

Equality Act 2010

The Equality Act 2010 is **discrimination legislation** that applies to all maintained and independent schools, and maintained and non-maintained special education schools. **It is every single school staff member's responsibility to abide by the Equality Act 2010** by following its three public sector duties:

Promoting equality
of opportunity

Promoting good
community relations

Eliminating
discrimination

The Equality Act 2010 states it is **unlawful to discriminate against a pupil, or a prospective pupil, by treating them less favourably than they would have been treated because of their protected characteristic(s): sex, race, disability, religion or belief, sexual orientation, pregnancy or maternity and gender reassignment.** It is unlawful to discriminate against a pupil because of a protected characteristic a person they are **associated** with has. Or because of a protected characteristic you **perceive** them to have, even when you are mistaken. E.g. *not engaging with a pupil as their parents are gay, or you think they are gay.*

There are four types of unlawful discriminatory behaviour:

Direct: Treating a person less favourably because of their protected characteristic.

Indirect: A provision, criterion or practice is generally applied but had the effect of putting people of a particular protected characteristic at a disadvantage.

Harassment: Unwanted conduct in relation to relevant protected characteristics with the purpose or effect of violating dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment *regardless* of whether it is an **intentional** or an **unintentional** act or behaviour.

Victimisation: Treating somebody less favourably than otherwise would have been because of something they have done in connection with the Act. E.g. *a pupil must not be victimised via association if a parent/sibling has complained about a teacher's alleged unlawful discriminatory behaviour.* Yet, children's good faith is relevant – it is not victimisation to give a child consequences for dishonesty about an alleged incident if found to be untrue.

Did you know?

- ✓ Age as a characteristic is protected by the Act in employment but not school. E.g. *it is not unlawful to organise children in age groups or treat them appropriately for their age or development stage.*
- ✓ The law for disability is different from any other protected characteristic as it works in one direction; it protects disabled people but not people who are not disabled. Schools can treat disabled pupils more favourably than non-disabled pupils to put all students on a more level footing.
- ✓ Although the Act does not bear directly on the relationships between pupils it directly deals with how schools treat pupils. E.g. *if a teacher dismissed complaints of racist bullying they may be guilty of unlawful discrimination for treating bullying related to protected characteristics less seriously than other types of bullying.*
- ✓ It is not unlawful exclusion of others when schools provide targeted 'Positive Action' measures to meet a particular need or alleviate disadvantages experienced by pupils with protected characteristics. E.g. *it is lawful to run special catch up sessions for Gypsy children.*
- ✓ The Act does not specifically deal with school uniform policy, however the Human Rights Act 1998 state schools need to be careful of 'blanket' uniform policies so they do not discriminate protected characteristics and must be sensitive to cultural and religious needs.

Exceptions

- ✓ **Admissions:** Single sex schools can refuse admission of pupils of opposite sex, admit a small number of pupils of opposite sex on an exceptional basis in relation to particular classes (limitation of numbers is not discriminatory). A school does not lose single sex status if a pupil undergoes gender reassignment and remains in the school. Schools of religious character can admit prospective pupils of schools own faith as a priority, unless places are unfilled. However, in order to reflect diversity in the schools locality, schools of a religious character can allocate places for children of other religions (but not by ethnicity).
- ✓ **Benefits, faculty and service:** Schools of religious character can access other aspects of school life, which are not necessarily part of the curriculum and conduct themselves in a way that is compatible with their religious ethos. E.g. *a Jewish School receiving pastoral care from a Rabbi is not discriminating against pupils of other faith by not providing an equivalent provision for other faiths.* However, it is unlawful to treat a pupil less favourably because they do not belong to the schools religion or in relation to any other protected characteristic. E.g. *a faith school would be acting unlawfully if it refused to admit a child because they, or their parents, were gay.*
- ✓ **Curriculum content:** Schools are free to include a free range of issues, ideas and material in the syllabus and expose pupils to thoughts and ideas of all kinds, however challenging or controversial, without fear of a legal challenge based on a protected characteristic. E.g. *if a boy complained it was sex discrimination for him to do a module on feminist thought or straight or religious pupils objected to a Gay Pride week project because it was discriminatory on sexual orientation or religious ground they would not have a valid complaint under the act.* Nevertheless, schools must ensure the way issues are taught do not discriminate against individual pupils. E.g. *If a teacher never asked the opinion of black pupils and made it clear she was uninterested in their views, a discrimination complaint would be valid.*
- ✓ **Collective worship:** Daily act of collective worship of a broadly Christian nature is mandatory for maintained schools and all schools can have acts of worship or other forms of collective worship. Schools are not acting unlawfully if they do not provide equivalent acts of worship for other faiths, but are free to celebrate any religious festival (e.g. *nativity play/ Eid/ Diwali*) without being claimed to be discriminatory against children of other faiths.