

Ysgol Greenfield School



CYNGOR BWRDEISTREF SIROL MERTHYR TUDFIL
MERTHYR TYDFIL COUNTY BOROUGH COUNCIL

GREENFIELD SCHOOL POLICIES

"Opening doors to the future"

Equality and Equity Policy 2023

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' Opening Doors To The Future '
' Agor drysau i'r dyfodol '

Date

Author

MONITORING THE POLICY

This policy will be reviewed bi-annually unless change of circumstances or legislation requires it to be amended earlier.

Signed:

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Date:

Headteacher

Signed:

.....

Date:

Chair of Governors

Our Vision

‘To open the doors to the future’

Our Mission Statement

In Greenfield we aim to create a strong sense of belonging within our pupils that extends to our families and local community. We will share in each other’s successes and support each other in our aspirations to achieve. Together we will nurture confident, happy and independent pupils who show positive Greenfield values as they continue their journeys into the future.





Aims

- To develop pupils’ communication skills
- To use technology to impact positively upon quality of life
- To develop pupils’ independence and ability to communicate their choices
- To inspire a love for learning
- To provide a meaningful curriculum for all
- For pupils to value themselves and others
- To try new things and overcome challenges
- To foster a sense of belonging to a community
- For pupils to develop an increasing understanding of their role and responsibilities in life
- To respect the needs and rights of others as a member of our community

We Value

- Communication
- Kindness
- Creativity
- Respect
- Team work
- Well-being
- Innovation
- Manners
- Celebrating success
- Effort

Our vision and values have been developed using the UN Convention on the Rights of the Child (UNCRC) as our guide, to create a safe and inspiring place to learn, where children are respected, their talents are nurtured and they are able to thrive. Our vision and values also compliment the ‘Four Purposes of Learning’ which underpin Curriculum for Wales. The Four Purposes are the shared vision and aspiration for every child and young person in Wales and support our pupils to become;

Ambitious Capable Learners 	Healthy Confident Individuals 	Enterprising Creative Contributors 	Ethical Informed Citizens 
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Introduction

This policy sets out the way in which Greenfield School meets the requirements of the Equality Act 2010. The Act consolidates and replaces the previous discrimination legislation for Wales, England and Scotland. It also strengthens the law to support progress on equality. The policy will be applied to all pupils and staff, including any volunteers working in the school.

Included in this policy is a statement outlining our commitment to provide equity in addition to equality and in doing so, highlight the difference between the two terms and what this means for pupils at Greenfield School.

Policy background and context:

This policy should be read in conjunction with Merthyr County Borough Council's Strategic Equality Plan for 2020-2024, whose objectives are as follows:

THEME	OBJECTIVE
Inclusive Engagement and Participation	Engage with our Citizens to participate and have their voices heard to understand and respond to the needs of our communities.
Community Cohesion	Promote and facilitate inclusive, safe and cohesive communities.
Inclusive and Diverse Workforce	Create an inclusive and diverse workforce, which reflects the communities in Merthyr Tydfil.
Gender/Equal Pay	Ensure equity of pay across Merthyr Tydfil County Borough Council.
Accessible Services	Understand and remove the barriers people face when accessing our services

Greenfield School's obligations as a public body:

Governing bodies should ensure that schools comply with all aspects of discrimination law. Greenfield School will ensure that the principles of fairness and equality are applied in everything that the school does.

The Protected Characteristics

The 2010 Act protects people from discrimination based on protected characteristics. The protected characteristics are as follows:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief

- Sex; and
- Sexual orientation

Although age and marriage and civil partnership are listed in the Act as protected characteristics the Act does not provide protection against discrimination because of age or marriage and civil partnership in the schools' provisions.

General Prohibitions

The governing body of a school must not discriminate in their roles as educators or employers against:

- Job applicants
- Existing members of staff
- A child seeking admission to the school
(The Local Authority is the admissions authority for Greenfield School)
- Existing pupils
- Past pupils (if they have a continuing link with the school)

(Refer to **Appendix I** for Protected Characteristics and for **Appendix II** for Definitions and Examples)

Policy statement:

Equality

Greenfield School is committed to avoiding discrimination and actively promotes equality to improve attainment and progression for all pupils. The school recognises that skills are crucial for opening up opportunities and increasing the chance of a successful life. The school promotes Equal Opportunities as an employer.

Greenfield School is a Rights Respecting School and the UNICEF Rights of the Child underpin all our values and ethos. The school promotes and celebrates all aspects of diversity and inclusion.

Equity

Greenfield School promotes an equitable learning environment that is focused upon fairness and the breaking down of barriers to disadvantage. By securing equity for our learners, we endeavour to provide a Person Centred and holistic education that is in tune with the specific needs of individuals and helps them overcome their personal challenges. Greenfield aspires to be an equitable community where everyone has the opportunity to succeed, regardless of their original circumstances.

1.Obligations to former pupils

Greenfield School will not discriminate against, harass nor victimise former pupils. This applies if the discrimination or harassment arises out of and is closely connected to their previous relationship with the school and would have been unlawful if they were still a pupil.

2. Liability for employees, agents and others

As an employer the school is legally responsible for acts of discrimination, harassment and victimisation carried out by its employees in the course of employment or by people who take action for the school (agents). Greenfield School will take all reasonable steps to prevent its employees or agents from acting unlawfully and as a consequence will not be held legally responsible if this is proven to be the case.

Greenfield School will take steps to make sure our employees and agents understand that they must not discriminate against pupils, or harass them or victimise them, and that they understand the school's duties in relation to making reasonable adjustments for disabled pupils.

3. Personal liability of Greenfield School employees and agents

An employee of Greenfield School is personally responsible for their own acts of discrimination, harassment or victimisation conducted during their employment, whether or not the school is also liable. However, an employee is not personally liable in relation to disability discrimination as they might be, for example in the event of a claim of racial discrimination.

4. Instructing and causing discrimination

Greenfield School employees will not instruct, cause or induce someone to discriminate against, harass or victimise another person, or to attempt to do so.

In the event of this happening, both the agent who has received the instructions and the victim can make a claim in the same way as they would for any other claim under the Act. The Equality and Human Rights Commission can also take action for unlawful instructions to discriminate.

5. Aiding contraventions

Greenfield School employees will not help someone else carry out an act which you know is unlawful under the Equality Act.

However, if the person giving assistance has been told by the person he or she assists that the act is lawful and he or she reasonably believes this to be true, he or she will not be legally responsible.

6. Admissions to Greenfield School

Pupil admission to Greenfield School is carried out by the Local Authority who must comply with the School Admissions Code produced by Welsh Government.

7. Providing education and access to any benefit, service or facility

Greenfield School will not discriminate against a pupil in the provision of education or access to any benefit, facility or service.

Greenfield School will not discriminate against, or victimise a pupil:

- in the way you provide education for the pupil
- in the way you afford the pupil access to a benefit, facility or service
- by not providing education for the pupil

- by not affording the pupil access to a benefit, facility or service
 - by subjecting the pupil to any other detriment
 - the school will not harass a pupil
- This includes everything that the school provides for pupils i.e. all school activities such as extra-curricular and leisure activities, afterschool and homework clubs, sports activities and school trips, as well as school facilities such as libraries and IT facilities. However, these obligations do not apply to anything done in connection with the content of the curriculum. The school is not restricted in the range of issues, ideas and materials used in teaching and can expose pupils to thoughts and ideas of all kinds, however controversial. Even if the content of the curriculum causes offence to pupils with certain protected characteristics, this will not make it unlawful unless it is delivered in a way which results in harassment or subjects pupils to discrimination or other detriment.

In creating fair provision, Greenfield School will use training to ensure that all staff are fully aware of the requirements of the Act and the implications of this for our education provision and delivery.

8. Curriculum delivery

The way in which the curriculum is delivered at Greenfield School is covered by ensures that issues are taught in a way that does not subject pupils to discrimination. The curriculum content is crucial to tackling key inequalities for pupils including gender stereotyping, preventing bullying and raising attainment for certain groups.

9. Offsite Learning and school trips

Offsite learning, school trips, including field trips and residential trips are often an extremely important part of school life for pupils at Greenfield School. Careful thought is given to all planned visits to ensure that any trips do not discriminate against any of our pupils. However, in some limited cases it may be impossible to make a school trip accessible for all pupils and the learning needs of other pupils will be made part of the decision making process. Cancelling the trip because a disabled pupil can't attend where it puts other pupils at a disadvantage may not be the best or only decision. In these cases, the input of the pupil and the parents is always sought.

The risk assessments that are prepared in relation to school trips include a consideration of the reasonable adjustment needs of disabled pupils and the school always seeks ways of including rather than excluding such pupils on trips.

10. Identity - based bullying

Greenfield School has a legal duty to its pupils in relation to bullying and ensures that all bullying on the grounds of a protected characteristic has the same emphasis as any other form of bullying.

11. School uniform

Greenfield School's school uniform policy does not discriminate against pupils with a protected characteristic.

12. Work experience / placements

Pupils should be given the same opportunities for work experience and placements and assumptions are not made about what would suit pupils with particular protected characteristics; for example, assuming that only boys would be interested in placements involving bricklaying or car maintenance or that only girls would be interested in hairdressing. Greenfield ensures that effective communication with work experience providers whilst supporting our pupils while they are on placement will help to reduce the chances of discrimination during work experience.

13. Assessments and accreditation

Greenfield School assesses pupils regularly using a variety of methods including external providers of accreditation, such as Edexcel. Greenfield School considers carefully the cultural, linguistic, religious or lifestyle experiences in order to avoid indirectly discriminating against pupils from particular racial groups.

14. Behaviour and discipline

Greenfield School's Positive Behaviour Support practice and training is inclusive and supports all staff and pupils in avoiding inadvertent discrimination.

15. Collective worship

Acts of worship and other religious observance organised by Greenfield School are not covered by the provisions prohibiting religious discrimination whether or not it is part of the curriculum.

This means that Greenfield School can carry out collective worship of a broadly Christian nature (as maintained schools are required to under other legislation) without this being unlawful under the Equality Act.

The Equality Act does not require Greenfield School to provide opportunities for separate worship for the different religions and beliefs represented among your pupils.

The school encourages the learning to be gained from celebrating the ceremonies and festivals of any faith, such as Christmas, Diwali, Chanukah or Eid, without being subject to claims of religious discrimination against children of other religions or of none.

Parents can remove their children from collective worship and Post 16 pupils can choose to withdraw themselves.

16. Exclusion from school

Greenfield will not discriminate against or victimise a pupil by excluding them (either temporarily or permanently) from our school.

The exclusions guidance makes it clear that pupils should only be excluded from school as a last resort and that exclusions should only be made on the grounds of a pupil's behaviour. Nothing in the Act conflicts with this guidance.

There may be, of course, occasions when it is appropriate to exclude a pupil with a protected characteristic.

17. Dispute and Resolution Enforcement

Greenfield School has complaints a procedure which deals with all complaints including those of discrimination, harassment and victimisation.

In the event that a complaint cannot be resolved via the school's internal procedure, then the Local Authority has in place an independent disagreement resolution services to deal with disputes between disabled children and schools in relation to alleged discrimination under the schools provisions of the Act. This is in addition to the independent disagreement services to deal with disputes between parents and schools and to deal with disputes between pupils and schools in relation to special educational needs disputes.

17(a). Independent advocacy services

The Local Authority has an independent advocacy service which a disabled child or the case friend of a disabled child can be referred to on request. These services provide advice and assistance, including representation, to a disabled child who is either making, intending to make or considering making a claim of disability discrimination under the schools provisions of the Act or is taking part in or intending to take part in dispute resolution arrangements.

18. The Public Sector Equality Duty

The Governing Body of Greenfield School adhere to the requirements of the general duty and in doing so:

- eliminate discrimination, harassment and victimisation and other conduct that is prohibited by or under the Equality Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not
- foster good relations between persons who share a relevant protected characteristic and persons who do not

19. Due regard

The Governing Body as a decision-making body will have due regard when considering the three aspects of the duty, above. This means having due regard to:

- remove or minimise disadvantages suffered by persons due to their protected characteristics
- take steps to meet the needs of persons with protected characteristics where those needs are different from the needs of others
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- having due regard to the need to foster good relations involves having due regard, in particular, to the need to:
 - tackle prejudice
 - promote understanding

20. Equality Objectives and Strategic Plans

The Governing Body will set an equality objective in relation to each of the protected groups and review all equality objectives at least once every four years.

Objectives will focus on better equality outcomes. Specific improvements in outcomes for pupils and employees are identified, specifying clearly how these will be achieved including timescales for achievement.

A report on the progress made in achieving the objectives will be compiled annually.

The school's Strategic Equality Plan will include:

- a description of the school
- equality objectives (including pay objectives)
- the steps taken or intended to be taken to meet the objectives and in what timescale
- arrangements to monitor progress on meeting equality objectives and the effectiveness of the steps taken to meet those objectives
- arrangements to identify and collect relevant equality information. This includes information gathered from engaging with protected groups about how the work of Greenfield may relate to the general duty. It also includes any information about pay differences related to a protected characteristic and the causes of these differences
- arrangements for publishing relevant equality information that the school holds and which you consider appropriate to publish
- arrangements for:
 - assessing the likely impact on protected groups of any policies and practices that the school is proposing, reviewing or revising
 - monitoring their actual and ongoing impact
 - publishing reports where an assessment shows a substantial impact (or likely impact) on the school's ability to meet the general duty
 - details of how the school will promote knowledge and understanding of the general and specific duties among employees
 - an action plan relating to gender pay objectives

21. Engagement

When setting meeting the requirements of the duty and the setting of objectives, the school will involve people considered to represent one or more of the protected groups and who have an interest in how Greenfield School carries out its functions. Other stakeholders may include:

- former, current and potential pupils
- former and current staff
- governors
- equality groups
- trade unions
- third sector and equality organisations
- the wider community

23. Staff pay

Greenfield School promotes fairness and equality in all aspects of pay and grades. In doing so the school promotes knowledge and understanding of the general duty and specific duties among your employees and uses performance management procedures to identify and address training needs of employees in relation to the duties.

24. Procurement

Whenever the Governing Body takes part in the procurement of goods or services, it will be subject to the specific duty relating to procurement.

When procuring works, goods or services from other organisations on the basis of a relevant agreement, the Governing Body will:

- have due regard to whether it would be appropriate for the award criteria for that contract to include considerations to help meet the general duty
- have due regard to whether it would be appropriate to stipulate conditions relating to the performance of the contract to help meet the three aims of the general duty.

25. Annual equality report

Greenfield School will publish an accessible equality report by 31st March, each year.

Appendix I

(From: What equality law means for you as an education provider In Wales: A Guide, 2014, updated Sept 2022)

Protected characteristics

The protected characteristics for the schools provisions are:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

Although age and marriage and civil partnership are listed in the Act as protected characteristics, the Act does not provide protection against discrimination because of age or marriage and civil partnership in the schools' provisions.

Disability

A person is a disabled person (someone who has the protected characteristic of disability) if they have a physical and/or mental impairment which has what the law calls 'a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

There is no need for a person to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment not the cause.

In relation to physical impairment:

Conditions that affect the body such as arthritis, hearing or sight impairment (unless this is correctable by glasses or contact lenses), diabetes, asthma, epilepsy, conditions such as HIV infection, cancer and multiple sclerosis, as well as loss of limbs or the use of limbs are covered.

- HIV infection, cancer and multiple sclerosis are covered from the point of diagnosis.

Severe disfigurement (such as scarring) is covered even if it has no physical impact on the person with the disfigurement, provided the long-term requirement is met (see below).

People who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist, are automatically treated as disabled under the Act.

Mental impairment includes conditions such as dyslexia and autism as well as learning disabilities such as Down's syndrome and mental health conditions such as depression and schizophrenia.

The other tests to apply to decide if someone has the protected characteristic of disability are:

The length the effect of the condition has lasted or will continue: it must be long term.

'Long term' means that an impairment is likely to last for the rest of the person's life, or has lasted at least 12 months or where the total period for which it lasts is likely to be at least 12 months. If the person no longer has the condition but it is likely to recur or if the person no longer has the condition, they will be considered to be a disabled person.

Whether the effect of the impairment is to make it more difficult and/or time-consuming for a person to carry out an activity compared to someone who does not have the impairment, and this causes more than minor or trivial inconvenience.

If the activities that are made more difficult are 'normal day-to-day activities' at work or at home.

Whether the condition has this impact without taking into account the effect of any medication the person is taking or any aids or assistance or adaptations they have, like a wheelchair, walking stick, assistance dog or special software on their computer. The exception to this is the wearing of glasses or contact lenses where it is the effect while the person is wearing the glasses or contact lenses, which is taken into account.

Example—Someone who has ADHD might be considered to have a disability even if their medication controls their condition so well that they rarely experience any symptoms, if without the medication the ADHD would have long-term adverse effects.

Progressive conditions and those with fluctuating or recurring effects are included, such as depression, provided they meet the test of having a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

The definition of disability, along with details of relevant exceptions, is explained in more detail in **Chapter 5** of the *Technical guidance for schools in England*. This and more guidance on the definition of disability is available on our website. It should be noted that a tribunal decision in 2018 means that children in schools who have a tendency to physical abuse of others as a result of their impairment are not excluded from the protection of the Equality Act.

Gender reassignment

Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in a way that differs from or is inconsistent with the physical sex they were born with.

This personal process may include undergoing medical procedures or, as is more likely for school pupils, it may simply include choosing to dress in a different way as part of the personal process of change.

A person will be protected because of gender reassignment where they:

make their intention known to someone – it does not matter who this is, whether it is someone at school or at home or someone like a doctor. Once they have proposed to undergo gender reassignment they are protected, even if they take no further steps or they decide to stop later on. They do not have to have reached an irrevocable decision that they will undergo gender reassignment, but as soon as there is a manifestation of this intention they are protected.

start or continue to dress, behave or live (full-time or part-time) according to the gender they identify with as a person

undergo treatment related to gender reassignment, such as surgery or hormone therapy, or have received gender recognition under the Gender Recognition Act 2004.

It does not matter which of these applies to a person for them to be protected because of the characteristic of gender reassignment.

This guidance uses the term 'transsexual person' to refer to someone who has the protected characteristic of gender reassignment.

Pregnancy and maternity

The Act lists pregnancy and maternity as a protected characteristic. Pregnancy and maternity discrimination is covered in Section 2.

Race

Race means a person's:

colour, and/or
nationality (including citizenship), and/or
ethnic or national origin

A racial group is composed of people who have or share a colour, nationality or ethnic or national origins.

A person has the protected characteristic of race if they belong to a particular racial group, such as 'British people'.

Racial groups can comprise two or more racial groups such as 'British Asians'.

Religion or belief

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief.

A religion need not be mainstream or well known to gain protection as a religion. It must, though, be identifiable and have a clear structure and belief system. Denominations or sects within religions may be considered a religion. Cults and new religious movements may also be considered religions or beliefs.

Belief means any religious or philosophical belief and includes a lack of belief.

'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.

A belief which is not a religious belief may be a philosophical belief, such as humanism or atheism.

A belief need not include faith or worship of a god or gods, but must affect how a person lives their life or perceives the world.

For a belief to be protected by the Equality Act:

It must be genuinely held.

It must be a belief and not an opinion or viewpoint based on information available at the moment.

It must be a belief as to a weighty and substantial aspect of human life and behaviour.

It must attain a certain level of cogency, seriousness, cohesion and importance.

It must be worthy of respect in a democratic society.

It must be compatible with human dignity and not conflict with the fundamental rights of others.

Sex

A person's sex refers to the fact that they are male or female. In relation to a group of people, it refers to either men or women or to either boys or girls.

Sexual orientation

Sexual orientation means the attraction a person feels towards one sex or another (or both), which determines who they form intimate relationships with or are attracted to.

Some people are only attracted to those of the same sex (lesbians and gay men).

Some people are attracted to people of both sexes (bisexual people).

Some people are only attracted to the opposite sex (heterosexual people).

Everyone is protected from being treated worse because of sexual orientation, whether they are bisexual, gay, lesbian or heterosexual.

Sexual orientation discrimination also covers discrimination connected with manifestations of that sexual orientation.

Appendix II

(From: What equality law means for you as an education provider In Wales: A Guide, 2014, updated Sept 2022)

Definitions and examples of discrimination

What is discrimination?

The Act consolidates existing law into a single legal framework and while many of the concepts of discrimination remain the same as in previous equality legislation there are some areas that were not previously covered. This section describes the various types of discrimination and how they apply to the schools provisions.

Direct discrimination

Direct discrimination occurs when you treat a pupil less favourably than you treat (or would treat) another pupil 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, for example because they are Roma.

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.

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. So a gay pupil cannot claim that excluding them for fighting is direct discrimination on grounds of sexual orientation unless they can show that a heterosexual or bisexual pupil would not be excluded for fighting. A pupil does 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.

There is no need for someone claiming direct discrimination because of racial segregation or pregnancy or maternity to find a person to compare themselves to:

Racial segregation is deliberately separating people by race or colour or ethnic or national origin and will always be unlawful direct discrimination.

To claim pregnancy or maternity discrimination a female pupil must show that she has been treated unfavourably because of her pregnancy or maternity (and does not have to compare her treatment to the treatment of someone who was not pregnant or a new mother).

It is not direct discrimination against a male pupil to offer a female pupil special treatment in connection with her pregnancy or childbirth.

It is not direct discrimination against a non-disabled pupil to treat a disabled pupil more favourably.

Examples—

Bethan is actively discouraged from undertaking a course in engineering by a teacher who tells her this is an unsuitable area of study for a female. This would be direct discrimination on the grounds of sex.

Gethin has Asperger's Syndrome and can sometimes act in a disruptive manner in class. The school does not take disciplinary action, but uses agreed strategies to manage his behaviour. Loan, a non-disabled pupil who is also disruptive in class is punished for his behaviour. This difference in treatment would not be direct discrimination against Loan.

Discrimination based on association

Direct discrimination also occurs when you treat a pupil less favourably because of their association with another person who has a protected characteristic (other than pregnancy and maternity).

This might occur when you treat a pupil less favourably because their sibling, parent, carer or friend has a protected characteristic.

Discrimination based on perception

Direct discrimination also occurs when you treat a pupil less favourably because you mistakenly think that they have a protected characteristic.

Discrimination because of pregnancy and maternity

It is discrimination to treat a woman (including a female pupil of any age) less favourably because she is or has been pregnant, has given birth in the last 26 weeks or is breastfeeding a baby who is 26 weeks or younger.

It is direct sex discrimination to treat a woman (including a female pupil of any age) less favourably because she is breastfeeding a child who is more than 26 weeks old.

Indirect discrimination

Indirect discrimination occurs when you apply a provision, criterion or practice in the same way for all pupils or a particular pupil group, such as A level physics students, but this has the effect of putting pupils sharing a protected characteristic within the general student group at a particular disadvantage. It doesn't matter that you did not intend to disadvantage the pupils with a particular protected characteristic in this way. What does matter is whether your action does or would disadvantage such pupils compared with pupils who do not share that characteristic.

'Disadvantage' is not defined in the Act but a rule of thumb is 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.

'Provision', 'criterion' or 'practice' are not defined in the Act but can be interpreted widely and include:

arrangements (for example, for deciding who to admit)

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.

Indirect discrimination will occur if the following four conditions are met:

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

Example—A school requires male pupils to wear a cap as part of the school uniform. Although this requirement is applied equally to all pupils, it has the effect of excluding Sikh boys whose religion requires them to wear a turban. This would be indirect discrimination based on religion and belief as it is unlikely that the school would be able to justify this action.

The approach is somewhat different where the protected characteristic is religion or belief: a claimant does not need to establish that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation on the claimant's right under the European Convention on Human Rights to manifest their religious beliefs is proportionate given the legitimate aims of the school. This is because protection of the right to manifest religion under the Convention does not require 'group disadvantage' to be shown.¹

The fact, therefore, that only one pupil is disadvantaged by a ban on the wearing of an item of clothing does not mean that they will not have been subject to indirect discrimination if that item of clothing is an expression of a genuinely held religious or other belief.

What is a '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

¹ Mba v Mayor & Burgesses of the London Borough of Merton [2013] EWCA Civ 1562, and Eweida, Chaplin, Ladele & McFarlane v United Kingdom (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

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.

The more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more convincing the justification must be.

In a case involving disability, if you have not complied with your duty to make relevant reasonable adjustments it will be difficult for you to show that the treatment was proportionate.

Discrimination arising from disability

Discrimination arising from disability occurs when you treat a disabled pupil unfavourably because of something connected with their disability and cannot justify such treatment.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs because of the protected characteristic of disability. For discrimination arising from disability, the motive for the treatment does not matter; the question is whether the disabled pupil has been treated unfavourably because of something connected with their disability.

Discrimination arising from disability is also different from indirect discrimination. There is no need to show that other people have been affected alongside the individual disabled pupil or for the disabled pupil to compare themselves with anyone else.

Discrimination arising from disability will occur if the following three conditions are met:

you treat a disabled pupil unfavourably, that is putting them at a disadvantage, even if this was not your intention, and

this treatment is because of something connected with the disabled pupil's disability (which could be the result, effect or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and

you cannot justify the treatment by showing that it is 'a proportionate means of achieving a legitimate aim'. This is explained above.

Example—Llinos has cerebral palsy and is a wheelchair user. She is told she will be unable to attend a school trip to a theatre putting on a production of a play she is currently studying in English, because the building is not wheelchair accessible. Llinos and her parents are aware that the play is also on at another local theatre which is accessible but the school does not investigate this option. This is likely to be discrimination arising from a disability.

Knowledge of disability

The required knowledge is of the facts of the pupil's disability. A school does not also need to realise that those particular facts meet the legal definition of disability.

If your agent (someone who undertakes tasks on your behalf) or employee knows of a pupil's disability, you will not usually be able to claim that you do not know of the disability.

Example—Catrin tells the school secretary that she has diabetes and that she needs to carry biscuits to eat when her blood sugar levels fall. A teacher has no information about her disability and refuses to allow pupils to bring food into the classroom. Catrin has a hypoglycaemic attack. In this case, the school is unlikely to be able to argue that it did not know about her condition.

Relevance of reasonable adjustments

By acting quickly to identify and put in place reasonable adjustments for disabled pupils, you can often avoid discrimination arising from disability, although there may be cases where an adjustment is unrelated to the unfavourable treatment in question.

If you fail to make an appropriate reasonable adjustment, it is likely to be very difficult for you to argue that unfavourable treatment is justified.

Reasonable adjustments

You should be familiar with the reasonable adjustments duty as this was first introduced under the Disability Discrimination Act 1995. The reasonable adjustments duty under the Equality Act operates slightly differently and has been extended to cover the provision by a school of auxiliary aids and services. The object of the duty is the same: to avoid as far as possible by reasonable means, the disadvantage which a disabled pupil experiences because of their disability. EHRC guidance on the extension of reasonable adjustments duty is available at our website

This duty sits alongside your duties and those of local authorities under Part 4 of the Education Act 1996. In some cases the support a disabled pupil may receive under the special educational needs framework may mean that they do not suffer a substantial disadvantage (see below) and so there is no need for additional reasonable adjustments to be made for them. In other cases disabled pupils may require reasonable adjustments in addition to the special educational provision they are receiving. There are also disabled pupils who do not have special educational needs but still require reasonable adjustments to be made for them. The level of support a pupil is receiving under Part 4 of the Education Act 1996 is one of the factors to be taken into account when you consider what it would be reasonable for you to have to do.

What is the reasonable adjustments duty?

You are required to take reasonable steps to avoid substantial disadvantage where a provision, criterion or practice puts disabled pupils at a substantial disadvantage.

You owe this duty 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.

The duty does not require you to make reasonable adjustments to avoid the disadvantage caused by physical features as this is covered by the planning duties.

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

The duty is an anticipatory and continuing one that you owe to disabled pupils generally, regardless of whether you know that a particular pupil is disabled or whether you currently have any disabled pupils. You should not wait until an individual disabled pupil approaches

you before you consider how to meet the duty. Instead you should plan ahead for the reasonable adjustments you may need to make, regardless of whether you currently have any disabled pupils. By anticipating the need for an adjustment you will be best placed to help disabled pupils who come to your school. You are not expected to anticipate the needs of every prospective pupil but you are required to think about and take reasonable and proportionate steps to overcome barriers that may impede pupils with different kinds of disabilities.

For example, while it may be appropriate for you to provide large print for a pupil with a visual impairment, you would not be expected to have Braille devices standing ready.

What is a substantial disadvantage?

A disadvantage that is more than minor or trivial is called a 'substantial disadvantage'. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if the disabled pupil in question did not have a disability.

You will need to take into account a number of factors when considering whether or not the disadvantage is substantial such as:

- the time and effort that might need to be expended by a disabled child
- the inconvenience, indignity or discomfort a disabled child might suffer
- the loss of opportunity, or the diminished progress a disabled child might make in comparison with his or her peers who are not disabled.

Example—Rhian is deaf. She is advised by the work experience coordinator that it would be better for her to remain at school rather than go on work experience as it might be 'too difficult' for her to manage. The school does not take any steps to help Rhian find a placement and she misses the opportunity taken by the rest of her classmates. This would be a substantial disadvantage.

The duty to change a provision, criterion or practice

These terms are not defined but in general they relate to how the education and other benefits, facilities and services are provided and cover all of your arrangements, policies, procedures and activities.

Where a provision, criterion or practice places disabled pupils at a substantial disadvantage in accessing education and any benefit, facility or service, you must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether but often will involve just an extension of the flexibility and individual approach that most schools already show to their pupils.

Example—A school has been allocated three places for students to represent the school at a national youth conference on the environment. The school decides to hold a debate on the topic to select the three pupils who will attend the conference. This places Rhys, who has a nervous system disorder at a significant disadvantage as he has trouble communicating verbally. The school modifies the criteria to enable Rhys to submit his views and ideas on the issue in writing. This is likely to be a reasonable adjustment to the school's practice.

When is it reasonable for a school to have to make adjustments?

A useful starting point when determining what a reasonable adjustment might be is to consider how to ensure that disabled pupils can be involved in every aspect of school life. Often effective and practical adjustments involve little or no cost or disruption.

Examples—

A teacher always addresses the class facing forward to ensure that a pupil with hearing difficulties is able to lip-read. This is an example of a simple reasonable adjustment.

A primary school introduces a playground buddy system and a friendship bench which creates a supportive and friendly place for disabled pupils during breaks. This is an example of an effective but easy reasonable adjustment.

Where disabled pupils are placed at a substantial disadvantage by a provision, criterion or practice or the absence of an auxiliary aid, you must consider whether any reasonable adjustment can be made to overcome that disadvantage.

You should not expect disabled pupils to suggest adjustments but if they do you should consider whether those adjustments would help to overcome the disadvantage and whether the suggestions are reasonable. It is good practice for schools to work with pupils and their parents in determining what reasonable adjustments can be made.

2.2 Harassment

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.

The relevant protected characteristics for the schools provisions are:

disability

race

sex

Pregnancy and maternity are not protected directly under the harassment provisions, however, unwanted behaviour (as described below) will amount to harassment related to sex.

The harassment provisions do not explicitly apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief in relation to schools. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage that would constitute direct discrimination.

Harassment related to a protected characteristic

Harassment occurs when you engage in unwanted behaviour which is related to a relevant protected characteristic and which has the purpose or effect of:

violating a pupil's dignity, or

creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.

The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for the pupil to say that they object to the behaviour for it to be unwanted.

In this context 'related to' has a broad meaning and includes situations where the pupil who is on the receiving end of the unwanted behaviour does not have the protected characteristic himself or herself, provided there is a connection between the behaviour and a protected characteristic. This would also include situations where the pupil is associated with someone

who has a protected characteristic, or is wrongly perceived as having a particular protected characteristic.

Example—A pupil from an Irish Traveller background overhears a teacher making racial slurs about Gypsy and Traveller people stating their site should be shut down and they were 'trouble'. This would constitute harassment related to a protected characteristic (race).

The definition of harassment as described above does not apply to the protected characteristics of gender reassignment, sexual orientation or religion or belief in relation to schools. However, where unwanted conduct related to any of these protected characteristics results in a pupil suffering disadvantage that would constitute direct discrimination.

Example—During a PSE (personal and social education) lesson, a teacher describes homosexuality as 'unnatural' and 'depraved' and states he will only be covering heterosexual relationships in the lesson. A bisexual pupil in the class is upset and offended by these comments. This may be unlawful direct discrimination on the grounds of sexual orientation.

Sexual harassment

Sexual harassment occurs when you engage in unwanted behaviour which is of a sexual nature and which has the purpose or effect of:

violating a pupil's dignity, or

creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.

'Of a sexual nature' can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, inappropriate touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings, or sending emails with material of a sexual nature.

Example—Lowri is a sixth form female pupil. She is asked intimate questions about her personal life and subjected to sexual innuendos by her teacher. This would be sexual harassment.

Less favourable treatment of a pupil because they submit to or reject sexual harassment or harassment related to sex

It is unlawful to treat a pupil less favourably because they either submit to, or reject, sexual harassment or harassment related to their sex.

2.3 Victimisation

Victimisation is defined in the Act as treating someone badly because they have done a 'protected act' (or because the school believes that a person has done or is going to do a protected act).

There are additional victimisation provisions for schools which extend the protection to pupils who are victimised because their parent or sibling has carried out a protected act.

A 'protected act' is:

making a claim or complaint of discrimination (under the Act)

helping someone else to make a claim by giving evidence or information

making an allegation that the school or someone else has breached the Act

doing anything else in connection with the Act.

If you do treat a pupil less favourably because they have taken such action then this will be unlawful victimisation. There must be a link between what the pupil (or parent or sibling) did and your treatment of them.

The less favourable treatment does not need to be linked to a protected characteristic.

Example—A teacher shouts at Delyth because he thinks she intends to support Lowri's sexual harassment claim. This would amount to victimisation.

Who is not protected?

A pupil who in bad faith gives false information or evidence (that is, that they knew was false) or makes an allegation that was false and given in bad faith would not be protected against victimisation. The original complaint/claim would not be affected providing it was not made in bad faith.

Example—Dafydd, a pupil at an independent school with a grudge against his teacher knowingly gives false evidence in another pupil's discrimination claim against the school. Dafydd is subsequently excluded from the school for supporting the claim. This treatment could not amount to victimisation because his evidence was untrue and given in bad faith.

Victimisation for actions of parents or siblings

You must not treat a pupil less favourably because of something their parent(s) or sibling has done in relation to the making of a complaint of discrimination.

A parent of a pupil complains to the school that her daughter is suffering sex discrimination by not being allowed to participate in a metalwork class. If the daughter is treated less favourably as a result of the complaint this would be unlawful victimisation.

This applies to a child in relation to whom the parent(s) were making a complaint and also to any other children who are pupils at the school. This also applies if a parent supports a teacher's complaint against the school under Part 5 of the Act.

If the information or evidence was false and given in bad faith (that is, the parent/sibling knew it was false) or the allegation was false and given in bad faith then this protection for the pupil will still apply, provided that the pupil did not act in bad faith.

Example—Geraint makes a complaint against his school claiming that he has suffered discrimination by a member of staff because of his sexual orientation. Geraint's younger brother Aled, at the same school, is protected against any less favourable treatment by the school because of this complaint, even if it is later found out that Geraint was not acting in good faith.

There must be a link between what the parent(s) or their child has done and you treating the child/sibling badly.

The child who is being treated badly does not need to have any of the protected characteristics.

The fact that a complaint/claim is not upheld does not mean that it was made in bad faith.

