



*Services for schools, owned by schools*

## H3-The Equality Act 2010

September 2023

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# Appendix H3

## Briefing Note on Employr

### 1. Introduction

The Equality Act came into force in 2010. It replaced t and also includes further protected characteristics.

1.1 The purpose of this note is to give information about the employment implications for schools of the Equality Act 2010. The DfE issued guidance to schools giving more detailed guidance. This guidance can be downloaded at:

<http://www.gov.uk/government/publications>

1.2 The Equality Act (hereafter referred to as the Act), introduced new measures aimed at ending discrimination. Disabled people now have rights in several key areas and a Disability Rights Commission has been set up to advise the Government on discrimination against disabled people. The Act did not override the requirements of any existing education law.

1.3 The Act defines a disabled person as one who has "a physical or mental impairment, which has a substantial and long term adverse effect on his ability to carry out normal day-to day activities". "Discrimination" is said to occur when a disabled person is treated less favourably than someone else, the treatment is for a reason relating to the person's disability and that reason does not apply to a person who is not disabled, and that the treatment cannot be justified.

1.4 The Authority in Newham has an inclusive education strategy that is concerned with supporting pupils with special educational needs and preparing them for the world of work. The Authority supports this by acting as an inclusive employer. In the case of Voluntary Aided Schools, the governing body is entirely responsible for all the responsibilities shared between the Authority and Community School governing bodies.

### 2. General issues

2.1 The employment provisions of the Act apply to all staff in Newham schools, community, voluntary aided or voluntary controlled. The legislation means that:

(a) employers must not discriminate against current or prospective disabled employees, or those who have been disabled in the past. This applies to every aspect of work including recruitment, conditions of service, training and dismissal.

(b) employers must make reasonable adjustments to premises if these substantially disadvantage a disabled non-disabled person. For prospective employees they must make a reasonable adjustment which would overcome a disadvantage in deciding if they are the most suitable person for the job.

- 2.2 Responsibility for complying with the employment provisions of the Act rests with the employer. Under LMS, the role of the employer is divided between governing bodies and the Authority, (except in Voluntary Aided Schools). Therefore, governing bodies must not discriminate against disabled employees or prospective employees when exercising their staffing powers and they are responsible for making reasonable adjustments to their employment arrangements or practices. The Authority must not discriminate against disabled employees or prospective employees when exercising its employer powers, for example, when checking that selected candidates meet the legal requirements on health before formally appointing them to the Authority's service.
- 2.3 Disabled employees or prospective employees have the right to complain to an Employment Tribunal if they believe an employer has unlawfully discriminated against them or has failed to make reasonable adjustments.
- 2.4 School governing bodies are required to approve Disability Equality Schemes that cover, amongst other issues, their role as an employer.
- 2.5 The Authority's Occupational Health Department (Medigold Health) can provide advice about whether employees meet the criteria for a disabled person and about what adjustments might be medically justified. It is for the employer i.e. school and Authority to decide if the adjustments are reasonable.
- 2.6 Less favourable treatment of disabled employees or prospective employees can only be justified if the reason for it is material to the circumstances of the case and substantial. So, for example, a disabled job applicant may not be appointed if they could not do the job concerned for reasons related to their disability and no adjustment which would enable the person to do the job is practicable.
- 2.7 The Authority and schools should not make any adjustment, or indeed do anything under the Act, that would result in a breach of statutory duties e.g. the requirements of the Education (Teachers) Regulations about medical fitness to each will continue to apply. This means that all newly qualified teachers appointed in Newham continue to need to be passed as medically fit to teach and that teachers who develop certain medical conditions e.g. tuberculosis, are forbidden to teach.

2.8 There is no requirement to make any adjustments for disabled employees. However, when planning buildings, governing bodies should consider the possible needs of disabled people in the context of their own buildings and practices.

## 2.9 Special Provisions for Disability

The law on disability discrimination is different from the rest of the Act in a number of ways. In particular, it works in only one direction – that is to say, it protects disabled people but not people who are not disabled. This means that schools are allowed to treat disabled staff more favourably than non-disabled staff, and in some cases are required to do so, by making reasonable adjustments to put them on a more level footing with staff without disabilities. There is a requirement for schools to remove physical, organisational and attitudinal barriers to prevent discrimination taking place and to also make policy and taking decisions with disabled people in mind from the start

The duty has similarities with the race duty but significantly differs in that it is much less concerned with the process of applying the duty and more focussed on its aims and outcomes.

There are six key elements, the linkages between them are very important, we need to have regard to: -

1. promote positive attitudes towards disabled people.
2. encourage participation in public life by disabled people.
3. promote equality of opportunity.
4. eliminate disability-related harassment
5. eliminate unlawful discrimination
6. Take steps to account for a disabled person's impairment, even when that means treating a disabled person more favourably than other people.

## 3. Reasonable Adjustments for Employees

3.1 The Authority and governing bodies must consider the need to make reasonable adjustments at every stage of the employment process. This includes the arrangements for recruiting new staff and those made for existing employees who become disabled or whose disability worsens. Adjustments may need to be considered in any aspect of the disabled person's job including working conditions, accommodation and training. For prospective employees adjustments may need to

be made to the job application process, including interview arrangements, or making the job offer.

### 3.2 Adjustments to consider could be:

- ◆ Altering premises
- ◆ Allocating some duties to another employee
- ◆ Transferring to an existing vacancy
- ◆ Altering working hours
- ◆ Changing the person's place of work
- ◆ Allowing absences during working hours for treatment
- ◆ Supplying additional training
- ◆ Acquiring or making changes to equipment
- ◆ Providing a reader or interpreter

3.3 Each case must be treated individually and schools are encouraged to discuss each case with Schools HR (NPW) for advice and guidance. Where there is financial cost to making the adjustment, the division of responsibility between the Authority and governing bodies will be in accordance with the Authority's Fair Funding scheme. Where the cost would fall upon the Authority, then the issue must be discussed and agreed with the relevant Authority service, prior to deciding that the adjustment is reasonable.

3.4 In deciding whether or not an adjustment is reasonable, Employment Tribunals will consider how much an adjustment will improve the situation for an employee, how easy the adjustment is to make, the cost of the adjustment, the extent of the employer's resources and financial help that may be available.

3.5 If an existing employee becomes disabled or an employee has a disability which increases, the Head Teacher should consult the person about his/her needs. Any reasonable adjustments must be considered, including holding a job open for someone whilst they recuperate. Any decision to dismiss a person for a reason relating to their disability must be justified, and could not be one that could not be removed by a reasonable adjustment.

3.6 Following consultation with the professional associations, the Authority has agreed a policy statement on the employment of disabled teachers

3.7 Advice on employment issues is available from the School Premises team. Advice on pupil disability issues and Disability Equality Inclusive Education team based at Building 1000