



## **Additional guidance notes and Glossary of Terms**

### **Our Legal Duties**

Legislation relating to equality and discrimination is laid out in the Equality Act 2010.

This legislation covers employment (work), the provision of services and public functions, and education.

Employers (schools) are liable for discriminatory acts of their employees if they did not take reasonable steps to prevent such acts. Employees can be liable for acts (where an employer took reasonable steps to prevent such acts).

### **The 'Protected Characteristics' within equality law are:**

- **Age** - A person of a particular age (e.g. 32 year old) or a range of ages (e.g. 18 - 30 year olds). Age discrimination does not apply to the provision of education, but it does apply to work.
- **Disability** - A person has a disability if s/he has, or has had, a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. It includes discrimination arising from something connected with their disability such as use of aids or medical conditions. HIV, multiple sclerosis and cancer are all considered as disabilities, regardless of their effect.
- **Gender reassignment** - A person (usually with 'gender dysphoria') who is proposing to undergo, is undergoing or has undergone gender reassignment (the process of changing physiological or other attributes of sex, therefore changing from male to female, or female to male). 'Trans' is an umbrella term to describe people with this 'Gender Identity'. 'Intersex' or 'Third Sex' is not covered by the Act but the school will treat Intersex children with the same degree of equality as children with gender dysphoria. Children as young as five may begin to show signs of gender dysphoria and therefore it is relevant in any school environment. (The Intercom Trust in Devon supports schools in supporting children undergoing gender reassignment).
- **Marriage and civil partnership** – Marriage and civil partnership discrimination does not apply to the provision of education, but it does apply to work.
- **Pregnancy and maternity** - Maternity refers to the period of 26 weeks after the birth (including still births), which reflects the period of a woman's Ordinary Maternity Leave entitlement in the employment context. In employment, it also covers (where eligible) the period up to the end of her Additional Maternity Leave.
- **Race** - A person's colour, nationality, ethnic or national origin. It includes Travellers and Gypsies as well as White British people.
- **Religion and belief** - Religious and philosophical beliefs including lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition. Religion and belief discrimination does not prevent a school from carrying out collective worship or other curriculum-based activities, but pupils may withdraw from acts of collective worship.



- **Sex** - A man or a woman.
- **Sexual orientation** - A person's sexual orientation towards the same sex (lesbian or gay), the opposite sex (heterosexual) or to both sexes (bisexual). Although children may not identify as gay or lesbian when very young, promotion of sexual orientation equality is as relevant in a primary school environment as it is in a secondary school. For example, a child may have an older sibling or parent who is gay. Children may experience friends 'questioning' or 'coming out' when they are in secondary school or college. Schools with a particular religious ethos cannot discriminate against lesbian, gay or bisexual pupils.

*It is also unlawful to discriminate because of the sex, race, disability, religion or belief, sexual orientation or gender reassignment of another person with whom the pupil is associated.*

*So, for example, a school must not discriminate by refusing to admit a pupil because his parents are gay men or lesbians. It would be race discrimination to treat a white pupil less favourably because she has a black boyfriend.*

**'Prohibited Conduct' (acts that are unlawful):**

- **Direct discrimination** - Less favourable treatment because of a protected characteristic.
- **Indirect discrimination** - A provision, criteria or practice that puts a person at a particular disadvantage and is not a proportionate means of achieving a legitimate aim.
- **Harassment** - Conduct which has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It includes harassment by a third party (e.g. customer or contractor) in the employment context.
- **Victimisation** - Subjecting a person to a detriment because of their involvement with proceedings (a complaint) brought in connection with this Act.
- **Discrimination arising from disability** - Treating someone unfavourably because of something connected with their disability (such as periods of absence from work or medical conditions) **and failure to make reasonable adjustments.**
- **Gender re-assignment discrimination** - Not allowing reasonable absence from work for the purpose of gender-reassignment in line with normal provision such as sick leave).
- **Pregnancy/maternity related discrimination** - Unfavourable treatment because of pregnancy or maternity. It includes unfavourable treatment of a woman or girl because she is breastfeeding.
- **Discrimination by association or perception** - For example, discriminating against someone because they "look gay", or because they have a gay brother; discriminating against someone because they care for a disabled relative.

*Schools are allowed to treat disabled pupils more favourably than non-disabled pupils, and in some cases are required to do so, by making reasonable adjustments to put them on a more level footing with pupils without disabilities.*



### **Public Sector Duties (applies to schools):**

A school must, in the exercise of its functions, give due regard to the need to (in relation to protected characteristics above):

1. Eliminate discrimination, harassment, victimisation and any other prohibited conduct.
2. Advance equality of opportunity (remove or minimise disadvantage; meet people's needs; take account of disabilities; encourage participation in public life).
3. Foster good relations between people (tackle prejudice and promote understanding).

*In practice, 'due regard' means giving relevant and proportionate consideration to the duty, so decision makers in schools must have due regard when making a decision, developing a policy or taking an action as to whether it may have implications for people because of their protected characteristics.*

### **Reasonable Adjustments and Accessibility Plans (Schedule 10)**

Schools are required to:

- Take reasonable steps to avoid disadvantage caused by a provision, criteria or practice or a physical feature that puts a disabled person at a substantial disadvantage compared to a non-disabled person. This involves removing or avoiding a physical feature, for example steps and lifts.
- Take reasonable steps to provide auxiliary aids/services.
- Provide information in an accessible format.
- Develop and implement (by allocating appropriate resources) Accessibility Plans which will
  - Increase disabled pupils' access to the school curriculum
  - Improve the physical environment
  - Improve provision of information.

The duty is an anticipatory and continuing one that schools owe to disabled pupils generally, regardless of whether the school knows that a particular pupil is disabled or whether the school currently has disabled pupils. The school will need to plan ahead for the reasonable adjustments that it may need to make, working with the **relevant admissions authority** as appropriate.

**For more information download guidance from the DfE:**

<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>

**Equality Human Rights website:** <http://www.equalityhumanrights.com> which includes the guidance for education providers (schools)

or Devon County Council at <http://www.devon.gov.uk/equalitylegislation.htm>

The Education and Inspections Act 2006 introduced a duty on all maintained schools in England to promote community cohesion. Aspects of educational legislation have also promoted equal opportunities, for example the Education Act includes a duty for local



authorities to educate children with special educational needs in mainstream schools wherever possible.

## **Appendix**

### **Definitions**

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|------------------|---|
| Equality         | This is more clearly defined as equality of opportunity and outcome, rather than equality of treatment. This means treating people fairly and according to their needs as some people may need to be treated differently in order to achieve an equal outcome.  |
| Inclusive        | Making sure everyone can participate, whatever their background or circumstances.   |
| Diversity        | Recognising that we are all different. Diversity is an outcome of equality and inclusion.   |
| Cohesion         | People from different backgrounds getting on well together (good community relations). There is a shared vision and sense of purpose or belonging. Diversity is valued. Relationships are strong, supportive and sustainable. Cohesion is an outcome of equality and inclusion  |
| Community        | <p>From the school's perspective, the term "community" has a number of meanings:</p> <ul style="list-style-type: none"><li>• The school community – the students we serve, their families and the school's staff.</li><li>• The community within which the school is located – in its geographical community, and the people who live and/or work in that area.</li><li>• The community of Britain – all schools by definition are part of it.</li><li>• The global community – formed by European and international links.</li></ul> |
| Gender Dysphoria | <p><b>Gender dysphoria is a recognised condition in which a person feels that there is a mismatch between their biological sex and their gender identity.</b></p> <p>Biological sex is assigned at birth, depending on the appearance of the infant. Gender identity is the gender that a person "identifies" with, or feels themselves to be.</p>  |



### **Exemplar equality objectives for inclusion in the school improvement plan**

The school might want to set up an equality working party or committee to take the lead on this. This committee could feed its findings into the relevant governing body committee.

To ensure that the school community is well-represented this working party could include pupils with a range of protected characteristics and their parents, the special educational needs coordinator, a member of the leadership group and people from the local community who support groups with protected characteristics.

*Information can be used to help identify inequalities which need to be addressed through equality objectives.*

### **Information a school should collect includes:**

- Progress and achievement data on individuals and groups (RAISE online, school SIMS termly assessment tracking data, data on interventions, before and after)
- Attendance data on individuals and groups
- Record of bullying incidents (new system from Sept 2012) – **BPRI form & guidance**
- Participation of pupils with protected characteristics in extra-curricular activities, including residential trips and activities out of school, the student council and positions of student responsibility
- Devon's audit toolkit, to analyse information about pupils with special educational needs and disabilities (SEND)
- Satisfaction surveys with staff, parents and pupils about the extent to which they feel that the school is addressing inequalities (including bullying and prejudice), improving outcomes for disadvantaged pupils and promoting positive attitudes. Anonymous surveys can help plug gaps in information, for example it is difficult to collect information that people consider 'private' such as their religion or belief or sexual orientation
- A review of national, regional and local studies