



## The Equality Act 2010 – Schools Policy

Effective from January 2011

### 1. Policy Statement

The school is firmly committed to the principles of equality; diversity and inclusion in both employment and the delivery of services. We seek to treat people with dignity and respect in an environment, free from discrimination.

This means treating people fairly regardless of their race (colour; nationality; ethnic or national origin), religion or belief, gender or gender identity, sexuality, disability, age or because of their association with someone who has that characteristic.

This policy provides detailed guidance on the Equality Act 2010.

### 2. Scope of policy

This policy applies to all employees within the school.

Where the Governing Body wishes to deviate from this policy or adopt any other policy, it is the responsibility of the Governing Body to arrange consultation with recognised trade unions.

### 3. Legal Framework

The Equality Act 2010 makes discrimination in all aspects of employment and provision of goods and services unlawful. This includes recruitment, training; terms and conditions, promotions, transfers and dismissals.

It outlines a number 'protected characteristics' which include:

- Age
- Disability
- Gender and Gender Identity
- Race
- Religion or Belief (or no Religion or Belief)
- Sexual Orientation
- Pregnancy and Maternity
- Marriage and Civil partnerships.

The legislation also includes discrimination 'by association' to someone who has a 'protected characteristic' or by 'perception' that they have that characteristic.

Section 149 of the Act places a single equality duty on the school to eliminate discrimination; harassment and victimisation; and to advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and those who do not share it. This requires the school to measure the impact of policies and to consider how everyone can

access the services designed to meet their needs through consultation and involvement.

#### 4. Definitions

**Age** – includes people of a particular age group; same age group; a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

**Disability** - is a physical or mental impairment, which has a substantial and long-term adverse effect on an individual's ability to carry out normal day-to-day activities. Who has a disability; has had a disability.

**Gender** - this covers men and women.

**Gender Identity** - a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their gender by changing physiological or other attributes of sex. That person does not have to be under medical supervision.

**Race** - includes (colour; nationality; ethnic or national origin)

**Religion or Belief** - is defined as being any religion, religious belief; similar philosophical belief or lack of religion or belief. A number of factors will be considered in deciding if something is a religion or belief that will include:

- collective worship
- a clear belief system and
- a profound belief affecting the way of life or view of the world.

This extends beyond well known religions and faiths to include beliefs such as Paganism and Humanism and those without religious belief.

**Sexual Orientation** - means a person's sexual orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex.

**Harassment** - is defined as unwanted and uninvited conduct or behaviour relating to a 'protected characteristic' that has the purpose or effect of violating an employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment for the recipient(s). (Section 26 EQA 2010)

## **5. Principles of policy**

In employment, the Equality Act 2010 makes it unlawful, because of a 'protected characteristic' to:

- discriminate directly against anyone - that is, to treat them less favourably than others because of that protected characteristic unless it can be objectively justified.
- discriminate directly against anyone - that is, to treat them less favourably than others because of the perception or their association with someone with a protected characteristics unless it can be objectively justified
- discriminate against or treat a disabled person less favourably because of something connected with their disability and this less favourable treatment cannot be justified.
- discriminate indirectly against anyone - that is, to apply a criterion, provision or practice (PCP) which disadvantages someone covered by that protected characteristic unless it can be objectively justified
- subject someone to harassment or fail to protect them from third party harassment.
- victimise someone because they have made or intend to make a complaint or give evidence in relation to a complaint of discrimination or harassment (Section 27 EQA 2010)
- instruct someone to discriminate on behalf of the school or to
- discriminate against someone after the working relationship has ended.

## **6. Harassment, Bullying and Victimisation**

### **Harassment**

Harassment includes unwanted and uninvited conduct or behaviour relating to a 'protected characteristic' that has the purpose or effect of violating an employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment for the recipient(s). (Section 26 EQA 2010).

Harassment takes many forms, such as bullying or offensive, hostile, ridiculing or demeaning behaviour. Any of these may be linked to an employee, by reference to their age, gender, gender identity; sexuality, disability, race, religion or belief or by their association with people with those 'protected characteristics'. For example, it will cover harassment based on a person's association with their disabled child.

Harassment may be intentional but, it can also be unintentional, for example, involving nicknames, teasing, name calling or other behaviour which is not with malicious intent but which is upsetting for the recipient.

The school's Anti-Harassment Policy can be used where employees wish to raise any concerns relating harassment.

## **Victimisation**

Section 27 of the Equality Act 2010 protects employees from being treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment, or have given or intend to give evidence relating to a complaint about discrimination or harassment.

### **5. Recruitment and Promotion; Pay and Terms and Conditions and Learning and Development**

Access to the following will be available to all candidates or employees regardless of their race (colour; nationality; ethnic or national origin), religion or belief, gender or gender identity, sexuality, disability, age or because of their association with someone who has a protected characteristic:

- employment and promotion
- pay and terms and conditions
- learning and development activities

Further guidance can be found in the Equality in Employment Policy.

### **6. Equalities Monitoring**

The Head Teacher and Governing Body are fully aware of the school's responsibilities under data protection, therefore, all data relating to 'protected characteristics' is confidential and will be processed; stored and handled appropriately; sensitively and in accordance with Data Protection legislation.

In particular, the Head Teacher is aware that disclosing that someone is transgender or transsexual, without the individual's permission to do so, is illegal and can constitute a criminal offence. This data can only be processed for certain specified reasons and data protection applies whether the employee has obtained legal recognition or not.

Further Guidance can be found in the Equalities Monitoring Policy.

### **7. Further advice and guidance**

Further advice and guidance on the Equality Act 2010 can be obtained from the Senior HR and Change Advisory Team.

### **8. Appendices**

The appendices provide guidance in relation to the following topics:

**Appendix 1** – Age in the Workplace

**Appendix 2** – Disability in the Workplace

**Appendix 3** – Gender and Gender Identity in the Workplace

**Appendix 4 – Religious Observance in the Workplace**

**Appendix 5 – Sexuality in the Workplace**

## Appendix 1

### Age in the Workplace

#### Recruitment

All job descriptions including job evaluation questionnaires, and person specifications, advertising, short listing and selection processes must focus on the skills needed for the job rather than the length of time taken to acquire the skills.

- Terminology and age - the use of age both directly and indirectly through the use of terminology associated with age such as 'young and dynamic' or 'mature' etc. must be avoided.
- Qualifications and age - the use of qualifications which may be indirectly age discriminatory should be considered carefully to ensure that they are necessary and can be objectively justified for the role. Where they are needed; qualifications whose names have changed over time such as 'O' Levels and 'CSEs' should always include the statement – or equivalent.
- Experience and age – Any reference to 'so many years experience' must be avoided in all recruitment documentation as this may rule out people who have the skills required but have not had the opportunity to demonstrate them over a longer period. The skills that need to be demonstrated, should be requested instead.
- Trainee roles - Recruitment for some roles can be associated with a particular age profile such as graduates or apprentices. Advertising will need to be placed so that a wide pool of applicants can apply, clarifying the job criteria or qualification(s) that are required, not a particular age group.

#### Pay and Benefits

Eligibility for pay and terms and conditions of service benefits based on length of service are permitted under the legislation provided the eligibility period is 5 years or less.

The use of a length of service criteria of more than 5 years is only lawful if it is objectively justifiable and reflects a higher level of experience, rewards loyalty; increases motivation, or fulfils a business need.

This means that current arrangements for sick pay and additional leave on reaching 5 years service do not need to change.

Redundancy selection based on age is no longer permitted. Redundancy payments based on age which the school makes in accordance with the Statutory Redundancy payment framework will continue to be allowed. However, the framework is revised to include employees under the age of 18 and over the age of 65.

Age related payments made in accordance with the National Minimum Wage will continue to be allowed.

### **Retirement**

The school's policy is that employees may continue working until they give notice that they wish to retire. The school does not have a normal retirement age.

## Appendix 2

### Disability in the Workplace

#### Reasonable adjustments

The school has a legal duty to make 'reasonable adjustments' to try to ensure that a disabled person is not treated less favourably than other employees who do not have a disability. This includes considering changes to job criteria or work practice; removing or altering physical features and providing auxiliary aids and adaptations.

#### Recruitment

Under the Equality Act 2010 the Head Teacher and others involved in the recruitment process are prohibited from asking questions relating to an applicant's health and absence before offering them work or including them in a pool of successful candidates to be offered work when it becomes available (Section 60 EQA 2010). This covers both interview questions and questions asked in references obtained prior to an offer of employment.

There are some exceptions where it is possible for the Head Teacher to ask questions regarding the health of an applicant before an offer is made but, **only** in the circumstances specified below, where it is necessary to:

- find out whether an applicant is able to participate in an assessment to test their suitability for the role
- establish whether there is a duty to make reasonable adjustments to enable an applicant to take part in the recruitment and selection process
- establish whether the applicant will be able to carry out a function that is intrinsic to the work concerned
- monitor the diversity of applicants
- take positive action in supporting employment for disabled people (for example under the 'two ticks' scheme) or
- establish that a person has a disability where this is an occupational requirement.

Only questions that are necessary and relevant should be asked.

For example, potential all applicants should be provided with full information on the assessment process to be used and asked if, for reasons concerned with their health or a disability, they require any adjustment(s) to the process to be made.

When a vacancy arises, the essential requirements of the job should be determined. Any factors intrinsic to the job considered, and a view taken on whether it is necessary to ask all of the applicants about any aspect that may affect their ability to carry out these functions.

A decision should also be made about how an applicant's ability to carry out these functions will be assessed, taking into account any reasonable adjustments that could be made. For example, where a job requires a significant amount of manual handling it would be legitimate for the employer to ask all of the applicants about their health in relation to that aspect of the job.

The Head Teacher can obtain further guidance from the Senior HR and Change Advisory Team.

## Appendix 3

### Gender Identity in the Workplace

Information relating to gender identity is confidential and considered to be sensitive information under Data Protection legislation. Disclosing that someone is transgender or transsexual, without their permission to do so, is illegal.

## Appendix 4

### Religious Observance in the Workplace

#### Time off for Religious Observance

The Equality Act 2010 does **not** say that the school must provide time and facilities for religious or belief observance in the workplace but, the Head Teacher can give reasonable consideration based upon individual and service needs. Attempts should also be made to try to accommodate a request from an employee for time to pray.

Some religions require their followers to pray at specific times during the day. Employees may therefore request access to an appropriate quiet place (or prayer room) to undertake their religious observance. The school is not required to provide a prayer room, however, if a quiet place is available and providing its use for prayer does not cause problems for other employees or the school, the Head Teacher may agree to the request.

In consultation with employees, it may be possible to designate an area for all employees for the specific purpose of prayer or contemplation, rather than just a general rest room. The Head Teacher may consider providing separate storage facilities for ceremonial objects.

#### Time off for Religious Festivals

Many religions or beliefs have special festival or spiritual observance days. An employee may request holiday in order to celebrate festivals or attend ceremonies. While there is no legal right to time off, the Head Teacher should sympathetically consider such a request to be away from work where the employee has sufficient annual leave entitlement and where the needs of the service allow for them to be away from work during term time.

While it may be practical for one or a small number of employees to be absent from work, it might be difficult if many requests are made. In these circumstances, the Head Teacher should discuss the matter with the employees affected, with the aim of balancing the needs of the school and those of other employees and be able to objectively justify any decisions made.

The school has clear, reasonable procedures for handling requests for leave and the Head Teacher should ensure that all employees are aware of and adhere to the procedures. The Head Teacher should be aware that some religious or belief festivals are aligned with lunar phases and therefore, dates change from year to year; the dates for some festivals do not become clear until quite close to the actual day.

The Head Teacher should not disadvantage those employees who do not hold any specific religion or belief.

Where an employee requests extended leave relating to their religion or belief for a religious occasion; pilgrimage etc. the Head Teacher must consider the

options carefully for all employees, as well as the individual, so that this does not indirectly discriminate against any party. The Head Teacher should also ensure that the issue is discussed with a member of the HR Advisory Team.

### **Dietary Requirements and Customs**

Some religions or beliefs have specific dietary requirements. If employees bring food into the workplace they may need to store and heat food separately from other food, for example Muslims will wish to ensure their food is not in contact with pork (or anything that may have been in contact with pork). It is good practice for the Head Teacher to discuss these issues with employees and find a mutually acceptable solution to any dietary issues.

The school is not required to make significant expenditure and/or building alterations to meet religious needs. Many needs will involve little or no change. For instance some religions or beliefs require a person to wash before prayer. This is often done symbolically or by using the existing facilities. However, it is good practice for the Head Teacher to consult with employees and to consider whether there is anything reasonable and practical that can be done to help employees meet the ritual requirements of their religion. It may help, for example, if all employees understand the religious observances of their colleagues thus avoiding embarrassment or difficulties for those practicing their religious obligations.

Some religions require extended periods of fasting and the Head Teacher should support employees through such a period, wherever possible. However, the Head Teacher should ensure that they do not place unreasonable additional demands on other employees which may cause conflict between employees or claims of discrimination.

### **Dress Codes**

If it is practical and safe to do so, employees may welcome the opportunity to wear clothing consistent with their religion. General dress codes which have the effect of conflicting with religious requirements may constitute indirect discrimination unless they can be objectively justified for example, because of health and safety requirements.

Every employee will be expected to comply with Health and Safety legislation and regulations and to wear any personal protective clothing relevant to the role that they undertake, regardless of their religion or belief or any other protected characteristic.

## **Appendix 5**

### **Sexuality in the Workplace**

#### **Confidentiality and Respect**

The school should not assume that everyone is heterosexual.

By their very nature, sexual matters are private and confidential. While some employees may be comfortable talking about their partner, some may choose not to share such information with the Head Teacher and colleagues.

Personal information should be maintained in the strictest confidence. Even basic information such as a partner's name is confidential, and it should not be assumed that what the Head Teacher knows is common knowledge.

### **Harassment**

Gay; Lesbian or Bisexual employees may find it very difficult to make a complaint or raise concerns relating to harassment for fear that they will be outed\* in the workplace. The Head Teacher should try to ensure confidentiality of information and reassure employees that procedures will be conducted with appropriate sensitivity and confidentiality.

\* **'Outing'** is when, against their wishes, an individual's sexual orientation is revealed by another person. 'Outing' someone without their clear permission is not only inappropriate, it is also a breach of that individual's privacy and may constitute harassment. It may also be a breach of the Data Protection, depending on what has happened.

Lesbian, gay and bisexual people are sometimes 'outed' for malicious reasons and consequently suffer harassment by colleagues or service users/customers. The Head Teacher should treat such a matter seriously.

It is important to avoid stereotyping. For instance, gay men are sometimes assumed to be HIV positive and consequently suffer exclusion by colleagues and can be subjected to offensive comments.

### **Social Events**

If the school offers the opportunity for social gatherings which extend to the partners of employees, care should be taken with the wording of invitations, posters etc. to ensure inclusion for those with same sex partners. Where partners are invited, this must extend to same sex partners otherwise this would be discriminatory.

### **Benefits**

Benefits apply and should be offered to same sex partners. Same sex partners are also covered under the entitlement for time off under, for example, parental leave and adoption leave