

Juniper



# HR Compliance: Equality, Diversity, and Inclusion

The legal framework for Equality,  
Diversity, and Inclusion (EDI) in schools

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# In an increasingly diverse and interconnected world, ensuring equality, fostering diversity, and promoting inclusion have become paramount.

Schools play a pivotal role in leading by example and shaping future generations' values, attitudes, and understanding.



## Equality

Equality in the workplace means equal job opportunities and fairness for employees and job applicants.

You must not treat people unfairly because of reasons protected by discrimination law ('protected characteristics'). For example, because of a person's sex, age or race.



## Diversity

Diversity is the range of people in your workforce. For example, this might mean people with different ages, religions, ethnicities, people with disabilities, and both men and women. It also means valuing those differences.



## Inclusion

An inclusive workplace means everyone feels valued at work. It lets all employees feel safe to:

- come up with different ideas
- raise issues and suggestions to managers, knowing this is encouraged
- try doing things differently to how they've been done before, with management approval



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# The Equality Act 2010





**The legal framework for EDI in schools is grounded in the Equality Act 2010 which serves as a cornerstone in prohibiting discrimination.**

**Discrimination means** treating someone 'less favourably' than someone else, because of:

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

These are called 'protected characteristics'.

**Less favourable treatment** can be anything that puts someone with a protected characteristic at a disadvantage, compared to someone who does not have that characteristic.

### **What is a disability?**

A person has a disability if:

- 1. Physical or mental impairment:** The disability impacts their physical and/or mental well-being.
- 2. Substantial and long-term effects:** The impairment has substantial and long-term adverse effects on their ability to carry out normal day-to-day activities.



## Understanding the definitions

- **“Physical or mental impairment”:** This includes a wide range of impairments, including sensory impairments (like those affecting sight or hearing), mental health conditions, learning difficulties, and certain long-term health conditions such as cancer, multiple sclerosis, or HIV.
- **“Substantial”:** This is defined as more than minor or trivial. For example, if an impairment significantly increases the time it takes to perform a daily task like getting dressed compared to a non-disabled person, it is considered substantial.
- **“Long-term”:** This is defined as lasting, or likely to last, for at least 12 months, or for the rest of the person’s life. It also includes conditions that fluctuate or recur over time.
- **“Normal day-to-day activities”:** These are activities that are carried out by most people on a regular basis, such as eating, washing, walking, shopping, or going to work. A person’s ability to participate fully and effectively in working life on an equal basis with other workers is also relevant when looking at ‘day-to-day activities’.

## Case Law

Follows v Nationwide Building Society, an employment tribunal upheld a claim of indirect associative discrimination on the grounds of disability. The claimant, wasn’t disabled but she was a carer for her mother who was. After a restructure, she wasn’t able to comply with a new requirement to work in the office on a full-time basis. The tribunal accepted Follows’ argument that carers are less likely to be able to be office-based than non-carers. This put her at a substantial disadvantage because of her association with her mother’s disability and Nationwide had not been able to objectively justify its treatment of her.



### Direct Discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic.



### Discrimination by perception and association

Discrimination by Perception is where an individual is directly discriminated against or harassed based on a perception that they have a particular protected characteristic when they do not, in fact, have that protected characteristic.

Discrimination by Association is where an individual is directly or indirectly discriminated against a person because they have an association with someone with a particular protected characteristic.



### Indirect Discrimination

Indirect discrimination is where a provision, criteria, policy or practice in the school is applied to everyone but particularly disadvantages people who share a protected characteristic compared with people who do not. Indirect discrimination can be justified if the school can show it acted reasonably, for example that it is a ‘proportionate means of achieving a legitimate aim’.

Indirect discrimination by association occurs when a policy, practice, rule, or procedure that applies to everyone particularly disadvantages a group of people who share a protected characteristic, and an individual is affected by it because of their association with someone who has that protected characteristic.

## Those who are protected

The Act protects the following people against discrimination:

- Employees and workers
- Contractors and self-employed people hired to personally do the work
- Job applicants
- Former employees – usually around providing references



### Unconscious Bias

Unconscious bias is when we make judgments or decisions on the basis of our prior experience, our own personal deep-seated thought patterns, assumptions or interpretations, and we are not aware that we are doing it.



### Genuine Occupational Requirement

Employers can exercise the powers available under the Act to appoint a person from a particular group, where there is a genuine occupational requirement and the application of the requirement is a proportionate means of achieving a legitimate aim.



### Positive Action

Positive action describes measures targeted at a particular group that are intended to redress past discrimination or to offset the disadvantages arising from existing attitudes, behaviours and structures.

Positive action is different from positive discrimination which is illegal. Positive discrimination generally means choosing (or not choosing) someone solely on the grounds of a protected characteristic and not on their abilities.



# 2

## **Public Sector Equality Duty (PSED) in schools and academies**





**The PSED, enshrined in the Equality Act 2010, requires schools and academies to actively work towards eliminating discrimination, advancing equality of opportunity, and fostering good relations.**

For schools, this duty translates into a commitment to ensure that all workers, regardless of their background, have equal access to a safe environment.

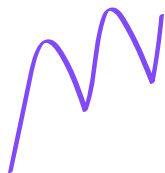
The Equality Act 2010 (Specific Duties) Regulations 2011 require public authorities to publish:

- Equality objectives, at least every four years
- Information to show their compliance with the Equality Duty, at least annually

Schools are required to proactively embed equality considerations into all of their policies and practices and have “due regard” to the PSED when making decisions, meaning that they must actively consider its principles in all aspects of their operations, from recruitment to employment.

Having due regard means consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This includes considering the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Meet the needs of people with protected characteristics.
- Encourage people with protected characteristics to participate in public life or in other activities where their participation is low.



# 3

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## **Harassment, bullying and victimisation**

**The legal framework for addressing harassment, bullying, and victimisation is grounded in equality and employment laws. Schools have a legal and ethical responsibility to provide a safe and respectful work environment. The Equality Act 2010 in the UK mandates employers to address these issues and take measures to prevent them.**



### Bullying

There is no legal definition of bullying, it can be described as unwanted behaviour from a person or group that is either:

- offensive, intimidating, malicious or insulting
- an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone.



### Harassment

Harassment can be defined as "improper, offensive and humiliating behaviour, practices or conduct, which may threaten a person's job security, create an intimidating, unwelcoming and stressful workplace, or cause personal offence or injury.

Sexual harassment is unwanted behaviour of a sexual nature which:

- Violates dignity
- Creates an intimidating, hostile, degrading, humiliating, or offensive environment.



### Victimisation

Victimisation is where someone is treated unfairly because they made or supported a complaint to do with a 'protected characteristic', or someone thinks they did.



### Note:

The Worker Protection (Amendment of Equality Act 2010) Act has now received Royal Assent and will come into force in late October 2024. In summary, the Act:

- introduces a new duty on employers to take reasonable steps to prevent sexual harassment of their employees in the workplace; and
- provides employment tribunals the power to provide an uplift of up to 25% to compensation where an employer has failed to take reasonable steps to prevent sexual harassment.



### Case Law

#### **Ms R Leher v Aspers (Stratford City) Ltd.**

The employee raised a grievance following one of several occasions where she was overlooked for promotions, alleging the decision related to her race. The grievance was not upheld and she was discouraged from referencing discrimination. She was subsequently given a higher number of short changeover shifts than her colleagues, with no handover and was the only person excluded from a social event. Although the Tribunal did not find that she had been discriminated against in being denied promotion they found that her grievances amounted to protected acts and Ms Leher's detrimental treatment by her employer and colleagues only happened because she had raised them. This amounted to victimisation.

**Causes and impacts of bullying, harassment, and victimisation:**

Various factors contribute to these behaviours, including power imbalances, lack of awareness, and a culture of tolerance. The impact of such behaviours is far-reaching, leading to decreased job satisfaction, lower morale, increased stress, absenteeism, higher staff turnover, reputational issues and reduced overall school performance. A toxic work environment also hinders collaboration and innovation. This may ultimately create legal liability against the school and individuals associated with the case.

**Preventive measures:** To prevent harassment, bullying, and victimisation among staff, schools should adopt a proactive approach:

- **Clear policies and procedures:** Develop and communicate comprehensive anti-harassment and anti-bullying policies outlining the school's stance and procedures for reporting and addressing incidents.
- **Training and education:** Provide regular training to staff and leadership on recognising, preventing, and addressing these behaviours. Training should also cover bystander intervention and conflict resolution.
- **Role modelling:** Leaders should exemplify respectful behaviour and create a positive workplace culture that values open communication and inclusivity.
- **Facilitate transparency:** Encourage an open-door policy where staff can raise concerns without fear of retribution.
- **Promote inclusivity:** Foster a diverse and inclusive work environment that respects different backgrounds, experiences, and perspectives.
- **Reporting mechanisms:** Establish multiple channels for reporting incidents, ensuring confidentiality and protection against retaliation.
- **Support systems:** Provide counselling services and support networks for affected individuals, enabling them to seek help without fear.





## School responses

When incidents occur, schools should respond promptly and effectively:

- **Investigations:** Conduct thorough and impartial investigations, involving trained professionals if necessary.
- **Disciplinary action:** Implement appropriate disciplinary actions, ensuring consistency and fairness.
- **Support for victims:** Offer support and accommodations for affected individuals, including time off, flexible work arrangements, and counselling.
- **Communication:** Keep staff informed about the school's response to incidents, demonstrating transparency and accountability.

## Encouraging a culture of respect and support

Schools can create a culture of respect and support by:

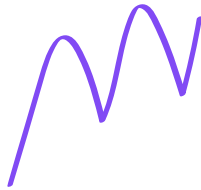
- **Regular assessment:** Conduct periodic assessments of workplace culture to identify any emerging issues and areas of improvement.
- **Feedback mechanisms:** Establish mechanisms for staff to provide feedback anonymously, ensuring continuous improvement.
- **Recognition and rewards:** Recognise and reward individuals and teams that embody respectful behaviour and contribute to a positive work environment.





# 4

## Understanding and implementing reasonable adjustments for staff



**Inclusivity is a cornerstone of modern society, aiming to provide equal opportunities for all individuals, including those with disabilities. In the context of UK schools, reasonable adjustments serve as a crucial mechanism to ensure that staff members with disabilities can fully participate and contribute.**

The legal framework for reasonable adjustments in UK schools is primarily outlined in the Equality Act 2010. This legislation places a duty on schools to make reasonable adjustments to ensure that disabled staff members are not placed at a substantial disadvantage compared to non-disabled individuals. The Act covers a wide range of adjustments, including physical modifications, changes to policies, provision of auxiliary aids, and more.



### Reasonable Adjustments

Reasonable adjustments are modifications, accommodations, or changes made to policies, practices, or physical environments to ensure that individuals with disabilities can access and participate in work on an equal basis with their peers. The concept is grounded in the principle of equality, aiming to eliminate disadvantages faced by individuals with disabilities.



### Case Law

In *Fareham College v Walters* the Employment Appeal Tribunal held that a decision to dismiss a disabled employee can amount to a failure to make reasonable adjustments if the employer could have made an adjustment, such as a phased return to work or transferred them to another job, which would have avoided the dismissal.

## Implications and benefits

Reasonable adjustments have profound implications for staff members, schools, and the broader educational community:

- **Equal opportunities:** Adjustments ensure that staff members with disabilities have equal opportunities to engage in professional development, teaching, and administrative tasks.
- **Retention and job satisfaction:** By providing the necessary accommodations, schools can retain skilled and experienced staff members, enhancing overall job satisfaction.
- **Legal compliance:** Schools that implement reasonable adjustments demonstrate their commitment to fulfilling legal obligations and promoting equality.



## Types of reasonable adjustments

Reasonable adjustments can encompass a wide range of interventions, including:

- **Physical modifications:** Creating accessible entrances, installing ramps, elevators, and ensuring accessible washrooms.
- **Flexible work arrangements:** Providing flexible working hours, remote working options, or adjusted duties to accommodate individual needs.
- **Assistive technologies:** Providing technological tools and software that support staff members' specific disabilities.
- **Training and awareness:** Ensuring annual training to staff members to increase awareness about disabilities and inclusive practices.

## Overcoming challenges and ensuring success

- **Training and education:** Provide regular training for staff members to raise awareness about disabilities and foster a culture of inclusion.
- **Individualised approaches:** Tailor adjustments to meet the specific needs of each staff member, acknowledging that disabilities are diverse.
- **Collaboration:** Involve staff members with disabilities in the decision-making process to ensure that adjustments meet their needs.



# 5

## Monitoring and reporting



**Monitoring involves systematically collecting and analysing data, including recruitment, employment practices, and overall school culture.**

The primary objective of monitoring is to identify and address any disparities or inequalities that may exist within the school. In relation to staff, monitoring aims to ensure that all employees, regardless of their background or characteristics, are treated fairly and equitably. Monitoring should include:

- **Staff diversity:** Schools monitor staff diversity by collecting data on characteristics such as gender, ethnicity, disability, and age. This helps schools assess whether their workforce represents a diverse range of backgrounds and identities.
- **Recruitment and promotions:** Schools monitor their recruitment and promotion processes to ensure that they are inclusive and provide equal opportunities for all staff members.
- **Staff development:** Monitoring staff training, and development opportunities helps schools identify if there are any gaps in access, ensuring that all employees have equal chances for professional growth.
- **Workplace climate:** Schools assess the work environment through monitoring to detect any potential instances of bullying, harassment, or discrimination, allowing for timely interventions to address such issues.
- **Policies and procedures:** Monitoring the implementation of all employment related policies to ensure that these do not directly or indirectly impact negatively or disproportionately on any particular group.

**Equal pay and pay secrecy**

The Equality Act provides that men and women should receive equal pay for equal work. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still must be made by comparison with a real person of the opposite sex in the same employment. However, the Act allows a claim of direct pay discrimination to be made, even if no actual comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from the school if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work with the school. This would be a claim under sex discrimination.

The Act also prohibits pay “secrecy” – such that employers must not prevent or restrict its employees from having discussions to establish if they believe pay differences exist that are related to a protected characteristic.





## Gender pay gap reporting

Pay gap reporting involves disclosing information about the differences in pay between different groups of employees within an organisation. The government introduced Gender Pay Gap Reporting regulations to promote transparency and encourage organisations to address gender-based pay inequalities.

The requirements are:

- **Data collection:** Schools with more than 250 employees are required to gather data on the salaries of their male and female staff members, including bonuses and other compensation-related information.
- **Analysis:** The collected data is then analysed to calculate the average gender pay gap, median gender pay gap, and other relevant statistics.
- **Reporting:** Schools are mandated to publish this data on their websites and submit it to the government's Gender Pay Gap Reporting portal. In addition to the data, schools are encouraged to provide a narrative explanation for any pay disparities identified and to outline any steps they are taking to address the gap.

## Importance for schools

Both monitoring and pay gap reporting are crucial for UK schools as they:

- **Promote accountability:** By monitoring and reporting, schools are held accountable for their employment practices, promoting transparency and fairness.
- **Identify disparities:** These processes help identify disparities or areas of concern, allowing schools to take targeted actions for improvement.
- **Support inclusion:** Effective monitoring and reporting contribute to creating an inclusive and diverse school environment, benefiting both staff and students.
- **Comply with legal requirements:** Schools must comply with legal requirements related to equality, diversity, and inclusion, which includes monitoring and reporting.

In summary, monitoring and pay gap reporting are essential tools that help schools ensure fairness, equality, and transparency in their employment practices and in addressing gender-based disparities. By actively engaging in these processes, schools contribute to fostering an inclusive and supportive environment for their staff.





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