

Schools HR Policy & Procedure Handbook



Keeping Children Safe in Education: School Suitability & Disqualification Guidance

	Date of Next Review
Head teacher/SLT	November 2017
Governors	Premises, Safeguarding and Health & Safety Committee / FGB

this guidance been **shared with** the following professional associations and Trade Unions representing Teachers, Headteachers and Support Staff:

- National Union of Teachers
- National Association of Schoolmasters Union of Women Teachers
- Association of Teachers and Lecturers
- National Association of Headteachers
- Association of School and College Leaders
- Unison
- GMB

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School Suitability & Disqualification Guidance

1. Introduction

Safer recruitment and an ongoing culture of vigilance is an important part of safeguarding children to promote the welfare of children in education.

Broseley Primary School is committed to safeguarding and promoting the welfare of all pupils in its care and expects all staff and volunteers to share this commitment.

The School see it as vital that there is a culture of safe recruitment and on-going vigilance. School governing bodies can adopt other HR Keeping Children Safe in Education (KCSiE) policies and guidance to help deter, reject and identify people who might be unsuitable to work with children and young people.

- Safer Recruitment Policy
- DBS Guidance for Schools
- Suitability Disqualification Guidance for Schools
- Single Central Record Guidance for Schools
- Whistle Blowing Procedure / Speaking Up About Wrong Doing
- Child Reporting Concerns Guidance
- Code of Conduct for school based staff
- Dealing with Allegations of Abuse

This guidance provides clarity for all maintained schools and academy schools on the requirements under the Childcare (Disqualification) Regulations 2009 and related obligations under the Childcare Act 2006 to ensure the suitability of staff and volunteers to work with children. This guidance also seeks to support head teachers and managers with procedures for checking suitability and disqualification.

2. Background Information

2.1 What is the key relevant legislation that supports this guidance?

Key relevant legislation includes:

- Childcare Act 2006 (sections 75, 76)
- The Childcare (Disqualification) Regulations 2009

Other legislation relevant to ensuring suitability to work with children includes:

- Safeguarding Vulnerable Groups Act 2006
- Early Years Foundation Stage (welfare Requirements) Regulations 2012
- Statutory Framework for the Early Years Foundation Stage 2013

2.2 What changes are there to the above legislation?

The statutory framework for Early Year's Foundation Stage (EYFS), which sets out disqualification requirements in nursery and reception classes has been in place to protect child minders for some time. This framework became statutory for maintained schools and academies from 1 September 2014.

2.3 What advice has been communicated by the DfE to inform the keeping children safe in education (KCSIE) agenda?

On 13 October 2014, the Department for Education (DfE) published supplementary advice to keeping children safe in education (KCSIE) around childcare disqualification requirements to help schools understand the requirements placed on them by childcare legislation. This was replaced in February 2015 with new DfE supplementary advice and in June 2016 this was replaced with 'Disqualification under the Childcare Act 2006.'

3. Eligibility

3.1 Which school staff are covered?

Schools and academy staff and volunteers are covered if they are employed and/ or provide early years childcare (from birth to 1 September following the child's 5th birthday) or later years (children who have not attained the age of 8) in nursery, pre-school, primary or secondary settings if they are concerned with the management of childcare:

- Early years childcare (from birth to 1 September following the child's 5 birthday) including any staff who provide any care for a child up to reception age. This includes education (teachers, classroom support and classroom volunteers) and any supervised activity e.g. breakfast clubs, lunchtime supervision, after school clubs provided by the school both during and outside school hours
- Later years childcare (children who have not attained the age of 8) including staff who are employed to work in childcare provided by the school outside of school hours for children who are above reception age but not over 8 years old. This does not include activities that take place during school hours including extended schools hours for co-curricular learning activities such as school choir or school sports team but does include before and after school settings i.e. breakfast and afterschool provision.
- Anyone directly concerned with the management of early years or later years childcare- this would include Headteachers and other Senior Leadership Team members, managers, supervisors, leaders or volunteers who are responsible for day to day management of the provision.

3.2 Which school staff are not covered?

The following staff/volunteers are not covered by the requirement:

- Employed staff and volunteers who only provide education, childcare or supervised activity during school hours to children above reception age*
- Staff who only provide childcare or supervised activities out of school hours for children who are aged 8 or over.
- Staff who have no involvement in the management of the relevant provision
- Caretakers, cleaners, drivers, transport escorts and staff who are not employed directly to provide childcare.
- School governors unless they volunteer in a relevant setting or they are directly concerned with the day-to-day management of such provision.

*Staff who are only occasionally deployed but not regularly required to work in the relevant childcare setting will not automatically come under the scope of the legislation

3.3 Which other staff working in school (but not employed by the school) are covered

and who is responsible for ensuring compliance?

Included:

- Centrally employed Local Authority staff (e.g. peripatetic music teachers and Protocol supply teachers) are covered but are the responsibility of the LA to ensure staff are compliant
- Other agency staff –schools must obtain confirmation from the employing agency or organisation of the individual that agency that they have informed the individual that they will be committing an offence if they are disqualified under the 2009 regulations. This should include that the agency provider requesting that their staff inform them if they consider that they could be disqualified under the legislation.
- Self-employed contractors: - schools must ensure that self-employed contractors are compliant with the requirement of the legislation.
- Trainees and students –schools must obtain confirmation from the provider that they comply with legislation (where the school pay the salary of a trainee it is their responsibility to conduct the checks and where the trainee staff is self- funded it is the training provider's responsibility to conduct relevant checks.)

Excluded:

- Healthcare professionals, Local Authority (LA) staff, Speech and language therapists and educational psychologists are excluded from the statutory definition

4. Reasons for Disqualification

4.1 What are the main reasons for potential disqualification?

Under the 2006 Act and 2009 Regulations these include:

- Being cautioned or convicted of certain violent/sexual offences against a child or an adult
- Grounds relating to the care of children (including where an order is made in respect of a child under the person's care)
- Having registration refused/cancelled in relation to childcare or children's homes or being disqualified from private fostering
- Included on the Disclosure and barring service (DBS) Children's Barred List
- Living in the same household where another person who is disqualified lives or is employed (disqualification by association)
- Offences include those committed overseas that, had the offence been committed in the UK would disqualify that person regardless of how the offence is described in the law of the other country

4.2 How do schools check if an offence is relevant?

As only certain convictions / events lead to disqualification, Headteachers will need to refer to the Relevant Offences table (link can be found at Appendix 2) to see if the offence is listed. If it is not listed, the individual is not disqualified. Section 6 of this guidance also advises on action to take with completed Suitability Declaration Forms. For new employees an up-to-date enhanced DBS certificate will help schools establish if offences committed by the individual are relevant.

4.3 What is disqualification by association?

An individual is also disqualified if a member of their household is disqualified as a result of the events set out in 4.1. 'Household' means more than partners and spouses and

extends to anyone else living or working in the household including children, wider family members, flatmates and lodgers. This means that if an individual worker in a relevant setting or an individual involved in the day to day management of such provision has a partner who has been convicted of a relevant offence and that partner lives in the same house as the individual employed or working in your school, then the individual is disqualified.

4.4 When are all convictions and cautions spent?

When considering relevant offences schools must take into account the Rehabilitation of Offenders Act (ROA) which allows some criminal convictions and cautions to be considered spent after a rehabilitation period. The vast majority of roles in schools and relevant childcare settings are exempt for the ROA so they are normally required to disclose all convictions and cautions including those that are spent. The exception is certain minor cautions and convictions are 'protected' for the purposes of the Exceptions Order, which means they are not subject to disclosure to employers and they are removed or filtered from standard or enhanced DBS certificates. When asking staff for their disqualification declaration schools should inform staff that they do not need to provide details about any protected cautions or protected convictions.

Schools should be aware that the ROA does not allow employees to disclose spent convictions or cautions relating to individuals who live or who are employed in the same household as them. The Suitability Declaration form asks if there is anyone living in the individual's household if they have any unspent cautions or convictions that are included on the list of relevant offences. Schools HR Businesses Partners can advise further on whether staff with relevant cautions or convictions are disqualified from working in relevant childcare.

5. Checking Suitability

5.1 Do existing pre-employment checks cover new staff and volunteers or is there anything further schools need to do?

The 'Carefirst' pre-employment checks carried out by Employment Services covers disqualification of individuals to ensure that relevant offences of the individual or anyone else who may live at the same address (but not someone who may be employed at this address). Schools are notified immediately if someone is disqualified. This guidance advises schools to issue new relevant staff with the Suitability Declaration Form (appendix 1) unless they are confident that the recruitment processes and paperwork have sufficiently included the requirements of the legislation. In practice, it will be sensible to include the completion of the form as part of the school's induction process.

5.2 How should schools request this information from existing relevant staff and volunteers?

Head teachers must take steps to assess whether any individuals employed at the school including volunteers or individuals concerned in the management of early year's provision as defined in 3.1 are disqualified by association or whether their own circumstances have changed. This guidance recommends the use of a Suitability Declaration Form at Appendix A in respect of themselves and in respect of others in their household. This has been agreed by unions.

6. Action to take with completed Suitability Declarations

6.1 How long should schools allow for individuals to complete the Suitability Declaration Form?

Headteachers may want to issue the guidance and Suitability Declaration Form to relevant staff and volunteers and allow up to 10 days for completion and return, so that they have the opportunity to understand the issues.

If the form is not returned within the given timescale, any non –returns should be chased allowing no more than a further 5 working days from the original timescale.

6.2 Do schools need to repeat this exercise?

There is no need to ask staff to repeat the declaration once it has been completed and this date is recorded on the Single Central Record (or separately –see FAQ 8.1) It is recommended that schools do however, remind staff about the declaration they have made and their duty to provide such information if their circumstances should change. Headteachers may choose to include a section on the school’s safeguarding policy or another policy (in addition to adding to new staff member’s recruitment processes.) This policy can then be referred to during a staff annual appraisal, during staff development days in staff bulletins or by email.

6.3 Do schools need to delve into the declaration?

There is no need to delve into the declaration. Once it is received, unless there is good reason to doubt the individuals’ honesty, the declaration can be taken at face value.

6.4 What are the implications if the Suitability Declaration Form is only partially completed or staff and volunteers refuse to complete it?

In the event that any individual refuses to complete the Suitability Declaration Form following attempts to request this in writing within the given timescales, (see 6.1), Headteachers should explain that:

Employed staff:

- The school may be in breach of Ofsted regulations if they employ a disqualified person without reasonable excuse. Ofsted may prosecute the employer i.e. school / academy/ Local Authority unless they can prove they did not reasonably know about the offence.
- By refusing to complete the declaration, they have refused to follow a reasonable management instruction.
- The matter will therefore be dealt with under the schools disciplinary procedures which may include suspension whilst the matter is investigated.

Volunteers:

- The school may be in breach of Ofsted regulations if they employ a disqualified

- person without reasonable excuse (there is no prosecution for volunteers).
- By refusing to complete the declaration, they have refused to follow a reasonable management instruction.
- They cannot continue to volunteer in school whilst the matter is being considered.
- Their actions may ultimately lead to no further volunteer work being offered.

6.5 What if an individual answers yes to one of the questions and/ or it is clear that an individual is disqualified?

Once a provider (school) has asked an individual to declare information about their circumstances the law provides that this must be acted upon if it brings into doubt their suitability. Schools must therefore be able to demonstrate that they have taken appropriate steps to make sure they do not knowingly employ someone who is disqualified. HR Business Partners can assist with this.

If it is clear that a relevant individual is disqualified it will be necessary to inform Ofsted within 14 days from the date they became aware of information which may lead to the disqualification of the individual (disqualification@ofsted.gov.uk). Failure to do so would be a breach of Early Years Foundation Stage (safeguarding and welfare) requirements. The following information should be provided

If it suspected that the individual may be disqualified but schools are not clear, after referring to Ofsted list of compliance at Appendix B they may contact Ofsted to make an enquiry to disqualification@ofsted.gov.uk providing the below information. Ofsted will respond with a decision.

- *School Name:*
- *DfE Number -*
- *Full Name –*
- *Telephone Number -*
- *Position – e.g. Child Workforce Volunteer (child ages 4 - 11 years old)*
- *Involvement -*
- *Nature of Offence –*
- *Nature of Offence- by Association –*
- *Relationship to Individual concerned*

The Headteacher should tell the relevant individual that Ofsted have been informed and explain the implications of disqualification to them including whether they can apply for an Ofsted waive of disqualification. (there may be some circumstances where this will not be possible –e.g. if the individual is on the barred list)

Until such time that a waive may be granted by Ofsted the individual remains disqualified and must not work or volunteer in early years or later years as defined in 3.1. If they cannot be moved into a role outside of early years or later year's provision, they may need to be suspended until the waive decision is made. The headteacher must consider the risk and harm to children and their obligations under the 2006 Act. Schools HR Business Partner can support Headteachers in making this decision.

Where a disqualification does exist and it is not possible to redeploy the individual or for the disqualification to be waived, it may be necessary to potentially end the contract of employment. This will be through the schools disciplinary procedure following which, they

will have the right to appeal.

7. Applying for an Ofsted Waive

7.1 Who can apply for an Ofsted waive?

It is possible to obtain an Ofsted 'waive' which has the effect of cancelling the disqualification (either through an offence committed by themselves or because someone they live with is disqualified). It is the individuals' responsibility (not the employers) to apply for an Ofsted waive via completion of the Ofsted form. This can be obtained by emailing Ofsted at disqualification@ofsted.gov.uk. The form must be completed accurately and fully and will need information about the individual or about the person who lives or is employed in their household who satisfies the disqualification criteria. This includes:

- Details of any order, determination, conviction, or other grounds for disqualification from registration under the 2009 Regulations;
- The date of the order, determination or conviction, or the date when the other ground for disqualification arose;
- The body or court which made the order, determination or conviction, and the sentence (if any) imposed ;and
- A certified copy of the relevant order (in relation to an order or conviction).

Schools should not request DBS certificates from third parties, or copies of a person's criminal record obtained directly from the police, person, probation service or courts as this would be considered an enforced subject access request –which from March 2015 will be a criminal offence.

There will be no agreement to waive an individual's disqualification on the strength of information given over the telephone.

Each waive will be considered on its own merits and a waive may be granted with limitations e.g. to a particular type of employment or to a particular premises. If a waive is granted then the employer must make a decision as to whether they wish to employ / continue employing the individual.

The headteacher should ask to see a copy of Ofsted's decision letter.

7.2 What is the status for the individual until a decision is reached from Ofsted?

Until such time that a waive may be granted by Ofsted the individual remains disqualified and must not work or volunteer in early years or later years as defined in 2.1. If they cannot be moved into a role outside of early years or later year's provision, they may need to be suspended until the waive decision is made. Schools HR Business Partner can support Headteachers in making this decision. Also see FAQ 6.5.

7.3 What action should be taken if the waive is granted?

Each waiver will be considered on its own merits and a waiver may be granted with

limitations e.g. to a particular type of employment or to a particular premises. If Ofsted decide to grant the disqualification they will advise the individual in writing. The headteacher must then make a decision as to whether they wish to employ / continue employing the individual. A copy of the waive and any related information should be retained in the staff personnel file. Advice can be sought from the school's HR Business Partner.

7.4 What action should be taken if the waive is refused or the individual decides not to apply for the waive?

In some cases the law does not allow Ofsted to consider granting consent to waive the disqualification e.g. if they are included on the barred list or have been found to have committed an offence against a child and the court had ordered they are disqualified from working with children.

If Ofsted decide not to waive the disqualification then the individual remains disqualified and unable to work in the designated setting. Consideration of redeployment should be made and if this is not an option a fair process should be followed to end the contract of employment. This is through the schools disciplinary procedure following which, they will have the right to appeal.

The potentially fair reason for any dismissal would be illegality- i.e. it is illegal to continue to employ as it contravenes a statutory provision.

Advice can be sought from the Schools HR Business Partner or HR Officer.

8. The Single Central Record (SCR)

8.1 Do schools need to record this new requirement on the SCR?

As schools need to keep a record of staff employed to work or manage relevant childcare (and record the date that the disqualification checks were completed) this guidance recommends that this is recorded on the Single Central Record. A new column is now included on the Local Authority's template. Headteachers may choose to record this separately for Ofsted and other inspectorates.

8.2 What paper work can be kept in order to comply with data protection legislation?

Where a school retains personal information that is relevant to disqualification this should be kept on the personnel file. Substantive details of criminal records checks and copies of completed Suitability Declaration Forms need not be retained and information that is provided to schools that is not relevant should be destroyed (e.g. unspent cautions or convictions which is not listed as a relevant offence).

9. Checklist

9.1 What have HR done?

- reviewed appropriate HR policies

- reviewed the Schools Application form and include satisfactory completion of disqualification declaration as a pre-condition in contracts of employment.
- reminded schools of the requirements of the regulations.

9.2 What do Schools and Academies need to do?

- Identify staff and volunteers in scope
- Adopt the School Suitability & Disqualification Guidance and Form
- Explain the issue to affected staff and volunteers and ask for completed declaration forms to be returned by a set date; chasing any non –returns
- Review the completed Suitability Declarations Forms and speak to HR urgently if any disclosures are made
- Adopt any amendment to school policies as advised by HR and posted on the Shropshire Learning Gateway (SLG)
- Update Single Central Record
- Include satisfactory completion of disqualification declaration as a pre-condition in contracts of employment or offer letters that are sent.
- Consider how staff can be reminded of their declaration; that they must inform the Headteacher should their circumstances change e.g. include in safeguarding policy, staff bulletin, emails, team meetings or individual appraisal.

10. Further Information

10.1 Where can schools seek further information?

For further advice about this guidance, headteachers can contact named Schools HR Business Partner or Schools HR Officer.

Other information and publications:

The Childcare (Disqualification) Regulations 2009

<http://www.legislation.gov.uk/uksi/2009/1547/contents/made>

DFE Disqualification Under the Childcare Act 2006

Keeping Children Safe in Education 2016:

Mailbox.disqualification@education.gsi.gov.uk

<https://www.gov.uk/government/publications/keeping-children-safe-in-education>

Childcare Act 2006, section 75

<http://www.legislation.gov.uk/ukpga/2006/21/section/75>

Childcare Act 2006, section 76

<http://www.legislation.gov.uk/ukpga/2006/21/section/76>

Compliance, investigation and enforcement handbook:childminding and childcare

<http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook-childminding-and-childcare>

Early Years Foundation Stage (Safeguarding & Welfare Requirements) regulations 2012

<http://www.legislation.gov.uk/uksi/2012/938/schedule/paragraph/2/made>

Statutory Framework for the Early Years Foundation Stage

<http://www.education.gov.uk/aboutdfe/statutory/g00213120/eyfs-statutory-framework>

Safeguarding Vulnerable Groups At 2006

<http://www.legislation.gov.uk/ukpga/2006/47/contents>

NDNA Disclosure and Barring Service Factsheet

<http://www.ndna.org.uk/advice-information/factsheets/member-factsheets>

11. Monitoring and Review

The Governing Body will monitor the outcomes and impact of this guidance on an annual/bi-annual basis in conjunction with school representatives.

This procedure will be reviewed no later than 2 years by Human Resources in consultation with Trade Unions.



SUITABILITY DECLARATION FORM

Name of School: _____

This form should be completed by all school staff and volunteers. Staff and volunteers are advised to refer to Shropshire's Suitability and Disqualification Guidance for further information.

Name **Post**

Please answer the questions set out below and sign the declaration to confirm that you are safe to work with and care for children. If there are any parts of the declaration that you are not able to meet, you should disclose this immediately to the Headteacher.

Please tick the box to indicate **YES/ NO** against each bulleted question below:

Questions relating to you:	YES	NO
• Are you disqualified for caring for children?		
• Have you been cautioned or convicted of any offences against a child?		
• Have you been cautioned or convicted of any violent or sexual offences against an adult?		
• Have you been barred from working with children by the Disclosure and Barring Service (the DBS, this used to be known as the CRB)?		
• If you have children, have your children, at any time, been taken into care?		
• Have your children been, at any time, the subject of a child protection order?		
• Has a court order been made, at any time, in respect of a child under your care?		
• Have you ever been refused registration or had registration cancelled in relation to childcare or a children's home or have you ever been disqualified from private fostering?		
Questions relating to ALL others in your household ('household' means anyone residing permanently or temporarily with you at the time of signing this declaration):	YES	NO
• Is anyone living in your household disqualified for caring for children?		
• Has anyone living in your household been cautioned or convicted of offences against a child?		
• Has anyone living in your household been cautioned or convicted of violent or sexual offences against an adult?		
• Has anyone living in your household been barred from working with children by the Disclosure and Barring Service (DBS)?		
• Does anyone living in your household have children that have been taken into care?		
• Has anyone living in your household been the subject of a child protection order?		
• Has anyone living in your household had a court order made in respect of a child in their care?		
• Has anyone living in your household been refused registration or had registration cancelled in relation to childcare or a children's home or has anyone been		

If you have answered YES to any of the questions on page 1, please provide further information below:

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.....

I understand my responsibility to safeguard children and am aware that I am required to notify the headteacher of anything that may affect my suitability or that of anyone currently living in my household.

I will ensure that I notify the headteacher immediately of any changes to my situation or that of anyone living in my household.

I give permission for you to contact any previous settings, local authority staff, the police or the DBS to share information about my suitability to care for children.

Signed

Date

Name in block capitals

Headteacher (signature)

Date

Name in block capitals

Headteacher – please record follow-on action taken, where relevant

.....
.....
.....
.....

Headteacher (signature)

Date action taken

Relevant Offences

Offences mentioned in Regulation 4 of the Childcare (Disqualification) Regulations 2009 will lead to disqualification.

This list was put together on 24 February 2015 and has not been updated since then.

The list, which can be accessed using the link below, is set out in three columns:

- The statutory reference to the offence;
- A brief description of the offence (which may not be the official or only description); and,
- Any conditions that apply in the disqualification regulations (e.g. that the offence will only lead to disqualification if it was committed against a child).

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528473/Disqualification_under_the_childcare_act_June2016.pdf