



Schools and the  
Equal Status Act

## I 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 Act, 1998 and the Equal Status Act, 2000. This legislation prohibits discrimination in employment, including the employment of teachers, and in the provision of goods and services, accommodation and educational establishments.

This pamphlet outlines the main features of the equality legislation as it affects primary and second-level schools. It identifies ways in which the rights conferred and duties imposed by this legislation together with the education Acts 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.

### Education legislation

The main legislation governing schools is

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

The promotion of equality is embedded in the Education Act, 1998 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 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 Act, 1998 prohibits discrimination against employees, including teachers. It prohibits harassment and sexual harassment by employers, teachers and students. It requires the reasonable accommodation of teachers with disabilities. These provisions are subject to a number of detailed exemptions. The Equal Status Act, 2000 has specific provisions on educational establishments, which are defined to include all public and private primary and post-primary schools.

This pamphlet focuses on the Equal Status Act rather than the Employment Equality Act. It seeks to assist schools to take the steps necessary to meet their obligations under this Act.

## 2 The Equal Status Act

### Aim

The Equal Status Act, 2000

- promotes equality of opportunity,
- prohibits discrimination on nine specific grounds,
- prohibits harassment on the discriminatory grounds and sexual harassment,
- requires reasonable accommodation of people with disabilities and
- allows 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.

### Scope

The Equal Status Act covers

- buying, selling, or renting a wide variety of goods,
- a wide range of services, including public services like

### The definition of the nine grounds

*Gender* – Being male or female.

*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.

*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* – Being a Traveller.

## The definition of discrimination

Direct discrimination occurs if a person is treated less favourably than another person is treated, has been treated or would be treated specifically on the basis of membership of any of the nine grounds or where it is imputed.

Indirect discrimination occurs when a person has to comply with a condition – whether that be a requirement, a practice or otherwise – but they cannot do so. If the condition can be met by significantly more people who belong to a group than those who do not belong to it, and if the group is defined by any of the nine grounds, then it is discrimination unless the condition can be justified as being reasonable.

Discrimination by association occurs when a person is associated with somebody from any of the nine grounds and is treated less favourably because of that association.

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 Act applies to educational establishments, including primary and post-primary schools.

## Discrimination

The Equal Status Act prohibits three forms of discrimination:

- direct discrimination,
- indirect discrimination and
- discrimination by 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*

Harassment is where one person subjects the victim to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material which could reasonably be regarded as offensive, humiliating or intimidating to the victim and which is based on any discriminatory ground.

##### *Sexual harassment*

Sexual harassment takes place where a person subjects the victim to an act of physical intimacy, requests sexual favours from the victim, or subjects the victim to any act or conduct with sexual connotations – including spoken words, gestures or the production, display or circulation of written words, pictures or other material.

The act, request or conduct must be unwelcome to the victim and be one that could reasonably be regarded as offensive, humiliating or intimidating to him or her. Alternatively, the victim must be treated differently by reason of his or her rejection of or submission to the action.

## 4 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.

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 of the individual service provider concerned – 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.

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 an assessment of their needs.

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 Act relating to reasonable accommodation do not over-ride the duties a school has towards people with disabilities that are set out in the Education Act.

## 5 Liability

Under the Equal Status Act, 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 actions 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.

## 6 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.)



## 7 Other legislation and court orders

An overarching exemption in the Equal Status Act 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 Act 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 Act. Examples of exemptions covered by this provision include any obligations on schools to do something under the Education Acts.

## 8 The Equal Status Act and schools

The Equal Status Act requires 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.

The Equal Status Act specifies 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 Act does 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.

## 9 Mainstreaming of students with disabilities

The provisions of the Equal Status Act 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.

## 10 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.

## 11 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 Act.
- **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 pupils.

- **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.

## 12 More information

### Equality and Education

The proceedings of *Equality and Education*, a joint Equality Authority – ASTI Conference for second-level teachers, can be downloaded from the Equality Authority’s web site at <http://www.equality.ie/stored-files/PDF/Equality%20&%20Education.pdf>

### 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 *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/stored-files/PDF/Code%20of%20Practice%20on%20Sexual%20Harassment%20&%20Harassment.pdf>

### Legislation

The full text of the legislation referred to in this pamphlet 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.gov.ie/bills28/acts/2000/a2200.pdf> (in English)  
<http://www.gov.ie/bills28/acts/2000/a2200i.pdf> (as Gaeilge)



Employment Equality Act, 1998 – An tAcht um Chomhionannas Fostaíochta, 1998

<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, 2000 – An tAcht um Stádas Comhionann, 2000

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

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

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