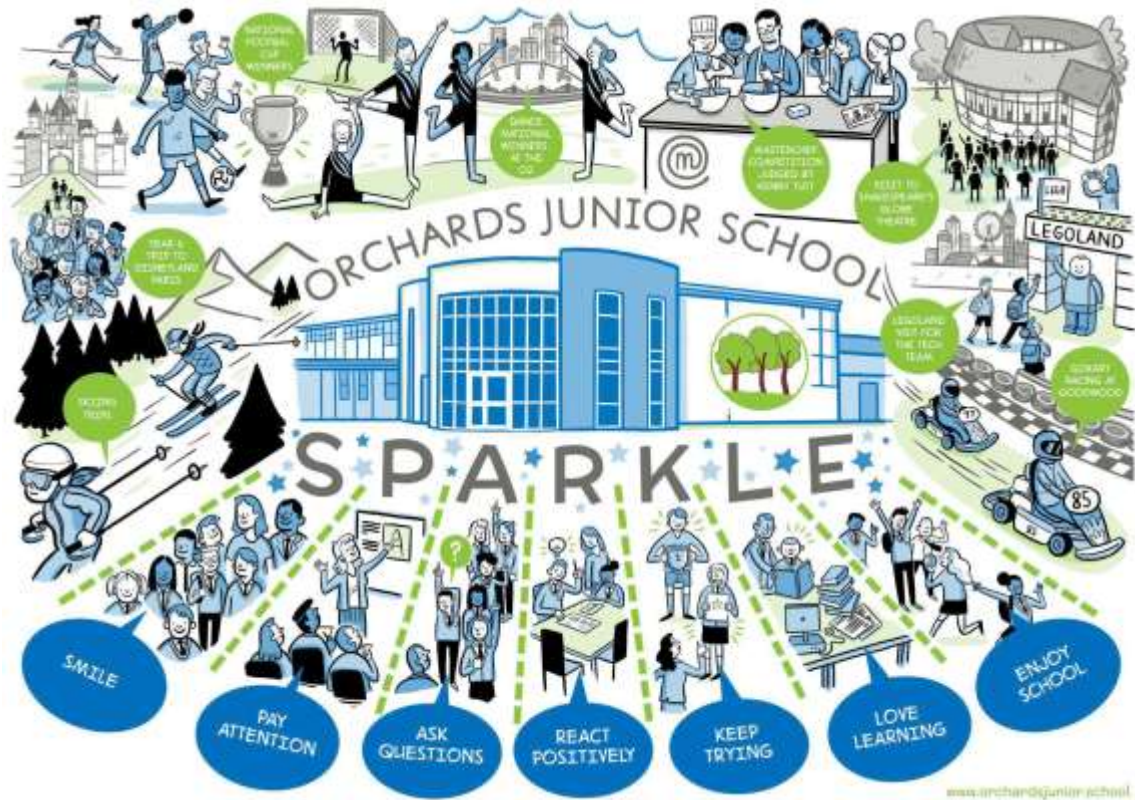


# SPARKLE MULTI-ACADEMY TRUST



## ORCHARDS INFANT AND JUNIOR SCHOOL

# POLICY FOR SINGLE EQUALITY

REVIEWED SEPTEMBER 2024

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## 1 Introduction

The Equality Act came into effect from autumn 2010 (amendment order 2012) which placed a new Single Equality duty on all public bodies which includes schools. As such schools are required to consider the needs of pupils and their families, employees and contracted service providers. Orchards Infant and Junior School has developed this policy to ensure school meets its statutory duty regarding:

- Race, Gender and Disability Equality
- Community Cohesion
- Site / Asset Management and Health & Safety

This document sets out how pupils, employees and visitors to school with the following protected characteristics (previously known as equality strands) will be protected in our school from harassment and/ or discrimination:

- disability;
- gender;
- race;
- religion and belief;
- sexual orientation.

This document also extends to cover all aspects of vulnerability, including those associated with socio-economic factors where known (e.g. pupils qualifying for free school meals).

Orchards Infant and Junior School is committed to being a good employer and this policy outlines how we meet our varied duties in terms of recruitment and employment practices. We seek to be fully inclusive of all those in our community, including parents, guardians and carers. As such, this scheme sets out how we will work to overcome any discrimination related to the other protected characteristics:

- age;
- being married or in a civil partnership;
- pregnancy and maternity.

This policy will be evaluated with findings reported to the Trustees annually. A full review will be conducted every three years.

## 2 Our Guiding Principles

In fulfilling the legal obligations outlined later in this policy, school is guided by the following principles:

### **Principle 1: all members of the school and wider community are of equal value**

We see all members of the school and wider community of equal value:

- Whether or not they are disabled;
- Whatever their ethnicity, culture, religious affiliation, national origin or socio- economic circumstances;
- Whichever their gender and sexual orientation;
- Whatever their age.

### **Principle 2: we recognise and respect diversity**

Treating people equally does not necessarily involve treating them all the same. Our policies, procedures and activities must not discriminate, but are differentiated as appropriate, to take account of differences in life-experience, outlook and background and in the kinds of barrier and disadvantage which people may face in relation to:

- Disability, so that reasonable adjustments are made;
- Ethnicity, so that different cultural backgrounds and experiences of prejudice are recognised;
- Gender and **sexual orientation** so that the different needs and experiences of girls and boys, women and men are recognised;
- Age.

### **Principle 3: We foster positive attitudes and relationships, and a shared sense of cohesion and belonging.**

We intend that our policies, procedures and activities should promote:

- Positive attitudes towards disabled people, good relations between disabled and non-disabled people and an absence of harassment of disabled people;

- Positive interaction, good relations and dialogue between groups and communities different from each other in terms of ethnicity, culture, religious affiliation, national origin or **socio-economic circumstances**, and an absence of prejudice-related bullying and incidents;
- Mutual respect and good relations between boys and girls, women and men and an absence of sexual harassment;
- Positive intergenerational attitudes and relationships.

**Principle 4: We will ensure that the recruitment, retention and ongoing development of staff is undertaken in a fair and equitable manner to support our school’s vision and values.**

All school’s policies and procedures should benefit all employees and potential employees. For example in recruitment and promotion, and in continuing professional development:

- Whether or not they are disabled;
- Whatever their ethnicity, culture, religious affiliation,\* national origin or socio-economic circumstance;
- Whichever their gender and sexual orientation;
- Whatever their age.

\*Employment: the Equality Act 2010 provides that for schools with a religious character it will not be unlawful discrimination to do things permitted by the School Standards and Framework Act 1998. The existing exemptions as they relate to schools with a religious character are therefore retained.

**Principle 5: We aim to reduce and remove inequalities and barriers that already exist.**

In addition to avoiding or minimising possible negative impacts, we take opportunities to maximise positive impacts by reducing and removing inequalities and barriers that may already exist between:

- Disabled and non-disabled people;
- People of different ethnic, cultural and religious and **socio-economic backgrounds**;
- Girls and boys, women and men;
- People of different sexual orientation;
- People whatever their age (where appropriate).

**Principle 6: We consult widely.**

We recognise that people affected by a policy or activity should be consulted and involved in the design of new policies and in the review of existing ones. Wherever possible and/or deemed appropriate we will strive to involve:

- Disabled people as well as non-disabled;
- People from a range of ethnic, cultural and religious and socio-economic backgrounds;
- Women, men, girls and boys;
- People of different sexual orientation;
- People from different age groups.

### **Principle 7: Pupils, their families, staff and the wider community as a whole should benefit.**

We intend that our school policies and core/ enhanced curriculum activities should benefit society as a whole, both locally and nationally, by fostering greater social cohesion, and greater participation in public life. Our policies seek to respect and include:

- Disabled people as well as non-disabled;
- People of a wide range of ethnic, cultural and religious and socio-economic backgrounds;
- Both women and men, girls and boys;
- People of different sexual orientation;
- People of different ages and between generations.

Since September 2007 all schools have had a duty to contribute to ‘working towards a society in which there is a common vision and sense of belonging by all communities; a society in which the diversity of people’s backgrounds and circumstances is appreciated and valued; a society in which similar life opportunities are available to all; and a society in which strong and positive relationships exist and continue to be developed in the work place, in schools and in the wider community’ (Ref: Guidance on the duty to promote community cohesion, Department for Children, Schools & Families, 2007). Orchards Infant and Junior School make our contribution to community cohesion by creating opportunities, through the curriculum and activities where pupils to interact with those from different backgrounds and cultures. This enriches their understanding of the community and its diversity.

### **3 Aims of our Single Equality Policy**

To articulate the school’s commitment to equality which permeates and is supported by all school policies, protocols, procedures and practices;

To ensure that everyone who belongs to, or comes into contact with, our school community is valued, respected and their individual needs are supported;

- To promote equality of opportunity and eliminate unlawful discrimination, harassment or victimisation;
- To ensure all pupils have the opportunity to reach their full potential;
- To promote and support the continued professional development of all staff;
- To comply with statutory duties under equalities legislation in one single document.



#### **4 The Purpose of the Single Equality Policy**

This equality policy is the school's response to the specific and general duties detailed in current equality legislation, which has been brought together under the Equality Act 2010 (see appendix 1). It is an attempt to capture how our school is systematically establishing, implementing and embedding good practice in equality and diversity across all areas of school life. This includes a response to all aspects of diverse social identity.

This Single Equality Policy sets out how the school will:

- Eliminate discrimination (see appendix 2);
- Eliminate harassment or victimisation related to any aspect of social identity or diversity;
- Promote equality of opportunity;
- Promote positive attitudes to all aspects of social identity and diversity;
- Encourage participation by disabled people and people representing different aspects of social identity in public life;
- Take steps to take account of difference even where that involves treating some people more favourably than others;
- Take proportionate action to address the disadvantage faced by particular groups of pupils. This includes progress reviews of pupils by groups as identified in data monitoring sets.

#### **5 Planning to eliminate discrimination and promote equality of opportunity**

This policy is underpinned by the core belief that all children and young people are a key part of their local community, share the same rights to membership of that community and are entitled to a high quality education. An action plan complements this Equality Policy which identifies the key priorities to make our school more accessible to the whole community, irrespective of background or need.

It encompasses our duties to promote positive outcomes in relation to race, gender and disability, but also identifies actions to address other social identities. It encompasses our anticipatory duties to plan ahead for the reasonable adjustments (reasonable and proportionate steps to overcome barriers that may impede some pupils) we need to make to be best placed to help pupils with a disability and/or complex health need who come to our school.

Our action plan replaces the school's Disability Accessibility Plan (previously required under the planning duties in the Disability Discrimination Act) as it sets out that Orchards Infant and Junior School will ensure access to education for disabled / SEN pupils, alongside other protected groups, in the three areas required:

- Maximise the extent to which disabled / SEN pupils can participate in the school curriculum;
- Monitor the environment of the school to ensure disabled / SEN pupils can take advantage of education and associated services;
- Ensure delivery to disabled / SEN pupils is appropriate and equitable to those pupils who are not disabled nor have SEN requirements.

Our action plan is reviewed within the standard pupil progress monitoring measures and as such equality objectives will be regularly reported to Trustees. In addition to on-going reporting a full review of the Single Equality Action Plan will be scheduled as a Trustees agenda item on an annual basis. Equality objectives will also be identified through consultation with key stakeholders using an appropriate audit tool e.g. Inclusion Quality Mark.

School staff contribute to the development of this action plan to ensure they are aware of targets, can implement and embed best practice. The policy and action plan is available on the staff shared area of school's computer system and on school's website. It can also be made available on request to school's office manager. We recognise the importance of engaging the whole school community and where language presents difficulties in accessing or understanding either document, school will endeavour to assist.

## **6 Mainstreaming equality into policy and practice**

As well as the specific actions set out beneath this plan, the school operates equality of opportunity in its day to day practice in the following ways:

## **6.1 Ethos and Organisation**

Orchards Infant and Junior School will ensure that the principles previously listed above also apply to the full range of our school policies, procedures and practices including those that are concerned with:

- Learners' progress, attainment and assessment;
- Learners' and staff personal development, welfare and well-being;
- Teaching styles and strategies;
- Admissions and attendance;
- Staff and governor recruitment, retention and professional development;
- Care, guidance and support;
- Behaviour, discipline and exclusions;
- Working in partnership with parents, carers and guardians
- Working with the wider community;
- Participation of groups in wider school activities;
- Preparing all members of the learning community for living and positively contributing to a diverse society.

## **6.2 Teaching and learning**

We aim to provide all our pupils with the opportunity to succeed, and to reach the highest level of personal achievement. To do this, we will ensure the following:

- The achievement of pupils will be monitored by race, gender and disability and we will use this data to support pupils, raise standards and ensure inclusive teaching. We will use this contextual data to improve the ways in which we provide support to individuals and groups of pupils;
- We will take into account the achievement of all pupils when planning for future learning and setting challenging targets;
- We will ensure equality of access for all pupils and prepare them for life in a diverse society;

- We will use materials that reflect the diversity of the school, population and local community in terms of race, gender and disability without stereotyping;
- We will promote attitudes and values that will challenge racist and other discriminatory behaviour or prejudice;
- We will provide opportunities for pupils to appreciate their own culture and celebrate the diversity of other cultures;
- We will actively seek to involve all parents in supporting their child's education;
- We will encourage classroom and staffroom discussion of equality issues which reflect on social stereotypes, expectations and the impact of such subjects on learning;
- We will include teaching and classroom-based approaches appropriate for the whole school population, which are inclusive and reflective of our pupils.

### **6.3 The Curriculum**

We will actively seek opportunities to review the curriculum (including the enhanced curriculum) and curriculum subject / areas in order to ensure that teaching and learning reflect the seven principles outlined above.\*

*\*The content of the curriculum is excluded from discrimination law following the Equality Act 2010. The Act does, however, explicitly include the delivery of the curriculum i.e. the way in which education is provided. Schools will need to ensure that the way in which issues are taught does not subject individual pupils to discrimination. Further that it would not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an appropriate manner and context. (Draft guidance from the DfE cited in Equality Act 2010).*

### **6.4 Admissions and exclusions**

Our admissions arrangements are fair and transparent, and do not discriminate on race, gender, disability or socio-economic factors. When deemed necessary the decision to exclude a pupil will always be based on the agreed strategy within school's Behaviour and Inclusion policies. We will closely monitor exclusions to avoid any potential adverse impact and ensure any discrepancies are identified and dealt with.

## **6.5 Equal Opportunities for Staff**

Orchards Infant and Junior School is committed to the implementation of equal opportunities principles and the monitoring and active promotion of equality in all aspects of staffing and employment. Whilst we try to ensure that the staffing of the school reflects the diversity of our community, all staff appointments and promotions are made on the basis of merit and ability and in compliance with the law.

## **6.6 Employer duties**

As an employer we recognise the need to ensure that we eliminate discrimination and harassment in our employment practice and actively promote equality across all groups within our workforce.

Equality aspects such as gender, race, disability, sexual orientation, gender re-assignment and faith or religion are considered when appointing staff, allocating Teaching and Learning Responsibilities (TLR) or re-evaluating staff structures, to ensure decisions are free of discrimination.

Actions to ensure this commitment is met include:

- Monitoring recruitment and retention (including bullying and harassment of staff);
- Continued professional development opportunities for all staff;
- Senior Leadership Team support to ensure equality of opportunity for all.

## **7 Addressing Prejudice and Prejudice-related bullying**

School is opposed to all forms of prejudice which stand in the way of fulfilling legal duties for all aspects of equality such as:

- Prejudices around disability and special educational needs;
- Prejudices around racism and xenophobia, including those that are directed towards religious groups and communities, for example anti-Semitism and Islamophobia, and those that are directed against Travellers, refugees and people seeking asylum;

- Prejudices reflecting sexism and homophobia.

There is guidance in the staff handbook and in the staff shared computer area on how prejudice-related incidents should be identified, assessed, recorded and dealt with. We take seriously our obligation to report regularly to the local authority about the numbers, types and seriousness of prejudice-related incidents at our school and how they were dealt with in line with existing legal requirements.

## **8 Roles and Responsibilities**

### **8.1 Dr Paul Jones (Head Teacher) will:**

- Ensure that all staff, volunteers and parents are aware of the Single Equality Policy and that there is a collective responsibility to apply these guidelines fairly in all situations;
- Ensure that the policy is implemented effectively (supported by the Trustees);
- Manage any day to day issues arising from the policy whether for pupils or for the school as an employer and treat all incidents of unfair treatment and any incidents of bullying or discrimination, including racist incidents, with due seriousness. Any action taken will be guided by the strategic policy ratified by school's Trustees;
- Ensure staff have access to training which helps to implement the policy;
- Liaise with external agencies regarding the policy so that the school's actions are in line with the best advice available;
- Monitor and report to the Trustees annually on the effectiveness of the policy;
- Ensure that the SLT are kept up to date with any development affecting the policy;
- Provide appropriate support and monitoring for all pupils and specifically target pupils to whom the policy/action plan has a more direct relevance;
- Ensure that all appointments panels give due regard to this policy to ensure there is no discrimination in employment or training opportunities;
- Promote the principle of equal opportunity when developing the curriculum; promote respect for other people and equal opportunities to participate in all aspects of school life.

### **8.2 The Trustees**

The Trustees have set out their commitment to equal opportunities in this policy and will continue to do all it can to ensure that the school is fully inclusive to pupils, and responsive to their needs based on race, gender and disability. They will:

- Ensure that the school complies with all relevant equalities legislation;
- Recommend all Trustees receive up to date training in all the equalities duties;
- Designate a governor with specific responsibility for Equality;
- Establish that the action plans arising from this policy are part of the School Development Plan;
- Support the Head Teacher in implementing any actions necessary;
- Inform and consult with parents about the scheme;
- Conduct an review of the policy;
- Conduct on-going and a full annual evaluation of the action plan;
- Seek to ensure that people are not discriminated against when applying for employment on grounds of race, gender, sexual orientation or disability;
- Take all reasonable steps to ensure that the school environment gives access to people with disabilities, and also strive to make school communications as inclusive as possible for parents, guardians and pupils;
- Welcome all applications for admission to school, whatever a pupil's socio-economic background, race, gender or disability;
- Ensure that no pupil is discriminated against on account of their race, gender or disability.

### **8.3 The Senior Leadership Team will:**

- Have general responsibility for supporting other staff in implementing this policy;
- Provide a lead in the dissemination of information relating to the policy;
- Identify good quality resources and CPD opportunities to support the policy;
- With Dr Paul Jones (Head Teacher), provide advice/support in dealing with any incidents/issues;
- Assist in implementing reviews as detailed in the School Development Plan.

### **8.4 All School Staff will:**

- Accept that this is a whole school issue and support the implementation of the policy and action plan;
- Be aware of this policy and action plan and how it relates to them;
- Make known any queries or training requirements;

- Know how to deal with incidents of concern, and how to identify and challenge bias and stereotyping;
- Know procedures for reporting incidents of racism, harassment or other forms of discrimination. They will challenge any incidents of prejudice, racism or homophobia, and record any serious incidents, drawing them to the attention of the head teacher;
- Qualified teachers will support teaching assistants / support staff working in their classrooms and encourage them to intervene in a positive way against any discriminatory incidents;
- Not discriminate on racial, disability or other grounds;
- Keep themselves up to date with relevant legislation and attend training and information events organised by Orchards Infant and Junior School, school partnerships or local authority
- Ensure that all pupils are treated fairly, equally and with respect, and will maintain awareness of the school's Single Equality Policy and Action Plan;
- Ensure that pupils from all groups are included in all activities and have full access to the curriculum;
- Will strive to provide material that gives positive images based on race, gender and disability, and challenges stereotypical images;
- Promote equality and diversity through teaching and through relations with pupils, staff, parents, and the wider community;
- Monitor and, where necessary, guide the practice of volunteers, visitors or contractors working in school. Any concerns should be reported to Dr Paul Jones (Head Teacher) and/ or Senior Leadership Team.



### **8.5 Pupils will:**

- Be made aware of any relevant part of the policy, appropriate to age and ability;
- Be expected to act in accordance with any relevant part of the policy;
- Experience a curriculum and environment which is respectful of diversity and difference and prepares them well for life in a diverse society;
- Understand the importance of reporting discriminatory bullying and racially motivated incidents;
- Ensure any peer support programme within the school promotes understanding and supports pupils who are experiencing discrimination.

### **8.6 Parents, Guardians & Carers will:**

- Have access to the policy;
- Be encouraged to support the policy;
- Have the opportunity to attend any relevant meetings/awareness raising sessions related to the policy;
- Have the right to be informed of any incident related to this policy which could directly affect their child.

**All visitors, volunteers and contractors are responsible for complying with the school's Single Equality Policy – non-compliance will be dealt with in the first instance by Dr Paul Jones (Head Teacher).**

## **9 Consultation and involvement**

It is a requirement that the development of this policy has been informed by the input of staff, pupils and parents/guardians and carers. We have achieved this by using the following to shape the plan:

- Input from the Trustees through school's policy development and ratification processes;

- Input from staff through school's Policy Development Process;
- Input from any relevant staff surveys or through staff meetings/INSET;
- Feedback from parents/ guardians;
- Feedback from the school council;
- PSHCE curriculum content- long term planning;
- Issues identified in annual reviews or reviews of progress on Individual Education Plans/Personalised Provision Maps, mentoring and support.

## **10 Action Planning**

This policy is supported by an action plan, the progress of which is monitored and evaluated by the Trustees. The action plan that identifies the equality objectives for the school arising from this scheme has:

- Clear allocation of responsibility;
- Clear allocation of resources, human and financial;
- Clear timescales;
- Expected outcomes and success criteria;
- Specified dates for review.

The effectiveness of this action plan will be evaluated and also reflected in:

- School's self-evaluation;
- School's work towards / retention of the Inclusion Quality Mark;
- Discussions with the School Improvement Partner.

## **11 Publishing the Single Equality Policy**

**In order to meet statutory requirements Orchards Infant and Junior School will:**

- **Publish school's policy on the school website;**
- **Place an electronic copy of the policy in the staff area of school's computer system;**
- **Raise awareness of the policy through the school newsletter, assemblies, staff meetings and other communications;**
- **Ensure paper copies are made available on request;**
- **Ensure support is offered to pupils and parents where English is not their primary language to assist in understanding the content of school's policy.**

## Appendix 1                      **Equality and the law**

This policy demonstrates school's proactive approach in ensuring equality for pupils, employees and those visiting or providing additional services in school. It is designed to meet the duties and legislative requirements for race, disability, gender, religion / belief and sexual orientation as stated in the Equality Act 2010 (and amendment order 2012) and act upon the government progress report findings (2012). The act supersedes or strengthens the following acts and regulations:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- Race Relations (Amendment) Act (2000)
- The Disability Discrimination Act 2005, 1995
- Disability Equality Duty 2005
- The Employment Equality (Religion & Belief and Sexual Orientation) Regulations 2003
- The Employment Equality (Age) Regulations 2006
- The Equality Act 2006 Part 2
- The Equality Act (Sexual Orientation) Regulations 2007

School's Single Equality Policy and Action Plan have also been informed by additional statutes of law such as the Education and Inspections Act 2011, 2007.

Orchards Infant and Junior School recognises there is also a need to address bullying and discriminatory incidents, as these issues are prevalent in race, disability, gender, and homophobic incidents. Therefore this policy should be read in conjunction with school's Anti-Bullying policy, Anti-Bullying Protocol and any local authority documentation formally adopted by the Trustees.

### **Overview of previous equalities legislation which has been harmonised and strengthened by the Equality Act 2010:**

- Race Relations Act (RRA) 1976/2000

Sets out the statutory positive duty to promote racial equality, promote good race relations and eliminate unlawful racial discrimination;

- Sex Discrimination Act (SDA) 1975 (and Regulations 1999), Gender Equality Duty 2007

Sets out the statutory positive duty to promote gender equality and eliminate unlawful gender discrimination;

- Employment Equality (religion or belief) (sexual orientation) Regulations 2003 extended to education, Equality Act (Part 2) 2007

Sets out that it is unlawful for schools to discriminate against a person:

- in the terms on which it offers to admit him/her as a pupil;
- by refusing to accept an application to admit him/her as a pupil, or where he/she is a pupil of the establishment;
- in the way in which it affords him/her access to any benefit, facility or service;
- by refusing him/her access to a benefit, facility or service;
- by excluding him/her from the establishment;
- by subjecting him/her to any other detriment.

- Disability Discrimination Act (DDA) 1995/2005

Sets out a statutory positive duty to promote equality of opportunity for disabled people: pupils, staff, parents, carers and other people who use the school or may wish to, and eliminate unlawful discrimination. The Disability Discrimination Act 2005 (DDA) defines a disabled person as someone who has '*a physical or mental impairment which has a substantial or long-term adverse effect on his or her ability to carry out normal day-to-day activities*'. The DDA 2005 has also extended the definition of disability as follows:

- People with HIV, multiple sclerosis and cancer (although not all cancers) are deemed disabled before they experience the long-term and substantial adverse effect on their activities;
- Section 18 has been amended so that individuals with a mental illness no longer have to demonstrate that it is "*clinically well-recognised*", although the person

must still demonstrate a long-term and substantial adverse impact on his/her ability to carry out normal day-to-day activities.

- Education and Inspections Act 2006

The Education and Inspections Act sets out the duty to promote community cohesion. By 'community cohesion' the school is endorsing and adopting the definition provided by Alan Johnson, 2006, as:

*"working towards a society in which there is a common vision and sense of belonging by all communities; a society in which the diversity of people's backgrounds and circumstances is appreciated and valued; a society in which similar life opportunities are available to all; and a society in which strong and positive relationships exist and continue to be developed in the workplace, in schools and in the wider community."*

## Appendix 2                      Discrimination- Guidance

### Tackling and Eliminating Discrimination

Harassment on account of race, gender, disability or sexual orientation is unacceptable and is not tolerated within the school environment.

All staff are expected to deal with any discriminatory incidents that may occur in line with school's protocols. They are expected to know how to identify and challenge prejudice and stereotyping; and to support the full range of diverse needs according to a pupil's individual circumstances.

Racist and homophobic incidents and other incidents of harassment or bullying will be initially managed by the member of staff present, escalating to a class teacher / Head Teacher where necessary. All incidents however will be reported to the Head Teacher. Racist incidents will be reported to the Trustees and West Sussex on a termly basis.

### What is a discriminatory incident?

Harassment on grounds of race, gender, disability, sexual orientation or other factors such as socio-economic status, can take many forms including verbal or physical abuse, name calling, exclusion from groups and games, unwanted looks or comments, jokes and graffiti. A racist incident is defined by the Stephen Lawrence Inquiry Report (1999) as:

***'any incident which is perceived to be racist by the victim or any other person'***.

Orchards Infant and Junior School will embed the principals of this charter mark.

### Types of discriminatory incident

Types of discriminatory incidents that can occur are:

- Physical assault against a person or group because of their colour, ethnicity, nationality, disability, sexual orientation or gender;

- Use of derogatory names, insults and jokes;
- Racist, sexist, homophobic or discriminatory graffiti;
- Provocative behaviour such as wearing racist, sexist, homophobic or discriminatory badges or insignia;
- Bringing discriminatory material into school;
- Verbal abuse and threats;
- Incitement of others to discriminate or bully a victim because of their race, disability, gender or sexual orientation;
- Discriminatory comments in the course of discussion;
- Attempts to recruit others to discriminatory organisations and groups;
- Ridicule of an individual for difference e.g. food, music, religion, dress etc;
- Refusal to co-operate with other people on grounds of race, gender, disability or sexual orientation.

## **Types of Discrimination**

### **Direct discrimination**

Direct discrimination occurs when a person is treated less favourably than you treat (or would treat) another person because of a protected characteristic. In order for someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a person without their protected characteristic is receiving or would receive. A person does not need to find an actual person to compare their treatment with but can rely on a hypothetical person if they can show there is evidence that such a person would be treated differently. There is no need for someone claiming direct discrimination because of racial segregation or pregnancy or maternity to find a person to compare them self to:

- Racial segregation is deliberately separating people by race or colour or ethnic or national origin and will always be unlawful direct discrimination.
- To claim pregnancy or maternity discrimination a female must show that she has been treated unfavourably because of her pregnancy or maternity and does not have to compare her treatment to the treatment of someone who was not pregnant or a new mother.

### **Discrimination based on association**

Direct discrimination also occurs when a person is treated less favourably because of their association with another person who has a protected characteristic (other than pregnancy and maternity). This might occur when a person is treated less favourably because their sibling, parent, carer or friend has a protected characteristic.

### **Discrimination based on perception**

Direct discrimination also occurs when a person is treated less favourably because you mistakenly think that they have a protected characteristic.

### **Discrimination because of pregnancy and maternity**

It is discrimination to treat a woman (including a female pupil of any age) less favourably because she is or has been pregnant, has given birth in the last 26 weeks or is breastfeeding a baby who is 26 weeks or younger.

It is direct sex discrimination to treat a woman (including a female pupil of any age) less favourably because she is breastfeeding a child who is more than 26 weeks old.

### **Indirect discrimination**

Indirect discrimination occurs when you apply a provision, criterion or practice in the same way for all persons or a particular group but this has the effect of putting persons sharing a protected characteristic within the general group at a particular disadvantage. It doesn't matter that you did not intend to disadvantage the person/s with a particular protected characteristic in this way. What does matter is whether your action does or would disadvantage such person/s compared with persons who do not share that characteristic.

'Disadvantage' is not defined in the Act but a rule of thumb is that a reasonable person would consider that disadvantage has occurred. It can take many different forms, such as denial of an opportunity or choice, deterrence, rejection or exclusion.

'Provision', 'criterion' or 'practice' are not defined in the Act but can be interpreted widely and include:

- Arrangements (for example, for deciding who to admit)



- The way that education, or access to any benefit, service or facility is offered or provided
- One-off decisions
- Proposals or directions to do something in a particular way.

Indirect discrimination will occur if the following four conditions are met:

1. You apply (or would apply) the provision, criterion or practice equally to all relevant persons, including a particular person with a protected characteristic, and
2. The provision, criterion or practice puts or would put persons sharing a protected characteristic at a particular disadvantage compared to relevant persons who do not share that characteristic, and
3. The provision, criteria, practice or rule puts or would put the particular person at that disadvantage, and
4. You cannot show that the provision, criteria of practice is justified as a 'proportionate means of achieving a legitimate aim'.

### **What is a 'proportionate means of achieving a legitimate aim'?**

To be legitimate the aim of the provision, criterion or practice must be legal and non-discriminatory and represent a real objective consideration. In the context of school education, examples of legitimate aims might include:

- Maintaining academic and other standards.
- Ensuring the health, safety and welfare of pupils.

Even if the aim is legitimate the means of achieving it must be proportionate. Proportionate means 'appropriate and necessary', but 'necessary' does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim.

Although the financial cost of using a less discriminatory approach cannot, by itself, provide a justification, cost can be taken into account as part of the school's justification, if there are other good reasons for adopting the chosen practice.

The more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more convincing the justification must be.

In a case involving disability, if you have not complied with your duty to make relevant reasonable adjustments it will be difficult for you to show that the treatment was proportionate.

### **Discrimination arising from disability**

Discrimination arising from disability occurs when you treat a disabled person unfavourably because of something connected with their disability and cannot justify such treatment.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs because of the protected characteristic of disability. For discrimination arising from disability, the motive for the treatment does not matter; the question is whether the disabled person has been treated unfavourably because of something connected with their disability.

Discrimination arising from disability is also different from indirect discrimination. There is no need to show that other people have been affected alongside the individual disabled person or for the disabled person to compare themselves with anyone else.

Discrimination arising from disability will occur if the following three conditions are met:

- you treat a disabled person unfavourably, that is putting them at a disadvantage, even if this was not your intention, and
- this treatment is because of something connected with the disabled person's disability (which could be the result, effect or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and
- you cannot justify the treatment by showing that it is 'a proportionate means of achieving a legitimate aim'. This is explained above.

### **Knowledge of disability**

You will need to show that:

- You did not know that the disabled person had the disability in question, and
- You could not reasonably have been expected to know that the disabled person had the disability
- The unfavourable treatment would not amount to unlawful discrimination arising from disability.

If your agent (someone who undertakes tasks on your behalf) or employee knows of a person's disability, you will not usually be able to claim that you do not know of the disability.

### **Relevance of reasonable adjustments**

By acting quickly to identify and put in place reasonable adjustments for disabled persons, you can often avoid discrimination arising from disability, although there may be cases where an adjustment is unrelated to the unfavourable treatment in question.

If you fail to make an appropriate reasonable adjustment, it is likely to be very difficult for you to argue that unfavourable treatment is justified.

### **Reasonable adjustments**

School is familiar with the reasonable adjustments duty, first introduced under the Disability Discrimination Act 1995. The reasonable adjustments duty under the Equality Act operates slightly differently and has been extended to cover the provision by a school of auxiliary aids and services; however this element of the duty will not come into force until a later date yet to be confirmed. The object of the duty is the same: to avoid as far as possible by reasonable means, the disadvantage which a disabled person experiences because of their disability.

This duty sits alongside your duties and those of local authorities under Part 4 of the Education Act 1996. In some cases the support a disabled pupil may receive under the special educational needs framework may mean that they do not suffer a substantial disadvantage (see below) and so there is no need for additional reasonable adjustments to be made for them. In other cases disabled pupils may require reasonable adjustments in addition to the special educational provision they are receiving. There are also disabled pupils who do not have special educational needs but still require reasonable adjustments to be made for them. The level of support a pupil is receiving under Part 4 of the Education Act 1996 is one of the

factors to be taken into account when you consider what it would be reasonable for you to have to do.

### **What is the reasonable adjustments duty?**

School is required to take reasonable steps to avoid substantial disadvantage where a provision, criterion or practice puts disabled pupils at a substantial disadvantage

We owe this duty to existing pupils, applicants and, in limited circumstances, to disabled former pupils in relation to the following areas:

- Deciding who is offered admission as a pupil
- The provision of education
- Access to any benefit, service or facility.

The duty does not require school to make reasonable adjustments to avoid the disadvantage caused by physical features as this is covered by the planning duties.

School cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue will be whether or not to make the adjustment is 'reasonable' and this is an objective question for the tribunals to ultimately determine.

The duty is an anticipatory and continuing one that we owe to disabled pupils generally, regardless of whether you know that a particular pupil is disabled or whether you currently have any disabled pupils. We will not wait until an individual disabled pupil approaches us before we consider how to meet the duty. Instead we will plan ahead for the reasonable adjustments school may need to make, regardless of whether we currently have any disabled pupils. By anticipating the need for an adjustment we will be best placed to help disabled pupils who come to our school. School is not expected to anticipate the needs of every prospective pupil but we are required to think about and take reasonable and proportionate steps to overcome barriers that may impede pupils with different kinds of disabilities.

### **What is a substantial disadvantage?**

A disadvantage that is more than minor or trivial is called a 'substantial disadvantage'. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if the disabled pupil in question did not have a disability.

School will need to take into account a number of factors when considering whether or not the disadvantage is substantial such as:

- The time and effort that might need to be expended by a disabled child;
- The inconvenience, indignity or discomfort a disabled child might suffer;
- The loss of opportunity, or the diminished progress a disabled child might make in comparison with his or her peers who are not disabled.

### **The duty to change a provision, criterion or practice**

These terms are not defined but in general they relate to how the education and other benefits, facilities and services are provided and cover all of your arrangements, policies, procedures and activities.

Where a provision, criterion or practice places disabled pupils at a substantial disadvantage in accessing education and any benefit, facility or service, you must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether but often will involve just an extension of the flexibility and individual approach that most schools already show to their pupils.

### **When is it reasonable for school to have to make adjustments?**

A useful starting point when determining what a reasonable adjustment might be is to consider how to ensure that disabled pupils can be involved in every aspect of school life. Often effective and practical adjustments involve little or no cost or disruption.

Where disabled pupils are placed at a substantial disadvantage by a provision, criterion or practice or the absence of an auxiliary aid, school must consider whether any reasonable adjustment can be made to overcome that disadvantage.

School does not expect disabled pupils to suggest adjustments but if they do we will consider whether those adjustments would help to overcome the disadvantage and whether the suggestions are reasonable. It is good practice for schools to work with pupils and their parents/guardians in determining what reasonable adjustments can be made.



