

the children's legal centre

The Children's Legal Centre is a unique, independent charity concerned with law and policy affecting children and young people. It opened in 1981, as the major UK project for the International Year of the Child, and is staffed by lawyers and professionals with expertise in child law. Funded by grants from Central Government and by charitable trusts, including the Big Lottery and BBC Children in Need, the Children's Legal Centre works both in the UK and around the world to promote the rights of children and young people, and is recognised as a centre of excellence in the field of children's rights.

The Centre's Education Law and Advocacy Unit provides free legal advice and representation to children and/or parents with concerns relating to schools or Local Education Authorities (LEAs). It has been awarded a Specialist Quality Mark by the Legal Services Commission, together with a national contract to offer free legal advice and assistance from Community Legal Service Direct. The Unit can be contacted on 0845 456 6811.

The Centre produces a range of publications, including a journal, *childRIGHT*, which is published 10 times a year. *childRIGHT* explains and comments on all aspects of law and policy affecting children's rights. The Centre's other publications include:

- *At the Police Station: The role of the appropriate adult*
- *At What Age Can I? A guide to age-based legislation*
- *Children at Work: A guide to the law*
- *How Can I Complain? Making a complaint to the social services department*
- *Offering Children Confidentiality: Law and guidance*
- *Working with Young People: Legal responsibility and liability*
- *You and the Police: The basic facts – a pocket guide*

For more information about the Centre's publications, contact the administration office on 01206 872466.

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BULLYING:

A guide to the law

by Alison Fiddy and Carolyn Hamilton

IT IS WIDELY RECOGNISED that bullying in schools is a problem that affects thousands of children every year. There is now an abundance of information available on bullying that aims to give emotional support and assistance to bullied children and young people, as well as to those who bully. Many schools are now developing effective strategies to reduce bullying and are working closely with pupils and parents to resolve bullying incidents. However, parents may find that some schools do not accept that bullying is taking place or may refuse to take action to stop bullying. In these situations, parents need practical advice about how to make a formal complaint or take legal action.

This guide provides information for parents and carers on bullying and what schools are required to do to prevent and deal with it effectively. It also provides practical advice on what parents can do if their child is being bullied, and what to do if the school fails to support their child.



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ABOUT BULLYING

WHAT IS BULLYING?

Bullying can take the form of physical or verbal abuse, or a combination of both. Broadly speaking, bullying may include the following types of behaviour:

- name calling and teasing, including taunts about sexual orientation;
- taunting;
- mocking;
- making offensive comments either verbally, by text message or by email;
- malicious gossip;
- stealing from the victim;
- physical violence, such as kicking, hitting and pushing;
- making threats;
- coercion; and
- isolation from group activities.

The Department for Education and Skills (DfES) considers bullying to be conduct which is:

- deliberately hurtful (including aggression);
- repeated often over a period of time; and
- difficult for victims to defend themselves against.

(*Bullying: Don't Suffer in Silence – an anti-bullying pack for schools*, DfES, 2002.)

WHY DO SOME SCHOOLS FAIL TO TACKLE BULLYING?

While some schools are effective in addressing bullying, others still fail to take bullying seriously. There can be various reasons for this.

- The headteacher, teachers and parents may not be aware that bullying is taking place. Bullying is often secretive, underhand and may be cleverly hidden by the bullying child. The bullied child may be too frightened to tell. However, *Bullying: Don't Suffer in Silence* is clear that 'a lack of staff awareness does not mean no bullying occurs' (Part 5, para 5).
- The experience of the Children's Legal Centre is that some headteachers deny that bullying is an issue at their school.
- Parents regularly report to the Children's Legal Centre that some schools and teachers believe bullying is a normal and healthy part of school life.
- Bullies can be extremely effective in their methods, despite staff interventions.
- If the bullied child does tell, the teacher may not believe the child or the parents, or the teacher may simply not be interested. Parents often report that teachers say it is six of one and half a dozen of the other.
- Schools often imply that if a child is unable to cope, the school is not right for them and parents should consider moving their child to an alternative school.
- Some schools are unsure of how to respond to certain types of bullying, particularly racial or homophobic bullying.
- Sometimes, headteachers and teachers appear reluctant to deal with the parents of children who bully, especially those who refuse to accept that their child is bullying.
- Occasionally, it is the teacher who is bullying the child.

WHAT ARE SCHOOLS' RESPONSIBILITIES?

The attitude of the school makes a great deal of difference. There is less bullying in schools where it is regularly discussed and consistently condemned. Schools should act quickly and

firmly to eliminate bullying. There is now a broad consensus that the most effective way to do this is to adopt a 'whole school' approach. This means involving all staff members, parents and pupils in the creation of policies and an environment in which 'telling' is positively encouraged. Pupils with special educational needs and those from ethnic minority groups should certainly be involved in the drafting of policies, as they are particularly vulnerable to bullying.

THE LEGAL FRAMEWORK

Under s.61 *School Standards and Framework Act 1998 (SSFA)*, headteachers are required **by law** to draft a written policy on measures to prevent all forms of bullying – an anti-bullying policy.

Some schools choose to draft their anti-bullying policy as part of their behaviour/discipline policy. If this is done, it must be clear which sanctions apply to bullying. However, for the purposes of clarity, it is better to have an anti-bullying policy that is separate to the behaviour/discipline policy, but which cross-refers to the behaviour/discipline policy if necessary.

Pupils should be involved in both the drafting of an anti-bullying policy and its monitoring, by being encouraged to discuss the policy and its effectiveness. Involving pupils in this way is compatible with children and young people's right to participate under Article 12 *United Nations Convention on the Rights of the Child 1989*.

Anti-bullying policies

Part 1 of the DfES' anti-bullying pack for schools, *Bullying: Don't Suffer in Silence*, includes guidelines for the drafting of an anti-bullying policy:

Stage 1: Awareness raising and consultation

A policy will only be effective if everybody in school has discussed and understood the problem of bullying, and agreed on good and bad practice. Awareness raising helps people understand the problem and agree a definition of bullying. Consultation lets everybody say what they think the policy should contain. Pupils should be given a copy of the draft policy and set questions about it. As part of their homework, they can discuss the draft policy with their parents. A working party can help with formulating the draft policy. Family members, governors, lunchtime supervisors, community police officers, educational psychologists and educational social workers may offer valuable perspectives. An agreed policy should be short, succinct and written in language that everyone understands. It should include:

- a definition of bullying, including racist, sexist and homophobic bullying;
- aims and objectives;
- procedures to follow – who to tell, how to record bullying;
- sanctions; and
- intervention techniques, curriculum support, training policy, play policy.

Stage 2: Implementation

Schools should remind pupils that all forms of bullying are unacceptable and will not be tolerated. The school should keep accurate records of incidents, along with details of how the school responded. It is essential to follow-up after an incident to check that the bullying has not started again. This should be done within about two weeks, and again within the following half term. If pupils know that there will be follow-up, they are less likely to start bullying again.

Stage 3: Monitoring

Monitoring by a key member of staff identifies progress and enables follow-up, showing whether the policy is really effective. It is essential to follow up the launch of a policy with regular reminders. A low-profile policy can be easily forgotten and, in subsequent years, new pupils need to be made aware of the policy.

Stage 4: Evaluation

Data from monitoring and feedback, which staff, families, pupils and governors provide, should be used to review and update the policy – at least once every school year.

The anti-bullying policy should represent the school's 'promise' as to how it will address bullying problems. As a parent, you should always request a copy of the policy where your child is being bullied to check that the school is adhering to its promise.

Unfortunately, many schools fail to follow their anti-bullying policy, and some schools don't even have one. If a school fails to respond appropriately to your or your child's concerns about bullying, it may be necessary to make a formal complaint to the school's governors (see p.5).

Whole school preventive strategies

Besides having an anti-bullying policy, schools use a range of preventive strategies to deal with bullying. These include addressing bullying through the curriculum via PSHE and Citizenship, Circle Time or the tutorial system, as well as other strategies, such as peer support initiatives and school councils, which can help create a whole school anti-bullying ethos. Further information about effective strategies can be found in the Anti-Bullying Alliance's publication *Making schools safer using effective anti-bullying strategies* (available at www.ncb.org.uk/aba).

Racial bullying

Under the *Race Relations (Amendment) Act 2000 (RRAA)*, and the accompanying Code of Practice issued by the Commission for Racial Equality, schools must:

- 1 have a published race equality policy; and
- 2 monitor and assess the impact of their policies, including their race equality policy, on pupils of different ethnic groups.

In addition to these specific requirements, schools are under a statutory duty to work towards the elimination of racial discrimination and promote good race relations. If a school fails to address bullying of a racial nature, this will be contrary to the requirements to promote race equality and good relations between different ethnic groups. Where a child suffers racial bullying, the school should take it very seriously and not regard it as 'normal' bullying. Any failure on the part of a school to deal with bullying which involves a racial element could be a potential breach of the *RRAA 2000*. If your child is a victim of racial bullying, you should obtain a copy of the school's race equality policy, as well as the anti-bullying and behaviour/discipline policies. Schools should keep a log of all incidents of bullying of a racial nature as part of their arrangements for monitoring the duty to promote race equality.

DUTY TO SAFEGUARD AND PROMOTE THE WELFARE OF PUPILS

Schools and local education authorities (LEAs) are under a legal

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duty to safeguard and promote the welfare of children under s.175 *Education Act 2002*. The DfES has issued guidance as to how this duty applies (DfES/0027/2004 *Safeguarding Children in Education*).

The guidance provides that schools and LEAs are required to have arrangements in place for carrying out their functions with a view to safeguarding and promoting the welfare of children. S.175 requires two types of arrangements to be made:

- to take all reasonable measures to ensure that risks of harm to children's welfare are minimised; and
- to take all appropriate action to address concerns about the welfare of a child, or children, working to agreed local policies and procedures in full partnership with other local agencies.

The guidance states that 'safeguarding' covers more than the contribution made to child protection in relation to individual children. 'It also encompasses issues such as pupil health and safety and **bullying**' (Part 1, para 15, DfES/0027/2004 *Safeguarding Children in Education*).

In relation to maintained schools, the duty is placed on governing bodies. A failure to have the required arrangements in place may be grounds for the Secretary of State to take action against an LEA or governing body.

Independent schools

Although s.175 does not specifically apply to independent schools, there is a similar duty contained in the *Education (Independent School Standards) (England) Regulations 2003*. Paragraph 3 of the Schedule to these Regulations requires independent schools to draw up and implement effectively a written policy to safeguard and promote the welfare of children who are pupils at the school. How a failure to adhere to this duty would be enforced is unclear, however.

'Maintained' schools ...

... are state schools. They are divided into the following categories:

- Community;
- Foundation;
- Voluntary Controlled;
- Voluntary Aided;
- Community Special; and
- Foundation Special.

(S.39 *Education Act 2002*.)

WHAT TO DO IF YOUR CHILD IS BEING BULLIED

If your child is being bullied at school, you should approach the school to tell them about the situation and find out what they are doing, or planning to do, to deal with the problem.

Step 1: Talk to your child

You should:

- talk calmly with your child about his or her experiences and help him or her understand that there are some things that can be done to try to stop the bullying;
- make a note of what your child says – particularly who was involved, how often the bullying has occurred, where it happened and what has happened;
- reassure your child that he or she has done the right thing in telling you about the bullying; and
- explain to your child that, should any further incident occur, he or she should report it to a teacher straightaway and tell you about it.

Step 2: Talk to the class teacher

You should:

- make an appointment to see your child's class teacher or form tutor;
- explain to the teacher the problems your child is experiencing;
- be realistic when talking to the teacher – the school will not be able or willing to exclude the bully from the class or the school immediately. However, the teacher should investigate the allegations and take reasonable steps to protect your child; and
- obtain a copy of the school's anti-bullying policy, so that you are aware of the action the school should take on being notified of a bullying incident. You should also request a copy of the school's behaviour/discipline policy, as this will often set out sanctions for certain types of behaviour. Both policies can be obtained by writing to the headteacher, or sometimes the school office will give you copies if you ask for them informally.

If you feel you cannot talk to the teacher, or that the teacher does not take your complaint seriously, there may be other support staff in the school you could talk to, such as the Connexions Personal Adviser (for 13- to 19-year-olds), a Learning Mentor or Home School Liaison Worker.

Remember:

When talking to the teacher, you should:

- try to be as specific as possible – the teacher may have no idea that your child is being bullied and will need dates, places, times and the names of the children involved in order to take effective action to stop the bullying;
- make a note of what the teacher has said and the action that he or she intends to take; and
- stay in touch with the school after this meeting (let them know if things improve as well as if problems continue).

Keeping the channels of communication open is essential if the problem is to be resolved.

Once your child has told you that they are experiencing bullying, you should keep a diary of incidents, including dates, times, perpetrators and action that you have taken.

If you are not satisfied with the class teacher's response, you will need to speak to the headteacher.

Step 3: Talk to the headteacher

The headteacher has day-to-day responsibility for discipline and for ensuring that standards of behaviour are acceptable. This is equally true of independent and maintained schools. The headteacher does not, however, have a completely free hand. He or she must act in accordance with any written statement of general principles that has been provided by the governing body (s.61(1) *SSFA*).

Before going to see the headteacher, you should ensure that you have copies of, and have read, the school's anti-bullying policy and behaviour/discipline policy. You can then refer to them if you do not feel the policies are being followed.

If the headteacher does not resolve your complaint, or you feel that the action taken to stop the bullying is insufficient, you may need to take matters further by making a formal complaint.

'Where other strategies do not resolve the problem, permanent exclusion of the bully may be justified in the most serious and persistent cases, particularly where violence is involved.'
(*Bullying: Don't Suffer in Silence – an anti-bullying pack for schools, Part 4, para 2.*)

MAKING A FORMAL COMPLAINT

Step 4: Finding out about the school's complaints procedure

There is a legal requirement for maintained schools to have a written complaints policy. S.29 *Education Act 2002* requires the governing bodies of maintained schools to:

- establish procedures for dealing with complaints;
- have a written complaints policy; and
- publicise the school's complaints procedures.

DfES guidance, LEA/0180/2003, sets out a model complaints policy for schools.

Before making a complaint, parents should ask to see a copy of the school's complaints policy. Such a request should be made in writing to the headteacher.

Step 5: Request for disclosure of educational records

Before making a formal complaint, you should request to see a copy of your child's educational record. This is particularly useful where there is a dispute about whether you have notified the school of the bullying.

You should make an application to see your child's educational record in writing to the headteacher, and you should state that you are making the request under the *Education (Pupil Information) (England) Regulations 2000*. The record should then be made available to you within 15 school days. There is no charge for inspecting the record. However, should you wish to have a copy made, there may be a charge for photocopying.

There are some limited circumstances in which records can be withheld by the school:

- pupils who make an application on their own behalf will not be allowed to see their educational record if it is obvious that they do not understand what they are asking for; and
- schools should not disclose anything from an educational record which is likely to cause serious harm to the mental or physical health of the pupil or anyone else, including material concerning actual or suspected child abuse.

Sample letter of complaint

Name of Chair of Governors
School's address

Dear ...

Re: Formal complaint

I wish to make a formal complaint. My daughter, S, has been bullied over a period of ... weeks/months by X, Y and Z. The incidents complained of are as follows:

[you should list the bullying incidents, including dates and locations]

I have spoken to S's class teacher and the headteacher on numerous occasions. These are listed below:

[you should list the occasions on which you spoke to the class teacher and headteacher]

My daughter is now suffering anxiety and depression, and she is frightened to attend school. I would like a full and thorough investigation of these bullying incidents. Please let me know what action you will be taking, both in relation to the bullying which has occurred and to ensure that my child is not bullied in the future.

Yours sincerely

A N Other

Step 6: How to make a formal complaint

Despite the legal requirement to have a written complaints policy, procedures may differ substantially from school to school. Some require that the letter be sent to the headteacher, while others require that it be sent to the Chair of Governors. However, it is advisable to address the letter to the Chair of Governors or at least send a copy to him or her.

Any written complaint should state clearly that you wish to make a formal complaint and wish to be informed of the way in which the complaint will be dealt with. The sample letter of complaint above highlights the points that the letter should contain.

Step 7: The response of the governors

The response of the governors will vary from school to school, as each school has the power to set its own complaints procedures. However, there are some common elements:

- as a matter of good practice, most complaints procedures will contain time limits (usually between seven and 21 days) within which the governors will reply to the letter initiating the complaints procedure;
- commonly, the governors will appoint a sub-committee of between three and five governors to hear the complaint and determine what action should be taken;
- normally, as a parent, you will be allowed to attend and present evidence to the sub-committee, although some governing bodies make a decision on paper submissions alone;
- usually, you are allowed to take a friend or representative (which could be a legal representative) with you to the meeting; and
- generally, either the headteacher, or another teacher with

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responsibility for investigating the evidence, will be invited to give a report on the incidents complained of (you may be allowed to question or cross-examine the headteacher and vice versa).

It is rare for children, especially those at primary school, to be allowed to appear before the governor's sub-committee, give evidence or to present a complaint on their own behalf, but there is no statutory ban on them doing so (see Annex B, LEA/0180/2003, *School Complaints Procedure*, DfES, 2003).

Independent schools

Where a child is bullied in an independent school, there are certain procedures that are different.

Disclosure of educational records

If your child attends an independent school (i.e. a fee-paying school), you will need to request disclosure of their educational record under the *Data Protection Act 1998*, as the *Education (Pupil Information) (England) Regulations 2000* do not apply to independent schools. You should write to the headteacher stating that you wish to seek disclosure of your child's educational record under s.7 *Data Protection Act 1998*. The record must be made available to you within 40 days. It is not specified whether this period includes weekends, but it is best to allow **40 working days**.

Complaints procedures

Independent schools are required to publish a written complaints procedure, which is available to parents on request (para 7, Schedule to the *Education (Independent School Standards) (England) Regulations 2003*).

Anti-bullying policies

Independent schools are also required to publish and implement written policies on the prevention of bullying, having regard to the DfES guidance *Bullying: Don't Suffer in Silence* (para 3, Schedule to the *Education (Independent School Standards) (England) Regulations 2003*). The problem in relation to independent schools is the inability of parents to challenge their policies and procedures, or their failure to publish them in the first place, as they are not public bodies and are not, therefore, subject to judicial review (see p.10).

Step 8: Complaints to the local education authority (LEA)

Note: This section is not applicable to independent schools.

If the governing body appears inefficient or obstructive, or you do not feel the matter has been sufficiently resolved, a complaint can be made to the Director of Education at the LEA. The Director should respond to any complaint and can contact the school on your behalf. It is, however, important to be aware that the LEA will not usually interfere in the internal management of the school and is unlikely to instruct a school to take any specific action.

Under s.62 *SSFA 1998*, LEAs do have the power to take such steps as they consider necessary to prevent the breakdown, or continuing breakdown, of discipline in a school. This power can only be exercised where the LEA is of the opinion that the behaviour of certain pupils is severely prejudicing the education of other pupils. OFSTED has suggested that the ineffectiveness of a school's measures to combat bullying could be a concern prompting LEA action under this provision (*Bullying: effective action in secondary schools*, OFSTED, 2003).

Anti-Social Behaviour Orders

An LEA can apply for an Anti-Social Behaviour Order provided the bully is over 10 years of age. Such an Order can be applied for against a young person who is behaving in a manner that causes distress or harassment to someone who does not live in their own household. The Order stops the young person from going to particular places or doing particular things. A failure to comply with the Order can result in prosecution.

Step 9: Complaints to the Secretary of State for Education and Skills

Before a formal complaint can be made to the Secretary of State for Education and Skills, the complainant must have exhausted all other procedures.

The grounds for complaint to the Secretary of State are as follows:

- a complaint can be made that the school or LEA has failed to make adequate arrangements to safeguard and promote the welfare of a child under s.175 *Education Act 2002*;
- a complaint can be made against the LEA or the governing body of any maintained school that has acted unreasonably with respect to the exercise of any power or the performance of any duty imposed by the *Education Act 1996* (s.496 *Education Act 1996*);
- a complaint can be made against the LEA or the governing body of any maintained school if it has failed to discharge any duty imposed on them by or for the purposes of the *Education Act 1996* (s.497 *Education Act 1996*); and
- a complaint can be made against an LEA that has failed to perform to an adequate standard **any function** conferred on it in its capacity as an LEA (s.497A *Education Act 1996*).

The fourth criterion applies to LEAs only, but it does have the advantage of being a catch-all provision.

The Secretary of State can make such directions as he or she considers appropriate to ensure that the governing body or LEA complained of exercises its functions, duties or powers as it should.

You need to be aware that the grounds are very difficult to fulfil and very few complaints have resulted in action by the Secretary of State. Furthermore, it can take up to six months to get any response to a letter of complaint, and the Secretary of State very rarely finds it necessary to intervene.

In order to make a complaint to the Secretary of State, you should send a letter to the DfES setting out your complaint along with any supporting documents (e.g. letters of complaint sent to the governors or LEA).

Step 10: Complaints to the Local Government Ombudsman

You can complain to the Local Government Ombudsman (LGO). However, the LGO can only investigate in limited circumstances, and does not deal with complaints:

- about the internal management of the school (for example, where the school has heard a complaint, but the complainant is unhappy with its decision);
- about the actions of independent schools;
- about something that happened over 12 months ago unless he or she thinks it is reasonable to look into the matter despite the delay; or
- where the case has already been heard by a court or a tribunal.

It is also unlikely that the LGO will investigate where a complaint has been made to the Secretary of State for Education and Skills. In general, the LGO can only investigate complaints about the way an LEA has done or failed to do something where there has been 'maladministration' by the LEA which has caused 'injustice'. This means something that the LEA has done wrong, or failed to do, that directly affected the complainant. The LGO will not get involved where you simply disagree with the action that has been taken by the LEA.

'Maladministration' may have occurred where the LEA has:

- taken too long to take action without good reason;
- not followed its own rules or the law;
- taken incorrect action or failed to take action at all;
- broken its own promises;
- given the wrong information; or
- not made a decision in the correct way.

'Injustice' may include harm to feelings, distress, worry and inconvenience.

The LGO produces a form which you can use to submit your complaint. This can be obtained by telephoning the LGO Advice Line on 0845 602 1983, or it can be downloaded from their website at www.lgo.org.uk. Alternatively, you can write a letter detailing your complaint. All complaints to the LGO must be made in writing, and should be sent with copies of any documents in support of the complaint, such as letters from the LEA.

In the complaint, you should include the action you would like the LEA to take to make up for their failings. For example, you could ask for a formal apology or financial compensation.

In relation to bullying issues, you can only complain to the LGO about an LEA, not a school.

Remember:

- Before making a complaint to the LGO, you must have made a complaint to the LEA, and the LEA must have been given an opportunity to answer your complaint.
- You must complain to the LGO within 12 months of when you first knew about the matter you are complaining about or the LGO may refuse to deal with your complaint.

If the LGO decides to investigate, you will be kept informed and,

once the investigation is completed, a formal report will be produced. This will say whether there has been maladministration by the LEA and it will recommend what the LEA should do to put things right.

Although most LEAs comply with the LGO's recommendations, the LGO cannot force the LEA to pay compensation or comply with any other recommendations it makes.

There are three Local Government Ombudsmen in England, and they each deal with complaints from different parts of the country (see 'Useful Contacts' on p.14).

WITHDRAWING CHILDREN FROM SCHOOL

When parents discover that their child is being bullied, their immediate response is often to remove their child from school until the matter has been dealt with. This is, however, problematic and may isolate the child even further from their peer group. If a child stops attending school, the school will treat their absence as unauthorised. At the Children's Legal Centre, we often receive calls from parents whose child is simply too frightened to go to school or risks being badly injured if they do. In these circumstances, we always advise parents to seek a medical certificate from the GP to authorise their child's absence. Periods of unauthorised absence can result in parents being prosecuted for failing to ensure their child's attendance at school, which can result in a hefty fine or imprisonment for up to three months (see 'Failure to attend school regularly' on p.8).

There are also a number of other alternatives where a child simply cannot return to their school.

HOME EDUCATION

Under s.7 *Education Act 1996*, parents have a legal duty to ensure their child receives an efficient full-time education suitable to their

Periods of unauthorised absence can result in parents being prosecuted for failing to ensure their child's attendance at school, which can result in a hefty fine or imprisonment for up to three months.

child's age, ability and aptitude, and any special educational needs he or she has. There is no legal requirement that this education be provided at school. The law allows parents to educate their child at home provided that the standard of education they provide is 'suitable'. There are a number of organisations that can assist parents by providing both materials and moral support (see 'Useful Contacts' on p.14).

It is important to note that if you decide to home educate, you have opted out of the state education system and should not expect any assistance, financial or otherwise, in educating your child from the LEA.

If you decide to remove your child from school and home educate, your child's education becomes **your responsibility**, not the responsibility of the LEA.

If you make the decision to home educate your child, you need to notify your child's school. The school will then remove your child's name from the school roll. Failure to de-register your child in this way may result in action for non-attendance at school being taken against you (see 'Failure to attend school regularly' on p.8).

Case study 1

Mrs K contacted the Children's Legal Centre after removing her daughter, J, from school. J had been bullied over a period of 14 months. J had a Statement of Special Educational Needs. The school had failed to deal with the bullying despite both informal discussions and formal written complaints. Not only was Mrs K frustrated at the school's failure to take action, she was also worried about J's state of anxiety. She decided that the only course of action was to remove J from school. She hoped that this would spur the school into taking action against the bullies. However, the LEA threatened Mrs K with prosecution for J's non-attendance at school. Furthermore, the LEA notified social services, who decided to investigate under s.47 *Children Act 1989*. Mrs K was unwilling to co-operate with the social worker. The social worker threatened Mrs K, saying that the local authority would make an application to the courts for an interim care order if J was not returned to school forthwith. When Mrs K rang the Children's Legal Centre, she was advised to co-operate with the social worker in her investigations. Mrs K was also advised to obtain medical and psychological reports to support her withdrawal of J from school. In the event, medical and professional backing was obtained and the LEA agreed to provide some home tuition for J, as is their duty under s.19 *Education Act 1996*, until another school was found that was more suitable to J's special educational needs.

Sample letter

Headteacher
School's address

Dear [insert name of headteacher]

Re: Removal from the school roll

This letter is to inform you that as from [insert date], I shall be removing my son/daughter, [insert child's name], from [insert name of school] and educating him/her at home as is my right under s.7 *Education Act 1996*.

Please ensure that my child is no longer registered as a pupil at [insert name of school].

Yours sincerely

A N Other

If you are in doubt about whether the education you intend to provide is suitable, you should contact the LEA to ascertain what they consider to be a 'suitable education' before asking for your child's name to be removed from the school roll. Although you are not under any duty to check with the LEA, it may avoid any problems arising later. If the LEA is of the view that the home education you are providing is unsuitable, then you could face legal action (see 'School Attendance Order').

LEAs have no automatic right of entry to the parental home to check the standard of education the child is receiving, but they can require some proof that the education you are providing is satisfactory in their view.

Making the decision to home educate your child should be a last resort. You should try everything possible to maintain your child in school.

The DfES has produced guidance for parents wishing to home educate their children, which can be obtained from the Pupil Well-being and Transport Team at the DfES (telephone: 01325 391160/391272, email: pwtt.well-being@dfes.gsi.gov.uk).

FLEXI-EDUCATION

You may feel that your child should only return to school part-time for a certain period – perhaps while you build up his or her confidence and problems are resolved. If the school agrees to this,

R (on the application of G) v Westminster City Council [2004] EWCA Civ 45

G was a 15-year-old boy, who challenged the decision of Westminster City Council when it refused to make arrangements for the provision of education otherwise than at school. G suffered bullying, as a result of which G's father wrote to the LEA saying that he had no option but to withdraw G from school. G's father requested support under s.19 *Education Act 1996*, but the LEA argued that they had no duty to provide s.19 support for G, as he had not been permanently excluded and remained on the school roll, and that it had no statutory obligation to provide education 'otherwise' to G, as he had been removed from school on a voluntary basis. Thus, responsibility for his future education remained with his father. There was medical evidence which suggested that G was suffering from depression.

The Court of Appeal dismissed G's case and held that:

- 1 G was not prevented from attending the school in question by reason of illness.
- 2 G's father acted unreasonably in withdrawing G from school when there was no alternative school available.
- 3 'Otherwise', where used for the second time in s.19 [who, by reason of illness, exclusion from school or otherwise] is intended to cover any other situation in which it is not reasonably possible for a child to take advantage of any existing suitable schooling.
- 4 If a school is unable to prevent a child from being subjected to persistent bullying, it might be reasonable for the parents to withdraw that child from school and, in such circumstances, it would not be reasonably practicable for the child to continue to attend the school. But, that was not the case here and there was, therefore, no breach of s.19.

your child will attend for just part of the week. You must provide education at home for the remainder of the week. It is up to the headteacher and the governing body to decide whether they are prepared to agree to such an arrangement. The school is under no legal obligation to do so, and you have no right to insist. Furthermore, if the school does agree, you have a responsibility to ensure that your child keeps up with other pupils in the class.

THE LEA'S DUTY TO PROVIDE EDUCATION OTHER THAN AT SCHOOL

Under s.19(1) *Education Act 1996*, the LEA has a duty to provide suitable education for children of compulsory school age who are unable to attend school as a result of illness, exclusion or 'otherwise'. S.19 is supplemented by DfES Circular 11/99, *Social Inclusion: Pupil Support*, which provides that 'suitable' means an efficient education suitable to the age, ability and aptitude of the child, and any special educational needs he or she has. The guidance is clear that LEAs should decide what constitutes a suitable education outside of school, in consultation with parents, having regard to their own policies and the efficient use of resources, but '*LEAs cannot decide not to arrange any education, or to make arrangements which do not provide suitable education for [a] child*' (Chapter 4, para 4). It may be that the LEA can offer a child education at a special unit, such as a Pupil Referral Unit (PRU), or home tuition. But, you need to be aware that education provided under s.19 *Education Act 1996* may not be of the quality or quantity provided by schools.

WHAT CAN LEAS DO TO ENFORCE ATTENDANCE?

LEAs are able to take a range of actions where a child fails to attend school.

Failure to attend school regularly

Where a child, who is of compulsory school age and registered at a school, fails to attend school regularly, the LEA may decide to prosecute the child's parents (s.444(1) *Education Act 1996*). Prosecution can result in a fine (up to £2,500) or imprisonment for up to three months. There are a number of defences for parents prosecuted for this offence: no offence is committed if the child was away from school for a religious holiday or as a result of sickness or some other unavoidable cause. There is also a defence where parents can show that their child's absence was justified, but given the decision in *R (on the application of G) v Westminster City Council*, it is doubtful whether absence as a result of bullying would be considered justified.

School Attendance Order

An LEA must serve a School Attendance Order (SAO) on the parent of a child of compulsory school age who fails to prove that the child is receiving suitable education (s.437 *Education Act 1996*) – e.g. where a parent is home educating and the LEA does not believe that the education being provided is sufficient.

Before serving an SAO, the LEA will serve a notice on the parent in writing. This will require the parent to satisfy them that the child is receiving a suitable education within a specified period. If the parent cannot satisfy the LEA – or, in the opinion of the LEA, it is expedient that the child should attend school – it will serve an SAO. The SAO will specify the school (or PRU) that the child should attend. Failure to comply with an SAO is an offence (punishable by fine), unless the parent can prove the child is receiving suitable education outside school. SAOs are not designed for pupils who attend school irregularly.

Format of a School Attendance Order

As you [name of parent] of [address of parent], being the parent of a child of compulsory school age in the area of the Authority, have failed to satisfy the Authority in accordance with the requirements of the notice served on you under section 437(1) of the Education Act 1996 by the Authority on [date of notice] that [name of child] is receiving suitable education, either by regular attendance at school or otherwise:

And as, in the opinion of the Authority, [name of child] should attend school:

You are required to cause [name of child] to become a registered pupil at the following school:

[Insert full name and address of the school and omit the whole or part of the following words as the case requires]

being the school [specified by the Authority] [selected by you] [determined by a direction of the Secretary of State for Education and Skills] [as the school to be named in this Order] [specified in the statement for the child under section 324 of the Education Act 1996].

Failure to comply with the requirements of this Order is an offence unless you can prove that [name of child] is receiving suitable education otherwise than at school.

Signed [name of officer] of [name of Authority] Education Authority.

[Dated]

Parenting Orders

A Parenting Order can be imposed by the magistrates court where a parent fails to secure their child's attendance at school or fails to comply with a School Attendance Order (s.8 *Crime and Disorder Act 1998*).

A Parenting Order requires the parent to attend counselling or guidance sessions for up to three months and to comply with any other requirements set out in the Order. There may, for example, be a requirement that the child is escorted to and from school.

A Parenting Order can run for up to 12 months and a failure to comply with such an Order is an offence, which can result in a fine (s.9 *Crime and Disorder Act 1998*).

Education Supervision Order

An LEA may apply for an Education Supervision Order (ESO) as an alternative to, or as well as, prosecuting parents for their child's failure to attend school regularly or failure to comply with an SAO. Guidance on ESOs is contained in DfES Circular 11/99, *Social Inclusion: Pupil Support*.

An LEA will apply to the court for an ESO where a child is of compulsory school age and the LEA believes that he or she is not being properly educated (i.e. not receiving an efficient full-time education suitable to his or her age, ability, aptitude and any special educational needs he or she has). The LEA must consult social services before making an application for an ESO. A supervising officer is appointed to advise, assist and befriend, and give directions to the supervised child and his or her parents to secure

Where a child persistently fails to attend school, and is not receiving a suitable education out of school, it is not unknown for local authorities to initiate proceedings to take the child into care.

that the child is properly educated (Schedule 3, Part III, *Children Act 1989*). Before making any directions, the supervisor must ascertain the wishes and feelings of both the child concerned and his or her parents, including their wishes and feelings about where the child should be educated.

ESO proceedings are 'family proceedings'. Thus, the child's welfare is the paramount consideration.

An ESO normally lasts for one year or until the young person reaches 16. Failure to comply with an ESO is an offence punishable by a fine. It is rare for an LEA to apply for an ESO.

Care Order

Where a child persistently fails to attend school, and is not receiving a suitable education out of school, it is not unknown for local authorities to initiate proceedings to take the child into care. The local authority will have to prove in court that:

- the child is suffering or is likely to suffer significant harm; and
- this is attributable to the child being beyond parental control; or
- the child was not receiving the care that it is reasonable to expect (s.31 *Children Act 1989*).

If granted by the court, the effect of a care order is that the local authority gains parental responsibility for the child (in addition to the parents) and has the power to remove the child from the parents.

WHAT LEGAL ACTION CAN YOU TAKE IF A BULLYING PROBLEM IS NOT ADDRESSED?

If all else fails, you may wish to consider legal action. Before starting any form of legal action, it is wise to consult a solicitor. The Children's Legal Centre's National Education Law Advice Line may be able to assist, or you can contact your local Citizens Advice Bureau or the Community Legal Service Directory to ascertain whether there are any solicitors in your area who specialise in education law (see 'Useful Contacts' on p.14).

CRIMINAL ACTION

Some forms of bullying may amount to criminal behaviour. Where a child who has been bullied has been threatened, the bully may have committed the offence of 'threatening behaviour' under s.4 *Public Order Act 1986*. This provides that:

- a person will be guilty of threatening behaviour if he or she uses threatening, abusive or insulting words or behaviour, or distributes or displays to another person any threatening, abusive or insulting written material, sign or any other 'visual representation' to
- (i) cause another person to fear immediate violence; or
 - (ii) provoke the immediate use of unlawful violence by another person.

Case study 2

M, who was 15 and of mixed-race, was subjected to a campaign of bullying over a lengthy period, instigated by one pupil. M suffered two particularly violent attacks at the hands of the bully. The first of these was racially aggravated and resulted in injuries to M's face and damage to his teeth. The second resulted in M suffering a nosebleed after being head-butted. The bully was excluded for these incidents for just two days and two weeks respectively. M felt unable to return to school after the second incident, as he was frightened for his safety. He was given a medical certificate by his GP who diagnosed depression caused by the bullying. Following the second incident, M's mother contacted the police. The bully was charged and later convicted of common assault and racially aggravated assault occasioning actual bodily harm, for which he received two six month Referral Orders. The bully was permanently excluded from school for a reason unrelated to the bullying, and M was able to return to school. M is now making an application to the Criminal Injuries Compensation Authority in relation to the physical and mental trauma he suffered.

If the bullied child is physically or sexually assaulted, the bullies may have committed the criminal offence of common assault or indecent assault. Both offences can be committed without actually touching the victim. However, in practice, the police are unlikely to act unless physical contact has been made.

Children under the age of 10 cannot be prosecuted for a criminal offence. This means that the police cannot charge a child under the age of 10, no matter what he or she does. Any child over 10 can be charged with committing a criminal offence. The police cannot charge a bully with committing a criminal offence unless they have evidence that the incident occurred. If your child has been injured, you should take your child to a doctor to obtain medical evidence. As soon as possible, your child should write down the details of all the bullying incidents. This is important because this piece of paper can be used in court provided it is written immediately after the event. This means that, should your child be required to give evidence, this evidence can be given by simply reading from the original document (rather than giving evidence from memory).

It is advisable to contact the police in cases where the assault is of a serious nature and the school and LEA have consistently failed to deal with the bullying. Sometimes, the mere threat of informing the police is enough to spur the school or LEA into action. Unfortunately, schools themselves rarely involve the police in bullying incidents, even where there has been serious violence.

Recent case law does suggest that the courts will take a 'no-nonsense' approach in criminal proceedings against bullies. In *R v A*; *R v B*; *R v C (2003) (unreported)*, the Court of Appeal held that pupils who indulge in campaigns of intimidation and violence could expect severe punishment, as this is the only way the courts can assist teachers in stamping out bullying. A, B and C threatened other pupils and forced them to hand over money. The victims were kicked and punched, and one was told he would be stabbed. All three perpetrators were sentenced to six month Detention and Training Orders.

The Protection from Harassment Act 1997

Under this Act, it may be possible for injunctions to be put in place to restrict the bullying child's behaviour and for damages to

be claimed for the harm suffered by the bullied child. Applications should be made via a solicitor.

The Act also contains two criminal offences which may apply in cases of bullying:

- the offence of harassment; and
- the offence of putting people in fear of violence.

If you contact the police about bullying, you should ask about the possibility of prosecution under this Act. However, it should be noted that a criminal prosecution cannot proceed unless the harassment has taken place on at least two separate occasions.

Private prosecution

You may be frustrated because the Crown Prosecution Service (CPS) or police decide not to prosecute where there has been a physical or sexual assault against your child. In these circumstances, and provided there is sufficient evidence, it may be possible to bring a private prosecution against the bully.

However, there may be good reasons why the CPS or police have decided not to prosecute. The Code for Crown Prosecutors contains two possible justifications for deciding not to prosecute: that there is insufficient evidence and that it would be against the public interest. The latter ground is most commonly used to prevent prosecution in bullying cases. For example, it may be decided that it would be against the public interest to prosecute where the bully is a child with special educational needs.

You are entitled to know the reason why the authorities are not proceeding with a prosecution and you should ask for an explanation.

CIVIL ACTION

Judicial review

It may be possible to seek a judicial review of the school or LEA's failure to take appropriate action to deal with the bullying situation. As a result, the school or LEA may be forced to act.

Judicial review is a public law action. It can only be taken against public bodies or private bodies that perform a public duty. LEAs are susceptible to judicial review. So too are boards of governors of maintained schools (*R v Haberdasher Aske's Hatcham Schools, ex parte ILEA [1989] 1 Admin. LR 22*).

Judicial review cannot be used where the complaint is against an independent school, as independent schools are not public bodies. The relationship between those paying the fees (usually parents) and the school is founded upon the law of contract (*R v Fernhill Manor School, ex parte A [1993] 1 FLR 620*). (For claims against independent schools, see 'Breach of contract' on p.12.)

An application for judicial review can be made only once all other possible remedies against the school and LEA have been exhausted. Furthermore, you must act promptly. Applications for judicial review must be made within three months of the disputed act or decision (e.g. the decision of the governors or LEA not to take any action against the bully), although this time limit can be extended where the court considers that there is good reason for doing so.

In judicial review, the court examines the way in which a decision has been reached and not the merits of the decision as such. An application may be successful, for example, where the school or LEA:

- failed to follow proper or correct procedures;
- did not apply the law correctly; or
- acted so unreasonably that no other school or LEA would have reached such a decision.

A child can apply for judicial review, provided the court believes that he or she has sufficient interest to apply. If a child has left the school and is settled at a new school, he or she is unlikely to have sufficient interest. The application is made in the name of the child. However, it is brought on behalf of the child by a 'litigation friend', usually one of the parents.

Unless it is proved that the LEA, school or teacher has also been negligent, a successful application is unlikely to result in the payment of damages. However, a successful judicial review action may have the effect of forcing the school or LEA to act to stop the bullying.

Injunctions

It may be possible to obtain an injunction to prevent a bully continuing with his or her behaviour. In Scotland, a Non-molestation Order was obtained against a group of teenage bullies. The Order authorised police to arrest the bullies if they breached the Order. There has yet to be a similar case in England or Wales, and the courts are generally reluctant to grant injunctions against teenagers. An injunction is only likely to be granted in a case where the bullying is severe, regular and ongoing.

A bully who breaches an injunction cannot be imprisoned. However, if a parent is granted an injunction, this is a basis on which a school would be expected to investigate how the victim could be protected.

A human rights action

The *Human Rights Act 1998 (HRA)* came into force on 2 October 2000. The *HRA 1998* incorporates into UK law the *European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR)*. These rights can be found in Schedule 1 of the *HRA 1998*. All public authorities must act in compliance with Convention rights (s.6 *HRA 1998*) and all legislation must be interpreted to comply with them. If a public authority acts in a way which is incompatible with a Convention right, the victim may take legal action against that authority. The term 'public authority' includes LEAs, and governors and headteachers of schools.

There are two rights which may be of particular assistance to a bullied child who fails to obtain protection against bullying:

- Article 3 of the *ECHR* states: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. Corporal punishment has been banned in British schools as a consequence of a ruling of the European Court of Human Rights outlawing physical punishment in schools. Where a school consistently fails to protect a child from bullying by another child or a teacher, this could constitute a failure to uphold a child's right under Article 3. However, the threshold for Article 3 is extremely high. Counsel did not consider a case that the Children's Legal Centre assisted on to satisfy the threshold where the child had had his school blazer set alight while he was wearing it.
- Article 8 of the *ECHR* states: 'Everyone has the right to respect for his private and family life, his home and his correspondence'. Where children are forced to strip in public changing rooms against their will, or to have their bags and lockers searched, their belongings removed or are exposed to video surveillance, this may not amount to inhuman or degrading treatment, but

It is advisable to contact the police in cases where the assault is of a serious nature and the school and LEA have consistently failed to deal with the bullying.

may infringe their right to respect for private life. Again, however, the standard of proof is extremely high for Article 8.

In order for a claim to be brought under the *HRA 1998*, the bullying would have to be extremely serious and have resulted in physical or psychiatric damage which is supported by strong medical evidence.

In addition, in order to secure public funding for a *HRA 1998* claim, the potential damages claimed would have to be significant enough to justify the use of public funds.

In enforcing all the rights under the Convention, a balance must be struck between the requirements and interest of society at large and the requirement to protect the individual's rights. The principle of the 'efficient use of education resources' is a factor which LEAs and schools may take into account when considering their duty to comply with Convention rights (see *Ford v UK (1996) (Application No. 28374/95)*). To expect a school to commit vast resources to employ large numbers of teachers in an effort to stop bullying, for example, would be unreasonable.

A claim under the *HRA 1998* must be brought within one year of the breach of a Convention right, although it is not clear whether the strict one year limitation period will always apply to children.

Thus far, the *HRA 1998* has been of little use in cases of bullying.

Negligence

You may be able to sue the school, teacher or LEA for damages as compensation for psychiatric damage or physical injuries suffered by your child as a result of a school or teacher negligently failing to act to protect your child from bullying. Negligence arises where a duty of care is owed to the child, and that duty of care is breached resulting in injury or damage to the child.

The law of negligence is very complex. For a case to be successful, it would be necessary to prove the following things:

1. That your child has been bullied

There is no legal definition of bullying. In deciding whether bullying has occurred, the court will look at all the circumstances. It will be necessary to prove that the bullying went beyond normal social interaction between children and was of a serious nature.

2. That the teacher or school owes your child a duty of care

It is well established in law that a school owes its pupils a general duty of care. However, it is far less clear in law how far a school must go to protect a pupil against bullying.

Faulkner v London Borough of Enfield and Lea Valley High School [2003] ELR 426

L and T, who were sisters, were subjected to hair pulling, name calling, shoving and spitting, and an assault. Their mother withdrew them from school following the assault. L and T claimed that the school had been negligent in failing to prevent the assault and failing to make the school safe for them thereafter. The court held that the series of incidents amounted to bullying, in the sense of being deliberate, targeted and persistent, but that the school's responses were appropriate, particularly as only one complaint had been made about the bullying, thus leading the school to believe that the problem had been resolved.

3. That your child has suffered harm as a result of the bullying incidents

This could be physical injuries, psychiatric damage or emotional and psychological damage. The harm must have been a consequence of the bullying incidents, and expert evidence will be needed to prove the damage in court.

4. That the harm was foreseeable

It must have been reasonable to expect that the teacher or school could foresee that your child might suffer harm or damage.

5. That the harm suffered was a direct result of the teacher and school negligently failing to act to protect your child

It would need to be shown not only that the teacher or school knew what was going on, but also that they failed to take reasonable steps to stop it. Schools are not legally required to guarantee the absolute safety of children. However, they must ensure that pupils receive the same level of care and supervision that a reasonably prudent parent would take of his or her own children (*Beaumont v Surrey County Council [1968] 66 LGR 580*). In the *Beaumont* case, the court provided further explanation of the standard expected of headteachers. The judge said that a headteacher should take 'all reasonable and proper steps to prevent any of the pupils under his care from suffering injury from inanimate objects, the actions of their fellow pupils, or from a combination of the two'.

There have been a few negligence actions relating to bullying in schools. Whether a claim is likely to succeed depends very much on the individual circumstances of the case.

Case study 3

Becky Walker took legal action, claiming damages for psychological harm caused by bullying while at school. She claimed that Derbyshire County Council was negligent in failing to stop the bullying. Becky was born with cerebral palsy. She was academically brilliant and took part in school activities, including playing in the school band. She was subject to bullying from three other members of the band during the two-hour band practice each week over a 15-month period. The incidents amounted to taunts, disapproving glares from the bullies, snide comments that she sometimes overheard and generally making life difficult for her. Becky eventually left the band. Both she and her parents complained to the school about the bullying. After failing to get any satisfaction from the school, Becky commenced legal action. Her claim that the school had been negligent was unsuccessful. The County Court held that the incidents complained of were not sufficiently distressing so that a teacher could foresee psychiatric damage to the claimant, particularly as the bullying occurred for only two hours a week at band practice, and did not impinge upon Becky's whole school life. (*Walker v Derbyshire County Council, The Times, 7 June 1994.*)

If the school is a maintained school, a claim for damages will usually be against the LEA which, as an employer, will be vicariously liable for the acts of the teachers it employs. This only applies provided that the teachers were acting in the course of their employment at the time of the incident. If the school is independent, the claim will be against the governors.

It is possible to make a claim against individual teachers. However, this may not be worthwhile. Teachers are unlikely to be covered by insurance and may not be able to afford to pay damages.

Your child him or herself may also sue a teacher, school or LEA for negligence. The application will normally be made in the name of your child, but brought on behalf of your child by a 'litigation friend', usually you as his or her parent. Most children will qualify for Community Legal Services funding. Without it, such actions can be extremely costly.

Trespass to the person

A civil action claiming damages for trespass to the person may be brought against a bully. For the action to be successful, it would be necessary to prove that the bully:

- threatened the use of immediate force; or
- hit the victim; or
- threw something at the victim.

Practical jokes may also be covered (for example, pulling a chair away so that the bullied child falls to the floor, see *Purcell v Horn [1838] 8 Ad & E 602*). Unlike the law of negligence, it is not necessary to prove that the harm or damage was actually inflicted on the bullied child. It is necessary to prove that the bully intended to cause harm. While there are no age limits to prevent a civil action of this kind, it may be difficult to prove that the bully is capable of having the necessary intent where he or she is very young.

An action of this kind would normally have to be brought on behalf of the bullied child by a 'litigation friend'. Proceedings would be brought against the bully, rather than his or her parents.

If successful, the court may award damages against the bully to compensate for any injury inflicted. However, if the bullied child suffered no harm or damage, the damages would not be high. The bully would be responsible for paying the damages. However, he or she may be unable to do so because of lack of money.

Case study 4

In 1996, Sebastian Sharp accepted £30,000 in damages from Shene School in Richmond, London. He had been bullied for a number of years between the ages of 12 and 15. The bullying was verbal and physical, and on one occasion he was thrown through a glass door. The school did not admit liability, but the case was settled in Sebastian's favour before reaching the High Court.

Breach of contract

If your child attends an independent school, you have entered into a contract with the school on behalf of your child. This contract is the instrument that governs the relationship between you, the school and your child.

The school agrees to provide services to your child and may be sued if it fails to provide such services. Such obligations are reciprocal. You may be sued for failing to pay fees and so on. Such a

contract is no different from the type of contract which might be entered into with any other supplier of services bought by a consumer.

A private school contract may include an express obligation on the school to provide a reasonably safe environment for your child. Even if not expressly stated, such an obligation would be considered by the courts to be implied in the contract. A school which failed to provide such an environment could be sued for breach of contract in the civil courts. For example, this might happen where a school fails to provide adequate supervision to prevent serious bullying and a child suffers physical or psychological harm as a result.

The Children's Legal Centre often receives calls from parents who have removed their child from an independent school because of bullying. The parents want to know whether they are still required to pay the fees for the remainder of the term or year. Generally, parents will be contractually bound to pay, but it is necessary to refer to the contract for a definitive answer to establish whether the school is in breach of contract, in which case the parents should not have to pay.

Where the school has breached the contract, you could sue for the breach and subsequent loss.

BULLYING OUT OF SCHOOL

Often the most frightening and severe bullying takes place outside school. Schools are able to take action against pupils in such circumstances. However, it is unclear to what extent the school must take action to stop the bullying.

Bradford-Smart v West Sussex County Council [2002] EWCA Civ 7

Leah Bradford-Smart brought an action against West Sussex County Council after she suffered bullying between the ages of nine and 12. The bullying occurred on the bus to and from school and on the estate where Leah lived. Leah claimed damages against the LEA for psychiatric injury. The Court of Appeal dismissed Leah's claim for damages, and stated that *'although a school might on occasions be in breach of duty for failing to take steps within its power to combat harmful behaviour of one pupil towards another even when they were outside school, those occasions would be few and far between'*.

The DfES guidance, *Bullying: Don't Suffer in Silence*, states that where a pupil tells of bullying off the school premises, a range of steps could be taken by the school. For example:

- talk to the local police about problems on local streets (if necessary seek a police presence at trouble spots);
- talk to the transport company about bullying on buses or trains;
- talk to the headteacher of another school whose pupils are bullying off the premises;
- map safe routes to school, and tell pupils about them; and
- talk to pupils about how to avoid or handle bullying outside the school premises.

Parents are often told that the school cannot deal with bullying that takes place out of school hours (for example, on the way to and from school). In fact, the courts have held that a teacher **does**

Parents are often told that the school cannot deal with bullying that takes place out of school hours. In fact, the courts have held that a teacher **does** have the power to discipline a pupil for bad behaviour outside the school premises.

have the power to discipline a pupil for bad behaviour outside the school premises (*R v Newport (Salop JJ ex parte Wright) [1929] 2 KB 416, R v London Borough of Newham and Another, The Times, 15 November 1994*). In the *Newham* case, a boy was excluded for bullying another pupil on the way home from school.

Where bullying is occurring off school premises, you should deal with the issue in exactly the same way as you would were the bullying occurring at school by following the procedures set out earlier in this publication.

NEGLIGENCE

To make a successful negligence claim against a school or LEA for damage to a child arising from bullying off school premises/outside school hours, it is necessary to show that the school or LEA was negligent. You or your child would have to prove in court that the duty of care owed to pupils extends to incidents that occur outside school hours and that the damage was foreseeable. The law is unclear whether a duty of care is owed in these circumstances, although case law does provide some guidance.

Bullying incidents on school premises before and after school hours

It is unlikely that schools will owe a duty of care to supervise pupils who arrive on the school premises before the start of the school day, unless the school voluntarily accepts responsibility for them (*Ward v Hertfordshire County Council [1969] 114 Sol. J 87*).

Bullying incidents on the school bus

If transport to and from school is provided by the LEA or school, then it is likely that there is a duty to supervise pupils (*Jacques v Oxfordshire County Council [1967] 66 LGR 440*). If pupils travel to school using public transport, then while the bus company is responsible for ensuring the safety of passengers, it is unclear whether this extends to a duty to supervise pupils.

Bullying incidents on the way to and from school

While the law would seem to allow teachers and schools to discipline pupils for incidents off the school premises, it is by no means clear that they have a duty to do so and, if there is no duty, then it is not possible to make a claim for negligence.

USEFUL CONTACTS

The Children's Legal Centre's National Education Law and Advocacy Unit

University of Essex, Wivenhoe Park, Colchester C04 3SQ
www.childrenslegalcentre.com

The Children's Legal Centre holds a national contract to offer free education law advice and assistance from Community Legal Service Direct. The Centre can provide up to 30 minutes of free and confidential legal advice regardless of income. Any additional advice and/or casework can be provided under Legal Help. Advice Line: 0845 456 6811.

Advisory Centre for Education (ACE)

Unit 1C Aberdeen Studios, 22 Highbury Grove, London N5 2DQ
Telephone: 0808 800 5793
www.ace-ed.org.uk

Provides free, independent and confidential advice on all aspects of the education service for parents of compulsory school age pupils.

ChildLine

Freepost NATN 1111, London E1 6BR
Advice Line: 0800 1111
www.childline.org.uk

ChildLine is a free, national helpline for children and young people in trouble or in danger. It provides a confidential telephone counselling service for any child with a problem 24 hours a day.

Commission for Racial Equality

St Dunstan's House, 201-211 Borough High Street, London SE1 1GZ
Telephone: 0207 939 0000
www.cre.gov.uk

Community Legal Service Directory

Telephone: 0845 608 1122
www.justask.org.uk

A service provided by the Community Legal Service which assists in locating a legal advisor in a particular area.

Connexions

Telephone: 080 800 13 2 19
Text: 07766 4 13 2 19
www.connexions-direct.com

Connexions Direct is a service for young people aged 13 to 19. It provides information and advice on a wide range of topics, including bullying.

Education Otherwise

PO Box 7420, London N9 9SG
Telephone: 0870 730 0074
www.education-otherwise.org.uk

Education Otherwise provides support, advice and information to families practising or contemplating home-based education.

Local Government Ombudsman

There are three Local Government Ombudsmen in England. They deal with complaints according to where the complainant lives:

1. Tony Redmond, Local Government Ombudsman, 10th Floor, Millbank Tower, Millbank, London SW1P 4QP
Telephone: 020 7217 4620
London boroughs north of the river Thames (including Richmond but not including Harrow or Tower Hamlets), Essex, Kent, Surrey, Suffolk, East and West Sussex, Berkshire, Buckinghamshire, Hertfordshire and the City of Coventry.
2. Patricia Thomas, Local Government Ombudsman, Beverley House, 17 Shipton Road, York YO30 5FZ
Telephone: 01904 380200
London Borough of Tower Hamlets, City of Birmingham, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire and the north of England (except the Cities of York and Lancaster).
3. Jerry White, Local Government Ombudsman, The Oaks No 2, Westwood Way, Westwood Business Park, Coventry CV4 8JB
Telephone: 024 7682 0000
London boroughs south of the river Thames (except Richmond) and Harrow, the Cities of York and Lancaster, and the rest of England not included in the areas of Mr Redmond and Mrs Thomas.

Parentline Plus

520 Highgate Studios, 53-79 Highgate Road, Kentishtown, London NW5 1TL
Telephone: 0808 800 2222
www.parentlineplus.org.uk

This organisation offers assistance and support to anyone parenting a child.

Anti-Bullying Alliance (ABA)

The revision of this guide was commissioned by the Anti-Bullying Alliance. The Anti-Bullying Alliance is an independent body, made up of over 50 organisations, involved with the development of anti-bullying policies and practice in order to support the learning, development and emotional well-being of children and young people. All member organisations work together to reduce bullying and create safer environments for children and young people, free from bullying, violence and aggression. The Anti-Bullying Alliance is based at the National Children's Bureau, 8 Wakley Street, London EC1V 7QE. Telephone: 0207 843 6315. Email: aba@ncb.org.uk
Website: www.ncb.org.uk/aba

ABA members include:

Action for Inclusion – www.bgfl.org/services/inclus/
ATL – www.atl.org.uk
Beat Bullying – www.beatbullying.org
Brighton and Hove LEA Anti-Bullying Project – www.coastkid.org
ChildLine – www.childline.org.uk
Children's Legal Centre – www.childrenslegalcentre.com
Commission for Racial Equality – www.cre.gov.uk
ContinYou – www.continyou.org.uk
Coram Family – www.coram.org.uk
Council for Disabled Children – www.ncb.org.uk/cdc
County Durham Education – www.durham.org.uk/abs
EACH – www.eachaction.org.uk
Educational Consulting – www.educationalconsulting.co.uk
Fpa – www.fpa.org.uk
FSU – www.fsu.org.uk
Goldsmiths College – www.goldsmiths.ac.uk/departments/psychology/research
Jenny Mosley Consultancies – www.circle-time.co.uk
Kidscape – www.kidscape.org.uk
Leicestershire Educational Psychology Service – www.beyondbullying.com
Life Education Centres – www.lifeeducation.org.uk
Lucky Duck Ltd – www.luckyduck.co.uk
Miss Dorothy.com – www.missdorothy.com
NASUWT – www.teachersunion.org.uk
National Association of Head Teachers – www.naht.org.uk
National Association of Social Workers in Education
National Children's Bureau – www.ncb.org.uk
National Health Education Group – www.nheg.org.uk
National Healthy School Standard – www.wiredforhealth.gov.uk
NCH – www.nch.org.uk
Nottinghamshire Police
NSCOPSE – www.nscopse.org.uk
NSPCC – www.nspcc.org.uk
Overton Grange School – www.overtongrange.sutton.sch.uk
Parentline Plus – www.parentlineplus.org.uk
Safer Custody Group – www.hmprisonservice.gov.uk
Save the Children – www.savethechildren.org.uk
SCOPE – www.scope.org.uk
Secondary Heads Association – www.sha.org.uk
Stonewall – www.stonewall.org.uk
The Children's Society – www.childrenssociety.org.uk
UK Observatory for the Promotion of Non-Violence – www.ukobservatory.com
Young Minds – www.youngminds.org.uk
Young TransNet – www.youngtransnet.org.uk
Young Voice – www.young-voice.org
Youth Justice Board for England and Wales – www.youth-justice-board.gov.uk
YWCA of Great Britain – www.ywca.org.uk