

## **Appendix 2: Summary of Equality Legislation for schools**

### **Introduction**

This Appendix summarises the requirements of race, disability and gender equality legislation, and the duty to promote community cohesion. It also addresses the legislation relating to age, sexual orientation and religion and belief.

Every aspect of school life is covered by the above equality duties, including for example:

For Pupils:

- admissions and attendance
- teaching and learning, timetabling, homework, trips, visits, sports, breaks and lunchtimes, exams, clubs and extracurricular activities, and curriculum development, planning and delivery
- behaviour, discipline and sanctions, exclusions (permanent and fixed term)
- welfare and well-being
- progress and attainment.

Pupils are defined under the Equality Act 2010 as:

- prospective pupils (in relation to admissions arrangements)
- pupils at the school (including those absent or temporarily excluded)
- former pupils (if there is a continuing relationship based on them having been a pupil at the school).

For Staff:

- recruitment, selection, conditions of employment
- career progress, appraisal, CPD activities
- disciplinary, grievance, dismissal.

The duties also apply to those using the services of the school, for example parents, and the wider community. The governing body carries the ultimate responsibility for implementing equality legislation.

### **Meeting these duties**

## **Accessibility**

There is specific disability legislation in relation to disabled pupils and accessibility which means schools must plan strategically over time to:

- increase access to the curriculum
- make improvements to the physical environment of the school to increase access;
- make written information accessible to pupils in a range of different ways.

Schools must ensure that disabled pupils do not receive less favourable treatment and to do this the school has a duty to make reasonable adjustments.

## **Age, sexual orientation, religion and belief**

Schools must not discriminate on the grounds of age, sexual orientation or religion and belief. Age is not a protected characteristic for the school's provision in terms of pupils.

## **Community cohesion**

Schools have a responsibility to promote community cohesion, developing good relations across different cultures, ethnic, religious and non-religious and socio-economic groups. This duty also includes other differences such as for example in gender, disability or sexual orientation.

## **Disability equality**

The general duty to promote disability equality is owed to all disabled people which means that schools must have due regard to:

- promote equality of opportunity between disabled people and other people
- eliminate unlawful discrimination
- eliminate disability related harassment
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life.

## **Gender equality**

The general duty to promote gender equality means that schools must have due regard to:

- eliminate unlawful discrimination and harassment and
- promote equality of opportunity between men and women, girls and boys.

The duty also includes the need to consider actions to address the causes of any gender pay gap.

## **Transgender**

Transgendered people are explicitly covered by the gender equality duty. The term transgender refers to a range of people who do not feel comfortable with their birth gender.

Schools must respect the confidentiality of those seeking gender re-assignment and provide a supportive environment within the school community.

### **Race equality**

The general duty to promote race equality means that schools must have due regard to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good relations between people of different racial groups.

### **Public Sector Equality Duty**

The Public Sector Equality Duty applies to maintained schools, Academies and Pupil Referral Units. The Duty requires public bodies to demonstrate that they are taking action on equality in policymaking, the delivery of services and public sector employment. The duty requires public bodies to take steps not just to eliminate unlawful discrimination and harassment, but also to actively promote equality of opportunity and to foster good relations. The duties also require schools to:

- publish information to demonstrate compliance with the Duty
- prepare and publish equality objectives.

Where a school has 150 plus employees, data about these employees as well as pupil data will need to be published. In a school with fewer than 150 employees, only pupil related data will need to be published.

### **Socio-economic duty**

A public sector duty applies to 'authorities' who, when making decisions of a strategic nature, must consider how to reduce the inequality of outcomes resulting from socio-economic disadvantage

### **Equality terminology**

The definitions given below relate to the terminology of the Equality Act 2010 and to its particular provisions:

## **Protected characteristics**

The Act protects people from discrimination and harassment based on the following 'protected characteristics':

- age
- disability.
- gender reassignment.
- marriage and civil partnership
- pregnancy and maternity.
- race.
- religion or belief.
- sex.
- sexual orientation.

## **Discrimination**

Unlawful discrimination is defined in the Act as:

- direct discrimination (including discrimination based on perception or association).
- indirect discrimination.
- discrimination arising from disability.
- failure to make reasonable adjustments (for disabled people).

## **Direct discrimination**

Direct discrimination occurs when you treat a person less favourably than you treat or would treat another person because of a protected characteristic. So a very basic example would be refusing to admit a child to a school as a pupil because of their race or only allowing male members of staff to drive the school minibus. It is not possible to justify direct discrimination, so it will always be unlawful.

There are however exceptions to the schools provisions that allow, for example, single-sex schools to only admit pupils of one sex without this being unlawful direct discrimination. There are also limited circumstances in which an employer might be able to make a case for a genuine occupational requirement for a job. For example, a school may be able to restrict applications for a PE teacher from applicants of a specified gender in terms of the duties of the role.

In order for someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a person without their protected characteristic is receiving or would receive. They do not need to find an actual person to compare their treatment with but can rely on a hypothetical person if they can show there is evidence that such a person would be treated differently.

## **Indirect discrimination**

Indirect discrimination occurs when you apply a provision, criterion or practice (PCP) in the same way for all people or for a particular group of people, but this has the effect of putting people sharing a protected characteristic at a particular disadvantage. It doesn't matter that

you did not intend to disadvantage those with a particular protected characteristic in this way. What does matter is whether your action does or would disadvantage such people compared with others who do not share that characteristic.

'Disadvantage' is not defined in the Act but may be understood to mean that a reasonable person would consider that disadvantage has occurred. It can take many different forms, such as denial of an opportunity or choice, deterrence, rejection or exclusion. Indirect discrimination will occur if **all** the following four conditions are met:

1. you apply (or would apply) the provision, criterion or practice equally to all, including a person with a protected characteristic, and
2. the provision, criterion or practice puts or would put those sharing a protected characteristic at a particular disadvantage compared to others who do not share that characteristic, and
3. the provision, criteria, practice or rule puts or would put the particular person at a disadvantage, and
4. you cannot show that the provision, criteria of practice is justified as a 'proportionate means of achieving a legitimate aim'.

### **Positive action**

Those with protected characteristics may be disadvantaged for social or economic reasons or for reasons to do with past or present discrimination. The Act contains provisions that enable schools to take action to tackle the particular disadvantage, different needs or disproportionately low participation of a for example a particular pupil group, provided certain conditions are met.

These are known as the positive action provisions and allow (but do not require) schools to take proportionate action to address the disadvantage faced by particular groups of pupils. Such action could include targeted provision, resources or putting in place additional or bespoke provision to benefit a particular disadvantaged pupil group.

Positive action is intended to be a measure that will allow schools to provide additional benefits to some pupils to address disadvantage and is not the same as positive discrimination. Positive discrimination would be providing preferential treatment for a particular disadvantaged pupil group that exceeded the positive action conditions. It is never unlawful to treat disabled pupils (or applicants) more favourably than non-disabled pupils (or applicants). That is, a school is permitted to positively discriminate in favour of disabled pupils (applicants).

### **'Proportionate means of achieving a legitimate aim'**

To be legitimate the aim of the provision, criterion or practice must be legal and non-discriminatory and represent a real objective consideration. In the context of school education, examples of legitimate aims might include:

- maintaining academic and other standards.
- ensuring the health and safety and welfare of pupils.

Even if the aim is legitimate the means of achieving it must be proportionate. Proportionate means 'appropriate and necessary', but 'necessary' does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim. Although the financial cost of using a less discriminatory approach cannot, by itself, provide a justification,

cost can be taken into account as part of the school's justification, if there are other good reasons for adopting the chosen practice.

### **Provision, criterion or practice (PCP)**

These are not defined in the Act but can be interpreted widely and include:

- arrangements (for example, for deciding who to admit or in preparing for a school trip)
- the way that education, or access to any benefit, service or facility is offered or provided
- one-off decisions
- proposals or directions to do something in a particular way.

They may be written out formally or they may just have developed as the school worked out the best way of achieving what it wanted to do.

### **Reasonable adjustments**

The reasonable adjustment duty requires steps to be taken to avoid disadvantage where a provision, criterion or practice puts disabled people at a substantial disadvantage. For pupils this duty is owed to existing pupils, applicants and, in limited circumstances, to disabled former pupils in relation to the following areas:

- deciding who is offered admission as a pupil
- the provision of education
- access to any benefit, service or facility.

For employees and potential employees the duty to make reasonable adjustments aims to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

Schools cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue will be whether or not an adjustment is 'reasonable' and this is an objective question for the tribunals to ultimately determine.