

Schools and the Equal Status Acts

2nd Edition

1. Introduction

The promotion of equality has grown as a focus of public policy in Ireland in recent years. This has been reinforced and given statutory effect in recent equality legislation – the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004¹. This legislation prohibits discrimination in employment, including the employment of teachers, and in the provision of goods and services, in the provision of accommodation and in provision by educational establishments.

This information booklet outlines the main features of the Equal Status Acts as they affect primary and second-level schools. It identifies ways in which the rights conferred and duties imposed by this legislation together with the education legislation can be used as building blocks for the creation of an inclusive school.

The inclusive school prevents and combats discrimination. It is one that respects, values and accommodates diversity across all nine grounds in the equality legislation – gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. It seeks positive experiences, a sense of belonging and outcomes for all students across the nine grounds. Outcomes include access, participation, personal development and achieving education credentials.

¹ The Employment Equality Act 1998 came into force in October 1999. The Equal Status Act 2000 came into effect in October 2000. Both Acts were amended by the Equality Act 2004. The Employment Equality Act 1998 and the amending piece of legislation are referred to together as the Employment Equality Acts 2000 and 2004. The Equal Status Act 2000 and the Equality Act 2004 are referred to together as the Equal Status Acts 2000 to 2004.

Education legislation

The main legislation governing schools is

- the Education Act 1998 and
- the Education (Welfare) Act 2000.

In addition, the Education for Persons with Special Educational Needs Act was passed 2004; however, its provisions were not yet in force when this information booklet went to press.

The promotion of equality is embedded in the Education Act in a number of ways. Schools must use their resources to ensure that the educational needs of all students, including those with a disability or other special educational needs, are identified and provided for. Schools must promote equality of opportunity for male and female students. They must establish and maintain an admissions policy that provides for maximum accessibility to the school and which ensures that principles of equality are respected. A school plan must be prepared and it must state the objectives of the school relating to equality of access to and participation in the school and the measures that the school proposes to take to achieve these objectives.

The Education (Welfare) Act requires schools to prepare a code of behaviour that specifies the standards of behaviour to be observed by students.

The provisions of the Education for Persons with Special Educational Needs Act 2004 had not come into force when this information booklet went to press. The Act seeks to establish the principle of inclusive education for children with special educational needs as a legal requirement. It sets out procedures for conducting assessments of students who have special educational needs and preparing education plans for them. It also permits the designation of the school at which a

child with special educational needs is to be educated. The education legislation recognises the autonomy of each school, under the patron, and sets out the main responsibilities and rights of the principal and the board of management, subject to regulations made by the Minister.

Equality legislation

The Employment Equality Acts and the Equal Status Acts are relevant to the whole range of activities that occur in the school setting.

The Employment Equality Acts prohibit discrimination in employment and self-employment. This protection extends to teachers and other staff employed by the school, and to independent contractors. These Acts prohibit harassment and sexual harassment of staff by employers, by teachers or other staff or by students. They require the reasonable accommodation of employees – both teachers and other staff – with disabilities. They allow for positive action. All of these provisions are subject to exemptions.

The focus of this information booklet is the Equal Status Acts and their specific provisions on educational establishments. Educational establishments are defined to include all public and private primary and post-primary schools. This information booklet seeks to assist schools to take the steps necessary to meet their obligations under the Equal Status Acts.

2. The Equal Status Acts

Aim

The Equal Status Acts

- promote equality of opportunity,
- prohibit discrimination on nine specific grounds,
- prohibit harassment on the discriminatory grounds and sexual harassment,
- require reasonable accommodation of people with disabilities and
- allow for positive action.

Grounds

The nine grounds on which discrimination is prohibited are

- gender,
- marital status,
- family status,
- sexual orientation,
- religion,
- age,
- disability,
- race and
- membership of the Traveller community.

The definition of the nine grounds

Gender – Being male or female. (The European Court of Justice has held that discrimination against a transsexual person constitutes discrimination on the ground of sex.)

Marital status – Being single, married, separated, divorced or widowed.

Family status – Being pregnant or having responsibility as a parent in relation to a person under 18 years, or as a parent or the resident primary carer in relation to an adult with a disability who needs care or support on a continuing, regular or frequent basis.

Sexual orientation – Being heterosexual, homosexual or bisexual.

Religion – Having religious beliefs or having none; the term ‘religious belief’ includes religious background or outlook.

Age – Applies to everybody over 18 (except in relation to the provision of motor insurance to drivers aged under 18).

Disability – The term ‘disability’ is broadly defined. It covers a wide range of impairments and illnesses. It covers all physical, sensory and intellectual disabilities.

Race – Includes race, colour, nationality or ethnic or national origins.

Membership of the Traveller community – People who are commonly called Travellers, who are identified by both Travellers and others as people with a shared history, culture and traditions, identified historically as having a nomadic way of life on the island of Ireland.

Scope

The Equal Status Acts cover

- buying, selling, or renting a wide variety of goods,
- a wide range of services, including public services like welfare, health, education and services provided by the Department of Education and Science (subject to certain exemptions) and
- buying, selling or renting houses, apartments, etc.

The Equal Status Acts apply to educational establishments, including primary and post-primary schools.

Discrimination

Discrimination has a specific meaning in the Acts. A number of different types of discrimination are covered, including indirect discrimination, discrimination by imputation and discrimination by association.

The definition of discrimination

There are a number of elements to the definition of discrimination.

Discrimination occurs if a person is treated less favourably than another person in a comparable situation on the basis of membership of any of the nine grounds.

It covers differences in how the person

- is treated,
- has been treated or
- would be treated.

It covers where the membership of the discriminatory ground

- currently exists,
- has existed but no longer does,
- may exist in the future or
- is imputed to the person concerned.

Indirect discrimination happens when there is less favourable treatment by impact or effect. It occurs

when, for example, a student is refused access to a school not explicitly on account of a discriminatory reason but because of a provision, practice or requirement which the student finds hard to satisfy. If the provision, practice or requirement puts people who belong one of the grounds covered by the Acts at a particular disadvantage then the school will have indirectly discriminated, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Discrimination by association happens when a person associated with another person (belonging to the discriminatory grounds) is treated less favourably because of that association.

3. Harassment and sexual harassment

Harassment on the discriminatory grounds and sexual harassment are prohibited.

Principals, teachers and others in positions of responsibility in a school may not harass or sexually harass students at the school or anyone who has applied for admission. They must not permit students – or anybody else who has the right to be in the school, such as parents – to harass or sexually harass other students. This protection for students also applies to visiting students.

Issues that have arisen include a range of school yard incidents of harassment on the sexual orientation, race, Traveller, disability and gender grounds.

The definition of harassment and sexual harassment

Harassment is any form of unwanted conduct in relation to any of the discriminatory grounds. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

In both cases, it is conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading or offensive environment for the person.

In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other materials.

A person's rejection of, or submission to, sexual or other harassment may not be used by any other person as a basis for a decision affecting that person.

4. Victimisation

The Equal Status Acts prohibit victimisation. Victimisation occurs when a person is treated less favourably than another person because

- they make a complaint of discrimination to the Equality Tribunal
- they are a witness in any proceedings under the Equal Status Acts or
- they have opposed by lawful means an act that is unlawful under the Equal Status Acts.

Victimisation also occurs when they are treated less favourably because they give notice that they intend to do any of these things.

5. Reasonable accommodation

Reasonable accommodation may be defined as providing special treatment or facilities or making adjustments for a person to enable them to access a service.

A school must provide reasonable accommodation to meet the needs of a person with a disability if it would be impossible or unduly difficult for that person to participate in school without the special treatment, facilities or adjustments.

However, there is no obligation to provide special treatment, facilities or adjustments if they give rise to anything more than a 'nominal cost'. The meaning of 'nominal cost' will depend on the circumstances such as the size of and resources available to the organisation. A large and well-resourced organisation is more likely to be able to afford a higher level of cost in making reasonable accommodation than a small one is. As most schools are funded by the State, this would suggest the 'nominal cost' exemption may not be very significant in practice. If the State provides grants or other resources for assisting in providing special treatment or facilities, there may be an onus on the school to avail of these.

The provision of reasonable accommodation is most often a low-cost exercise. It can seek to address a range of barriers – physical, communication and attitudinal. The starting point for providing reasonable accommodation for students with disabilities is proper and adequate assessment of the situation, including the needs of the student, before decisions that may be to the detriment of the student are taken. In the absence of such assessment, it will often be impossible for the school to know what facilities or special treatment may be reasonable, possible or effective. This necessarily involves discussing the matter with the student, parents and possibly their medical advisers. It also places an onus on the school to consider any reasonable proposal made by or on behalf of the student.

Schools can, of course, take steps to ensure that students do not harm themselves or others. It is not discrimination to treat a person with a disability differently to the extent that this is necessary to prevent them from causing harm to themselves or to another person.

The provisions of the Equal Status Acts relating to reasonable accommodation are without prejudice to the duties a school has towards people with disabilities that are set out in the Education Act.

6. Liability

Under the Equal Status Acts, schools are liable for discrimination or harassment committed by an employee in the course of their work, whether or not it was done with the school's knowledge or approval.

Schools are also liable for discrimination or harassment committed by people acting on their behalf who are not employees.

A school has a defence against being liable for the discriminatory actions or harassment of an employee if it can prove that it took such steps as were reasonably practical to prevent the employee from committing the actions. Such steps would include having a policy on harassment and sexual harassment and having proper procedures to address any incidents, and ensure that they do not recur.

7. Positive action

Organisations such as schools are allowed to provide preferential treatment or to take positive measures that are genuinely intended to promote equality of opportunity for those who are disadvantaged. They may also provide preferential treatment or take positive measures that cater

for the special needs of those who may require facilities, arrangements, services or assistance that are not required by others. (In contrast to the meaning of ‘special needs’ in the education legislation, the definition of the term in this context is not restricted to students who have disabilities or who are exceptionally able.)

8. Advertising

A school must not publish, display (or cause to be published or displayed) an advertisement which indicates an intention to discriminate, harass or sexually harass or which might reasonably be understood as indicating such an intention.

9. Other legislation and court orders

An overarching exemption in the Equal Status Acts covers all aspects of its application, including education.

If something is required by another law or a court order, the provisions of the Equal Status Acts cannot be construed as prohibiting it. However, if an organisation (such as a school) has any discretion about how it meets a legal requirement, then the way it does that must not breach the Equal Status Acts. Examples of exemptions covered by this provision include any obligations on schools to do something under the education legislation.

10. The Equal Status Acts and schools

The Equal Status Acts require that schools do not discriminate across the nine grounds. Schools must mainstream and reasonably accommodate people with disabilities. Harassment and sexual harassment is prohibited in schools. These provisions are subject to exemptions. Positive action is allowed.

The Equal Status Acts specify four areas in which a school must not discriminate:

- the admission of a student, including the terms or conditions of the admission of a student,
- the access of a student to a course, facility or benefit provided by the school,
- any other term or condition of participation in the school and
- the expulsion of a student or any other sanction.

Certain exemptions apply, and the most relevant are mentioned below.

The admission of a student

A school may not discriminate in relation to the admission of a student to the school, subject to exemptions set out below.

An exemption applies to the gender ground. Single-sex schools are allowed.

A second exemption concerns schools where the objective is to provide education in an environment that promotes certain religious values. A school that has this objective can admit a student of a particular religious denomination in preference to other students. Such a school can also refuse

to admit a student who is not of that religion, provided it can prove that this refusal is essential to maintain the ethos of the school.

Issues that have arisen include refusal of access for Traveller children, refusal of access for students with disabilities to post-primary schools and restricting access to a small number of students of a particular religion in a very large school run by another religious denomination.

Access to a course, facility or benefit

After a student has been admitted, a school may not discriminate in relation to the access of the student to any course, facility or benefit provided by the school.

Restricting a student's access to subjects on the basis of one or more of the nine grounds would be discrimination. Other examples of where discrimination could occur would be access to libraries, participation in school tours or extra-curricular activities, or membership of clubs or societies.

Issues that have arisen include the withdrawal of Traveller students from core subjects and access for students with disabilities to particular subjects.

Terms or conditions

A school may not impose any other condition on participation in the school that discriminates on the nine grounds.

One example of what this covers would include rules that restrict or permit students to take examinations. It would be illegal if the way these rules operate amounts to discrimination on any of the nine grounds.

An issue that arose involved requiring parents of a student with a disability to be present at swimming lessons with their child when their presence was unnecessary and when other parents were not required to be present.

Generally, differences in treatment on the nine grounds are not allowed in schools in relation to sporting facilities or events. However, if they are reasonably necessary taking account of the nature of the facilities or events, they can be allowed on the gender, disability and age grounds.

An issue that has arisen is different experiences in the provision of sporting opportunities to boys and girls in co-educational settings.

Expulsion and other sanctions

The Equal Status Acts do not prevent a school from imposing sanctions, but they cannot be imposed in a way that discriminates on the nine grounds.

For example, it could be discrimination to suspend a student for a particular behaviour if another student not belonging to the ground would not also be suspended for similar behaviour.

11. Mainstreaming of students with disabilities

The provisions of the Equal Status Acts rest on a presumption of mainstreaming for students with disabilities. A school is exempt from the requirement to provide service to a student with a disability only to the extent that doing so would (because of the student's disability) have a seriously

detrimental effect on the provision of services to other students or would make it impossible to provide services to other students.

12. Enforcement

A person who believes they have been discriminated against, harassed, sexually harassed or victimised under the Equal Status Acts can take a claim before the Equality Tribunal. This is the quasi-judicial body established to investigate, hear and decide claims. If the Equality Tribunal finds that the person has been discriminated against (or has been harassed, sexually harassed or victimised), it can order the person who is responsible for it to pay compensation of up to €6,350. The Equality Tribunal can also order that specific action be taken. Examples of this have included training staff and putting in place procedures to ensure discrimination does not recur.

The procedures for taking a claim are outlined in the Equality Authority's information booklet *The Equal Status Acts 2000 to 2004*.

13. Challenges in attaining the inclusive school

There are still a number of significant challenges to attaining the inclusive school. Three key challenges can be identified.

One of the challenges is inclusion for all across the nine grounds in the mainstream provision of education. Inclusion

in mainstream education involves not only issues of access and participation, but also of achieving outcomes in terms of education credentials and personal development.

Segregation remains an experience on grounds of gender, religion, disability, and ethnicity. Issues that this raises include access to schools, subject take-up, early school leaving and practical supports for mainstreaming.

Accommodating diversity presents a second challenge. Differences need to be acknowledged and valued. In order for that to happen, they will need to be understood. The inclusive school will take account of the specific needs of all, will assess the impact of decisions on all and will create a positive environment for all, across the nine grounds.

A third challenge lies in the role that schools have in helping students develop their ideas and values. This is done directly through what is taught and indirectly through the school's ethos and culture.

The information that is given to students about different groups in society, including those who experience inequality and discrimination, is important in this regard. Schools have a role in helping students, including those from minorities and disadvantaged groups, to learn about themselves and their differences from others in a way that is positive and affirming of diverse identities. Schools can also play an important role in helping students to understand the causes of inequality and empowering them to oppose these inequalities.

The ethos of the school can contribute to the values of students through the expectations and standards of behaviour set for students and through its practices and procedures in all areas of school life. For example, the subject choices and the range of extra-curricular activities that are

offered convey messages about how groups are valued that can be as strong as statements in the code of behaviour and its implementation.

14. Moving towards the inclusive school

A number of opportunities for action exist.

- **The school development plan** – The school development plan is an appropriate place in which to identify a commitment to achieving equality. It must contain equality objectives and identify the steps that will be taken to achieve them. It should be based on an identification of the educational needs of students across the nine grounds. Consulting groups that represent those who experience inequality in the development and monitoring of the plan can help to inform the school's commitment to equality.
- **The admission policy** – The admission policy will ensure that no student is denied a place in the school because of their membership of a group under any of the nine grounds. However, an exemption is allowed if it is proved that a refusal is essential to maintain the religious ethos of the school. It will seek to ensure adequate resources and supports are available to make the enrolment of those students a reality. This should include a commitment to making reasonable accommodation to enable students with disabilities to enrol and participate in the school. The policy must identify the measures the school will take to achieve maximum accessibility and ensure the principles of equality. It could also include positive action that is designed to promote equality for those who are disadvantaged or have the kind of special needs referred to in the Equal Status Acts.

- **The code of behaviour** – The code of behaviour should explicitly name the nine grounds and require behaviour that respects diversity across them. It should prohibit harassment and sexual harassment. The code should set out the policy and procedures to deal with harassment across all of the grounds and sexual harassment, and should identify action to ensure such harassment does not occur and the steps that will be taken if it does occur. Steps to prevent harassment occurring include ensuring all members of the school community – including parents and staff – are made aware of the code of behaviour and that harassment and sexual harassment are prohibited. They also include building an anti-harassment culture through training for both staff and students. Proper implementation of the procedures when incidents do occur is essential in preventing future harassment. The preparation of the code of behaviour should involve consultation with parents, teachers, principals and students.
- **Building awareness and understanding** – Students in the inclusive school will be offered opportunities to develop their knowledge and understanding of inequalities, what causes inequalities and how they can challenge them.
- **Training** – Teachers will need skills to ensure positive outcomes for all students, to prevent and address harassment and sexual harassment and to understand the situation of those who experience inequality.

15. More information

Equality and Education

The proceedings of *Equality and Education*, a joint Equality Authority – ASTI Conference for second-level teachers, are available from the Equality Authority. It can be downloaded from the Equality Authority's web site at <http://www.equality.ie>.

The Inclusive School

The proceedings of *The Inclusive School*, a joint Equality Authority – INTO Conference, are available from the Equality Authority. It can also be downloaded from the Equality Authority's web site at <http://www.equality.ie> or from the INTO's web site at <http://www.into.ie>.

Shared The Feeling? Now Let's Share the Future

This booklet, published jointly by the National Disability Authority, the Equality Authority and the Department of Education and Science for schools as part of European Year of People with Disabilities 2003, can be downloaded from the Equality Authority's web site at <http://www.equality.ie>.

Information booklets on the equality legislation

The Equality Authority has published two general guides to the equality legislation – *The Equal Status Acts 2000 to 2004* and *The Employment Equality Acts 1998 and 2004*. These booklets give more information on aspects of the legislation not covered in this information booklet, including the enforcement procedures. Copies of the booklets are available from the Equality Authority. They can also be downloaded from the Equality Authority's web site at <http://www.equality.ie>.

Harassment

The Code of Practice on Sexual Harassment and Harassment at Work sets out what is meant by sexual harassment and harassment in the workplace and what steps to take if it does occur. It has been given legal effect and can be used as evidence and taken into account in criminal proceedings before a court and in proceedings before the Labour Court, the Labour Relations Commission, the Equality Tribunal and a Rights Commissioner.

The first edition of *Code of Practice on Sexual Harassment and Harassment at Work* is available from the Equality Authority or can be downloaded from the Equality Authority's web site at <http://www.equality.ie>. (A second edition, to reflect amendments made to the Employment Equality Acts since the first edition was issued, is due to be prepared in 2005.)

Legislation

The full text of the legislation referred to in this information booklet can be downloaded from the Internet at the following addresses:

Education Act 1998 – An tAcht Oideachais 1998

<http://www.gov.ie/bills28/acts/1998/a5198.pdf> (in English)

<http://www.gov.ie/bills28/acts/1998/a5198i.pdf> (as Gaeilge)

Education (Welfare) Act 2000 – An tAcht Oideachais (Leas) 2000

<http://www.oireachtas.ie/documents/bills28/acts/2000/a2200.pdf> (in English)

<http://www.oireachtas.ie/documents/bills28/acts/2000/a2200i.pdf> (as Gaeilge)

Education for Persons with Special Educational Needs Act 2004 – An tAcht um Oideachas do Dhaoine a bhfuil Riachtanais Speisialta Oideachais 2004

<http://www.oireachtas.ie/documents/bills28/acts/2004/A3004.pdf> (in English)

(The official Irish translation of this Act was not available when this information booklet went to print.)

Employment Equality Act 1998 (note: this is the Act as originally passed) – An tAcht um Chomhionannas Fostaíochta, 1998 (note: this is the official Irish translation of the Act as originally passed)

<http://www.gov.ie/bills28/acts/1998/a2198.pdf> (in English)

<http://www.gov.ie/bills28/acts/1998/a2198i.pdf> (as Gaeilge)

Equal Status Act 2000² (note: this is the Act as originally passed) – An tAcht um Stádas Comhionann 2000 (note: this is the official Irish translation of the Act as originally passed)

<http://www.oireachtas.ie/documents/bills28/acts/2000/a800.pdf> (in English)

<http://www.oireachtas.ie/documents/bills28/acts/2000/a800i.pdf> (as Gaeilge)

Equality Act 2004 – An tAcht um Chomhionannas 2004

<http://www.oireachtas.ie/documents/bills28/acts/2004/A2404.pdf> (in English)

(The official Irish translation of this Act was not available when this information booklet went to print.)

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² *The Equal Status Act was also amended by the Intoxicating Liquor Act 2003. However, as the change introduced is not relevant to the content of this booklet, the web address has not been included here.*

