

A. ADVICE FOR GOVERNORS

A2: The Legal Framework

Legal duties and government policies: what this means for your school

This section sets out the relevant laws and policies in relation to this topic.

Relevant law [see A2.1]

Relevant policies [see A2.2]

Relevant guidance [see A2.3]

Inspections [see A2.4]

A2.1 Relevant law

For general law related to preventing and tackling bullying please see main text of *Safe to Learn*.

The Employment Equality (Sexual Orientation) Regulations 2003⁴

These laws protect all **staff** [see C2] in a school against discrimination or harassment on the grounds of their sexual orientation. **Discrimination**, either direct or indirect, involves treating one person less favourably than another on the grounds of their sexual orientation. **Harassment** is unwanted conduct which violates a person's dignity or creates an intimidating, hostile, degrading or humiliating environment. If employers do not take action to stop such behaviour against staff they run the risk of legal

challenge. The laws also cover perceived sexual orientation (if someone bullies because they think a person is lesbian, gay or bisexual even though they are not) or association (such as harassing a person over a friend or family member who is lesbian, gay or bisexual).

Employers should be aware that they are responsible for the actions of their employees, and what people may think of as just "banter" and "having a laugh" can be deemed harassment if it is at the expense of someone else's dignity. For staff who think that they are being discriminated against, support is available through channels such as trade unions and professional associations [see Further resources]. Creating a culture [see A4.2] of respect where difference is valued is important and heads and governors therefore have a key role in ensuring all members of staff, including those who are lesbian, gay or bisexual are treated fairly.

The Equality Act 2006⁵

Part 3 of the Equality Act 2006 gives powers to outlaw discrimination on the grounds of sexual orientation in the provision of "goods and services". Regulations made under Part 3 came into effect on 30 April 2007 and cover public bodies as well as private, and specifically cover education.

⁴ www.opsi.gov.uk/SI/si2003/20031661.htm

⁵ www.opsi.gov.uk/acts/acts2006/20060003.htm

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In practice it means for instance, that a pupil could not be refused entry to a school on the grounds that they were, or were thought to be, lesbian or gay, or because they had gay relatives. It would also mean that privileges, such as being a prefect, could not be denied to lesbian or gay pupils. It also means that schools that do not treat homophobic bullying with the same level of seriousness as other forms of bullying could face legal action.

Guidance for schools on their duties and responsibilities under the Sexual Orientation Regulations can be found at:
www.teachernet.gov.uk/wholeschool/equality/sexualorientation/regulations2007/

The Regulations should have no effect on the teaching and curriculum in schools, provided that the subject of sexual orientation is approached in an appropriate manner in line with existing guidance.

Section 28

Section 28 of the Local Government Act 1988 confused many schools with regards to what could be said in relation to homosexuality due to issues around the word “promotion”.

Section 28 was repealed in 2003 and is **no longer law**. There are no, and never have been any, legal barriers to teachers and staff discussing issues around sexual orientation in the classroom and **responding** [see A5] to, and **preventing** [see A4], homophobic bullying.

A2.2 Relevant policies

Every Child Matters⁶

Every Child Matters provides a focus for the education sector and the wider children’s workforce to think about supporting children to grow into respectful, confident and socially and emotionally healthy adults.

Those pupils who may be experiencing homophobic bullying will not be able to meet the outcomes Every Child Matters requires:

- **Being healthy:** Young people experiencing homophobic bullying are at risk of suffering from low self-esteem, and possibly experiencing mental health issues. They may also take part in risk taking behaviour.
- **Staying safe:** Young people experiencing homophobic bullying are at risk from harassment, and physical abuse, and are therefore not being kept safe.
- **Enjoying and achieving:** A young person who is experiencing homophobic bullying is less likely to enjoy school or achieve their full potential. Research suggests they may be reluctant to attend after school activities, or contribute fully to class in case this draws attention to them.
- **Achieving economic well-being:** A young person who experiences homophobic bullying may not do as well at school, and may not stay on to study further. Lesbian and gay pupils are more likely to leave school at 16, even if they do have an interest in continuing their studies.
- **Making a positive contribution:** Young people experiencing homophobic bullying will be discouraged from making a positive contribution to their school life and to their community.

Youth Matters⁷

Youth Matters is part of *Every Child Matters* and aims to ensure that all young adults (14-19) are supported to achieve the objectives of *Every Child Matters*.

The challenges facing young people, such as “study, money, employment, health, self-esteem and relationships” can provide additional challenges for

⁶ www.everychildmatters.gov.uk/

⁷ www.DCSF.gov.uk/publications/youth/

lesbian and gay young people. Learning about one's sexual orientation can however be a positive experience if suitable support structures are in place.

Since homophobic bullying can lead to an increased possibility of self-harm, educational underachievement, truancy, homelessness and even suicide it can prevent the objectives of *Youth Matters* being met.

A2.3 Relevant Guidance

Safe to Learn⁸

The DCSF's recently updated overarching guidance to schools, *Safe to Learn*, provides detailed guidance on how to tackle all forms of bullying. It includes sections on establishing a whole-school policy, practical interventions, data collection and working with parents/carers to strategically tackle bullying in the classroom and beyond. The strategies within it can also be used to tackle homophobic bullying.

Stand Up For Us⁹

Stand up for us, developed by DCSF and the Department of Health in 2004, helps schools challenge and respond to homophobic bullying through establishing and delivering a whole school approach.

DCSF Sex and Relationship Education Guidance¹⁰

DCSF guidance on Sex and Relationship Education (SRE) states that teaching in this area should demonstrate to pupils the importance of stable, loving relationships and respect and care.

In discussions about stable relationships, heterosexual and same-sex relationships can be discussed. The guidance also states that it is for schools to make sure that the needs of all pupils are

met in their SRE. Whatever their developing sexuality, all young people need to feel that SRE is relevant to them and sensitive to their needs.

It is also vital that schools can assure parents/carers that all SRE is age-specific and context specific.

A2.4 Inspection

Ofsted self-evaluation forms¹¹

The new Ofsted inspection regime is much more focussed than before with the emphasis on self-evaluation. Bullying is one of the issues that inspectors will look for in a school and Ofsted are increasingly sensitive to bullying motivated by prejudice.

The new forms require schools to evidence 'how well equality of opportunity is promoted and discrimination tackled so that all learners achieve their potential' and to what extent 'learners feel safe from bullying and racist incidents'. In collecting evidence for the SEF a school will therefore look to demonstrate the ways in which it tackles all forms of bullying, including homophobic bullying.

The General Teaching Council in its document *The Statement of Professional Values and Practice for Teachers* supports the importance of maintaining total equality of opportunity.

*"Teachers work within a framework of legislation, statutory guidance and school policies, with different lines of accountability. Within this framework they place particular importance on promoting equality of opportunity – challenging stereotypes, opposing prejudice, and respecting individuals regardless of age, gender, disability, colour, race, ethnicity, class, religion, marital status or sexual orientation."*¹²

⁸ www.teachernet.gov.uk/wholeschool/behaviour/tacklingbullying/safetolearn/

⁹ www.wiredforhealth.gov.uk/cat.php?catid=1101&docid=7707

¹⁰ www.dfes.gov.uk/sreguidance/

¹¹ www.ofsted.gov.uk/schools/sef.cfm

¹² www.gtce.org.uk/standards/disc/StatementOfProfValues