

The Equality Act 2010 for Schools

The Equality Act 2010 brings together all existing equality legislation under one act. In England and Wales the Act applies to all maintained and independent schools, (including academies and free schools) and maintained and non-maintained special schools, and covers current and prospective employees and pupils. Pupils who have left the school are also protected with reference to activities that connect them to the school, for example: the provision of references or access to publications for former pupils.

Anyone acting on behalf of the school (an employee or a contractor) is liable for their own behaviour, but the school is also liable unless it can show that it has taken all reasonable steps to stop the individual from doing the discriminatory action.

The relationship between one pupil and another is not within the scope of the main act. However, the school needs to demonstrate that it treats bullying with regards to each protected characteristic as seriously as all other forms of bullying and has a duty to foster good relations between pupils as part of its Public Sector Equality Duty (see page 6).

Protected Characteristics

There are 9 **protected characteristics** that are covered by the act:

- Race and Ethnicity
- Religion or Belief
- Sexual Orientation
- Sex
- Disability
- Age
- Gender Reassignment
- Pregnancy and Maternity
- Marriage and Civil Partnership

Age and marriage and civil partnership are not protected characteristics with regards to school pupils, although they are relevant for employees.

Prohibited Behaviours

The following behaviours are outlawed by the act.

Direct Discrimination

When a person treats one person less favourably than they would another because they have a **protected characteristic**.

For example: not allowing girls the same access to sporting equipment as boys would be direct discrimination because of sex.

Indirect Discrimination

When a provision, criterion or practice is neutral on the face of it, but its impact particularly disadvantages people with a protected characteristic

For example: banning all headwear would indirectly discriminate against people who wear headwear for religious reasons.

Harassment

Unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant, or violating their dignity

There are three types of harassment which are unlawful under the Equality Act:

- Harassment related to a relevant protected characteristic
- Sexual harassment
- Less favourable treatment of a pupil because they submit to or reject sexual harassment or harassment related to sex

For example: if a teacher used the fact that the Merchant of Venice was a set text to make fun of the Jewish pupils in the class, this would be harassment because of religion or belief.

Victimisation

Treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so. The less favourable treatment does not need to be because of a protected characteristic.

For example: refusing to make a pupil a prefect because she has complained that a teacher harassed her because she is Polish is an example of victimisation because of ethnicity and race

There are additional victimisation provisions for schools which extend the protection to pupils who are victimised because their parent or sibling has taken or is taking action under the Equality Act or supporting somebody who is doing so.

Discrimination by Perception and Discrimination by Association

The law also protects those who are **perceived** to have a protected characteristic (for example, it is illegal to discriminate against someone because you think that they may be gay) and those who are **associated** with people who have a protected characteristic (for example it is illegal to discriminate against someone because their child has a disability).

Genuine Occupational Requirements

If being of a particular racial group, religion or belief, sex or sexual orientation is central to a particular job it can be considered an **genuine occupational requirement** and is exempt from equality law.

For example: Employing a male actor to fill a post of a father in a film would be considered a genuine occupational requirement.

But, the rules around genuine occupational requirements are strict. For example, if there are enough people in similar roles who could carry out the tasks that the genuine occupational requirement applies to, it would not be legal to apply the genuine occupational requirement to the new role.

For example: A women's clothing department could not say that it was a genuine occupational requirement for a new shop worker to be female as it would involve helping women in the changing rooms, if there were enough women employed already to carry out this part of the job.

A religious school may be able to justify requiring all its teachers to be of the faith of the school on the grounds that teaching the principles of the faith to pupils is part of every teacher's responsibility. This genuine occupational requirement, however, would be unlikely to justify insisting that the school cleaners must be of this religion. When applying this genuine occupational requirement the employer must be able to demonstrate that it is proportionate to apply the religion or belief requirement in the particular case.

Who is Protected?

Race and Ethnicity

The Equality Act (2010) defines 'race and ethnicity' as including:

- Skin colour
- Nationality
- Ethnic or national origins

<p>The legislation defines a racial group as a group of people who share a skin colour, nationality or ethnic or national origins. For example, a racial group could be 'British' people. All racial groups are protected from unlawful discrimination and harassment under the Act.</p>	<p>National origins differ from nationality. For example, someone's national origins, or heritage, may be Chinese, but their nationality may be British.</p>	<p>Everyone has an ethnicity, but the act protects particular ethnic groups, which regard themselves and are regarded by others as distinct and separate communities because of certain characteristics and have a long shared history. The courts have confirmed that the following are protected ethnic groups: Sikhs, Jews, Romany Gypsies, Irish Travellers, Scottish Gypsies, and Scottish Travellers.</p>
--	--	--

Religion or belief

Religion is a formalised system of belief that aims to relate humanity to spirituality.

Belief is defined as philosophical beliefs, which are considered to be similar to a religion. Other categories of beliefs, such as support for a political party, are not covered by the Equality Act.

To be covered by the law, a religion or belief must be recognised as serious, it must bring people together and it must be compatible with human dignity. Denominations or sects within a religion will also be considered as religions, or religious beliefs, such as Catholicism and Protestantism, which are divisions of Christianity.

The law doesn't just protect those who have a religion or a belief. You also have the right to have no religion or belief, too. It is unlawful for someone to discriminate against you **because you have no religion or belief**. This includes Atheism and Agnosticism.

Disability

Disability is treated slightly differently to the other protected characteristics, in that the protection only works one way: it protects disabled people, but not people who are not disabled. This means that schools can treat disabled pupils more favourably than non-disabled pupils. In fact, the law requires that **reasonable adjustments** are made for employees and pupils who have a **disability** to remove barriers to full participation. For more information about reasonable adjustments and **auxiliary aids**, please see [here](#).

Whether a person is classed as disabled is generally determined by the effect that the impairment has on that person's ability to carry out normal day-to-day activities rather than on the impairment that they have. Someone is defined as disabled under the Equality Act 2010 if they have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to do normal daily activities.

- 'substantial' is more than minor or trivial – e.g. it takes much longer than it usually would to complete a daily task like getting dressed
- 'long-term' means 12 months or more – e.g. a breathing condition that develops as a result of a lung infection

It is also important to remember that not all impairments are easily identifiable. While some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious. A disability can arise from a wide range of impairments including:

- Sensory impairments, such as those affecting sight or hearing
- Impairments with fluctuating or recurring effects such as epilepsy
- Progressive, such as muscular dystrophy
- Organ specific, including respiratory conditions, such as asthma
- Developmental, such as autistic spectrum disorders (ASD) and dyslexia
- Learning difficulties
- Mental health conditions
- Long-term illnesses such as cancer

Note: The Equality Act 2010 makes it unlawful to ask health-related questions

to job applicants prior a job offer, unless those are specifically related to an intrinsic part of the job description. Health-related questions can be asked after a job offer has been made, but care should be taken to ensure that these are targeted, necessary and relevant to the job applied for.

Gender Reassignment

The Equality Act (2010) states: A person has the protected characteristic of **gender reassignment** if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

This definition means that, in order to be protected under the Act, a pupil will not necessarily have to be undertaking a medical procedure to change their sex but must be taking steps to live in the opposite gender, or proposing to do so.

For example, a person who starts the gender reassignment process, but then decides to stop, and a person who does not seek medical advice, but is living as the other sex without undergoing any medical intervention, would be protected. Discrimination by perception also applies, so a pupil would be protected if they were discriminated against because they were perceived to be transgender.

s149 Public Sector Equality Duty

General Duties

All public bodies, including schools and colleges, are required to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Fostering good relations involves having due regard, in particular, to the need to tackle prejudice and promote understanding between those who share a protected characteristic and those who do not, so work to reduce prejudice-related bullying between pupils would fall under this remit.

For more information about what constitutes due regard, please see [here](#).

Schools need to take the PSED into consideration when making decisions, and creating policies, not as an afterthought. The duty cannot be delegated to a third party.

Specific Duties

In order to demonstrate their compliance with the general duties, schools must:

- Publish sufficient information to demonstrate the school's compliance with the general equality duty across its functions, this should be updated every year.
- Prepare and publish equality objectives. Schools should have set one or more objective by 6th April 2012. These must be agreed with governors and reviewed and updated at least every four years.

Equality objectives will only be meaningful if they are based on evidence. Schools should assemble data related to the protected characteristics of pupils and analyse this for patterns of inequality or disadvantage.

Consultation and engaging with pupils, parents, staff and governors through questionnaires, focus groups and meetings can help schools to improve their



monitoring information and build up a strong evidence base for their equality objectives.

Equality objectives should then be based upon the issues that have been highlighted. It is important that objectives are SMART (specific, measurable, achievable, realistic and time limited) in order for schools to be able to put practicable action plans in place and know when the objective has been achieved.

The Equality Act allows schools to take **positive action** and target measures that are designed to alleviate these disadvantages and to meet specialised needs of students with particular protected characteristics.

For example, it is legal to put in place catch up classes for Roma pupils who are underachieving, if you have identified this as a need.

General Exceptions

Single Sex Schools are still able to admit pupils of only one sex. It is also justifiable to have single sex classes within a mixed school, provided that there is equal treatment. However, within a mixed school, it is not legal to provide different options for girls and boys. For example, just offering needlework classes for girls and a choice of needlework and woodwork for boys.

Single Sex Sports are permitted where the stamina and strength of the average girl would put her at a disadvantage compared with the stamina and strength of the average boy. This needs to be considered carefully and segregation is much less justifiable with regards to younger pupils. Where separate provision exists, there needs to be equal opportunities and resources for both girls and boys.

Faith schools have certain exceptions to the religion or belief provision

- Priority can be given in admissions to members of the school's religion, but only when the school is oversubscribed
- Services and spiritual care can be provided by a leader of the religious background of the school without needing to provide the same for pupils of other religions
- Visits can be made to sites relevant to the school's faith, without needing to do the equivalent for other faiths.
- Symbols of the school's faith can be given special prominence

The daily act of collective worship, which for maintained schools is mandatory and should be broadly Christian, is not covered by the religion or belief provisions. There does not need to be an equivalent act for other religions. Schools are also free to celebrate certain festivals e.g. Christmas, Divali, Eid without needing to ensure balance.

The content of the **curriculum** is specifically excluded from the Act's provisions, but the way in which the curriculum is delivered is specifically included in the Act. This means that the school is free to include all kinds of different issues, ideas and materials in the syllabus, but they need to ensure that the way in which the materials are delivered does not subject pupils to discrimination.

The Relationship between Sexual Orientation and Religion

The relationship between religion and sexual orientation can sometimes cause concern for schools with a religious character and for individual teachers. Schools and teachers can be concerned that equality law will prevent them from teaching in accordance with their religious beliefs. Teachers and pupils can also be worried that schools with a religious character may act in ways which are detrimental to people who are lesbian, gay or bisexual.

At school level, if religious beliefs are explained in an appropriate way in an educational context, which takes into account existing guidance on the delivery of Sex and Relationships Education and Religious Education, this

should not be unlawful. But, if beliefs are expressed in a way that involves criticising, harassing or berating a particular pupil or group of pupils, this is unacceptable and likely to be a contravention of the law.

Where individual teachers are concerned, having a view about something doesn't amount to discrimination and this view can legally be expressed in an appropriate context, such as in response to direct questioning. However, a teacher's right to express their view doesn't mean they have a right to discriminate. It must also be remembered that teachers are in an influential position and are bound by wider legislation than the Equality Act with regards to pupil safeguarding.

Further Reading

DfE advice and guidance for school leaders:

<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

EHRC Schools Guidance: <http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance>

ACAS Guidance for Employers:

<http://www.acas.org.uk/media/pdf/8/a/Equality-Act-2010-guide-for-employers.pdf>