



EQUALITY and DIVERSITY IN EMPLOYMENT

The Chelmsford Learning Partnership recognises the value of, and seeks to achieve, a diverse workforce which includes people from differing backgrounds, with different skills and abilities

Committee Responsible	Staff Student Committee
Lead Staff Member	CEO
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THE CHELMSFORD LEARNING PARTNERSHIP – EQUALITY AND DIVERSITY IN EMPLOYMENT

Introduction

The Chelmsford Learning Partnership recognises the value of, and seeks to achieve, a diverse workforce which includes people from differing backgrounds, with different skills and abilities. The trust will take positive steps to create an employment culture (through its Board of Trustees, managers and other employees, workers and volunteers) in which people can feel confident of being treated with fairness, dignity and tolerance, irrespective of their individual differences. This commitment extends to the whole trust community and others connected with it. This policy complements other equalities policies within the trust.

Objectives of the policy

The trust will uphold its obligations under law not to discriminate in any of its activities against employees or applicants for employment on the grounds of their sex, sexual orientation, marriage and civil partnership, disability, race (which includes colour, nationality and ethnic or national origins) age, religion or belief. The protected characteristics within the Equality Act 2010 are given below.

The trust further seeks to ensure fair treatment to all jobseekers and employees on employment matters whether or not their personal circumstances and differences are covered by the law and to consider the practicality of accommodating the particular needs of all groups.

The trust has in place a range of policies, procedures and practice in relation to recruitment, selection, employment, training and development which support and complement its Equality and Diversity in Employment Policy and it will operate these in a way which is consistent with the objectives of this policy.

Behaviour or actions by members of staff against the spirit and/or the letter of the law or this policy will be considered serious disciplinary matters and may, in some cases, lead to dismissal.

This policy deals with matters of employment in the broadest sense, and this includes the protection of staff from harassment, discrimination or victimisation by any member of the school community or other persons connected with it.

Responsibilities

It is recognised that everyone influences how equality is achieved and that everyone has a responsibility to uphold the law and principles of equality of opportunity. In addition to these general responsibilities, there are other specific responsibilities.

The Board of Trustees has responsibility for:

- supporting the implementation of the equality and diversity in employment policy
- ensuring employment and recruitment policies and practice are non-discriminatory in word and operation
- collating, analysing and monitoring policy and practice, initiating appropriate action
- ensuring complaints are investigated and dealt with effectively
- ensuring appropriate training takes place for governors and employees

Headteachers/Heads of School/Principals and other managers have responsibility for:

- ensuring that the equality and diversity in employment policy is implemented in employment and management practices
- ensuring the policy is brought to the attention of all employees, workers and volunteers and that they all receive appropriate training
- encouraging good practice and dealing appropriately with breaches of this policy
- monitoring the operation of relevant policies and procedures
- a member of the leadership team is the nominated lead on equalities issues

All employees, volunteers and workers have a responsibility to:

- act within equal opportunities legislation and to comply with the trust's policy
- take part in training and comply with measures introduced to ensure equal opportunities and non-discrimination
- report to their line manager, or other appropriate person, any breaches of this policy enacted against him/herself or another person by another employee, pupil or another person connected with the business of the school

Monitoring

The trust recognises that equality of opportunity can only be achieved by monitoring what is actually happening and then using this information to modify and improve future practice. The school will monitor the application of its policies and procedures and their impact on staff and applicants and revise them as necessary. In accordance with the Data Protection Act, all data will be used in such a way as to preserve anonymity.

The single Equality Duty (which came into force 6 April 2011) covers the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. In accordance with the general duty, the trust will be proactive in the elimination of discrimination, harassment, victimisation and any other conduct that is unlawful under the Act; the advancement of equality of opportunities and fostering good relations between employees.

Legal Definitions**Direct discrimination**

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (perceptive

discrimination) or because they associate with someone who has a protected characteristic (associative discrimination).

No-one will be directly or indirectly discriminated against on the grounds of their:

- age
- disability or health
- gender re-assignment
- marriage and civil partnership
- pregnancy and maternity
- race (which includes ethnic origin; colour or nationality);
- religion or belief *
- sex
- sexual orientation

* other than as allowed for by legislation in schools/academies with a religious character, whereby certain regard and preferences may be given in certain circumstances in respect of appointment, remuneration, promotion and termination.

Associative discrimination

Associative discrimination is discrimination against a person because they have an association with someone with a 'particular protected characteristic'. Associative discrimination applies to race, religion, belief and sexual orientation age, disability, gender reassignment and sex.

Perceptive discrimination

Perceptive discrimination is discrimination against a person because the discriminator thinks the person possesses that characteristic, even if in fact, they do not. Perceptive discrimination applies to age, race, religion, belief, sexual orientation, disability, gender reassignment and sex.

Proportionate means of meeting a legitimate aim

Indirect discrimination can be justified if you can show that you acted reasonably in managing your school i.e. that it is 'a proportionate means of achieving a legitimate aim'.

A legitimate aim might be any lawful decision you make in running your school, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.

Being proportionate really means being fair and reasonable, including showing that you have looked at 'less discriminatory' alternatives to any decision you make. Example - the long term aim of reducing inequality between men's and women's pay is always to be regarded as a legitimate aim for the purposes of justifying pay practices that indirectly discriminate against women. Therefore, short term pay protection schemes introduced with the aim of removing long-term inequalities in pay may be capable of being objectively justified, provided that their use is a proportionate way of achieving that aim.

Indirect discrimination

Indirect discrimination can occur when a condition, rule, policy or even a practice in the trust is applied to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if the school can show it acted reasonably, for example that it is a 'proportionate means of achieving a legitimate aim'.

Indirect discrimination applies to age, race, religion or belief, sex, sexual orientation, marriage and civil partnership, disability discrimination and gender reassignment.

The Protected Characteristics

While the trust is committed to not discriminating on any grounds, there are "certain protected characteristics" in law. The following defines the protected characteristics under the Equality Act.

Age

The Act protects people of all ages from unlawful discrimination,

Direct discrimination - treating someone less favourably because of their actual or perceived age, or because of the age of someone with whom they associate. Eg Advertising for job applicants less than 25 years only. This treatment can only be justified if it is a proportionate means of achieving a legitimate aim.

Indirect discrimination – can occur where there is a policy, practice or procedure which applies to all employees, but particularly disadvantages people of a particular age. For example, a requirement for job applicants to have worked in a particular industry for 10 years may disadvantage younger people. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Disability

Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport. Long term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life. Substantial means more than minor or trivial. In most circumstances, a person will have the protected characteristic of disability if they have had a disability in the past, even if they no longer have the disability.

Employers must make reasonable adjustments in the recruitment and employment of disabled people. This can include, for example, adjustments to recruitment and selection procedures, to terms and conditions of employment, to working arrangements and physical changes to the premises or equipment. In assessing the reasonableness of the adjustment, the employer will consider:

- proportionality and impact of the adjustment on the role
- the costs/financial support available

- medical opinion from the employee's doctor and the occupational health advisor
- impact on the operational requirements of the school

Direct discrimination – treating someone less favourably than other employees due to an actual or perceived disability, or because they associate with a disabled person.

Indirect discrimination – An example would be where an individual has a tendency to make spelling mistakes arising from dyslexia. This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

In accordance with the new Act, employers may not request information concerning an individual's sickness and attendance record prior to the selection stage. Once the preferred candidate has been selected, then sickness and attendance records can be obtained from the referee and applicant, as part of the pre-employment checks prior to a firm offer. The interview panel may not ask general questions about the individual's sickness and attendance record but may ask relevant questions to establish whether the applicant will be able to carry out a function that is intrinsic (eg majority of the work involves manual handling) to the work concerned once reasonable adjustments are in place;

Gender reassignment

The Act defines gender reassignment as a protected characteristic. This applies to people who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex. Gender reassignment is a personal process, that is moving away from one's birth sex to the preferred gender, rather than a medical process.

Protection is provided where, as part of the process of reassigning their sex, someone is driven by their gender identity to cross-dress, but not where someone chooses to cross-dress for some other reason.

In order to be protected under the Act, there is no requirement for a transsexual person to inform their employer of their gender reassignment status. However, if an employee is proposing to undergo gender reassignment or is still in the process of transitioning, they may want to discuss their needs with their employer so the employer can support them during the process.

Where an individual has been diagnosed as having 'gender dysphoria' or 'gender identity disorder' and the condition has a substantial and long term adverse impact they may also be protected under the disability discrimination provisions of the Act.

Direct discrimination – treating someone less favourably than other employees because of their gender reassignment, whether actual or perceived, or because they associate with someone who intends to undergo, is undergoing or has undergone gender reassignment.

Indirect discrimination – An example would be where an employer starts an induction session for new staff with an ice-breaker designed to introduce everyone in the room to the others. Each employee is required to provide a picture of themselves as a toddler. One employee is a transsexual woman who does not wish her colleagues to know that she was brought up as a boy. When she does not bring in her photo, the employer criticises her in front of the group for not joining in. It would be no defence that it did not occur to the employer that this employee may feel disadvantaged by the requirement to disclose such information. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Marriage and civil partnership

The Act protects employees from discrimination on the grounds of being married or in a civil partnership. Marriage will cover any formal union which is legally recognised in the UK as a marriage. A civil partnership refers to a registered civil partnership under the Civil Partnership Act 2004, including those registered outside the UK.

Only people who are married or in a civil partnership are protected against discrimination on this ground. The status of being unmarried or single is not protected. People who only intend to marry or form a civil partnership, or who have divorced or had their civil partnership dissolved, are not protected on this ground.

Direct Discrimination - treating someone less favourably than other employees on the grounds of them being married or in a civil partnership, actual or perceived, or because they are associated with a person who is married or in a civil partnership.

Indirect Discrimination – An example of this could be where an applicant for a job is treated less favourably because it is considered that they will not be as committed to the job as a single person because they have marital or partnership commitments.

Pregnancy and maternity

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

Direct discrimination – treating someone less favourably because of their actual pregnancy or perceived pregnancy, or because of the pregnancy of someone with whom they associate.

Indirect discrimination - An example could be where an employee has been off work because of pregnancy complications since early in her pregnancy. Her employer has dismissed her in accordance with the sickness absence management policy. This policy is applied regardless of sex. The dismissal is unfavourable treatment because of her pregnancy and would be unlawful

even if a man would be dismissed for a similar period of sickness absence, because the employer took into account the employer's pregnancy related sickness absence in deciding to dismiss. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Race

For the purposes of the Act, 'race' includes colour, nationality and ethnic or national origin. A person has the protected characteristic of race if they belong to a particular racial group. A racial group can be made up of two or more different racial groups (for example Black Britons).

Direct discrimination – treating someone less favourably because of their actual or perceived race, or because of the race of someone with whom they associate.

Indirect discrimination – can occur where there is a policy, practice or procedure which applies to all employees, but particularly disadvantages people of a particular race. An example could be a requirement for all job applicants to have GCSE Maths and English: people educated in countries which don't have GCSE's would be discriminated against if equivalent qualifications were not accepted. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Religion or belief

In the Equality Act, religion includes any form of religion which has a clear structure and belief system. It also includes a lack of religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

Belief means any religious or philosophical belief or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Examples of philosophical beliefs include Humanism and Atheism. Political beliefs are not protected.

A belief which is not a religious belief may be a philosophical belief. A belief need not include faith or worship of a god but must affect how a person lives their life or perceives the world.

For a philosophical belief to be protected under the Act:

- it must be genuinely held
- it must be a belief and not an opinion or viewpoint based on the present state of information available
- it must be a belief as to a weighty and substantial aspect of human life and behaviour
- it must contain a certain level of cogency, seriousness, cohesion and importance
- it must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others

Direct discrimination – treating someone less favourably because of their actual or perceived religion and belief, or because of the religion or belief of someone with whom they associate.

Indirect discrimination – An example would be where a school announces that from next month staff cannot wear their hair in dreadlocks, even if the locks are tied back. This is an example of a policy that has not yet been implemented but which still amounts to a provision, criterion or practice. The decision to introduce the policy could be indirectly discriminatory because of religion or belief, as it puts the employer's Rastafarian employees at a particular disadvantage.

The employer must show that the provision, criterion or practice can be objectively justified. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Sex

A person's sex refers to the fact that they are male and female.

Direct discrimination – treating someone less favourably because of their actual or perceived sex, or because of the sex of someone with whom they associate.

Indirect discrimination – can occur where there is a policy, practice or procedure that applies to all employees, but particularly disadvantages employees of a particular sex. For example, a requirement that job applicants must be six feet tall could be met by significantly fewer women than men. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Sexual orientation

Sexual orientation is a protected characteristic. It means a person's sexual orientation towards:

- persons of the same sex (ie the person is a gay man or a lesbian)
- persons of the opposite sex (ie the person is heterosexual); or
- persons of either sex (ie the person is bisexual)

Sexual orientation relates to how people feel as well as their actions. Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation and it also covers discrimination connected with manifestations of that sexual orientation. These may include someone's appearance, the places they visit or the people they associate with.

Direct discrimination – treating someone less favourably because of their actual or perceived sexual orientation, or because of the sexual orientation of someone with whom they associate.

Indirect discrimination – an example would occur if an employer only placed a job advert in newspapers aimed at gays and/or lesbians as heterosexuals tend not to read such publications. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Equal pay

The Equality Act retains the Equal Pay Act 1970 that was previously in place which provides that men and women should receive equal pay for equal work. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment. However, the Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from the school if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work with the school. This would be a claim under sex discrimination.

Pay secrecy

The trust will not prevent or restrict its employees from having discussions to establish if they believe pay differences exist that are related to a protected characteristic. The trust may, in particular circumstances, require its employees to keep pay rates confidential from outside the workplace eg a competitor organisation.

Occupational requirements

The trust may where appropriate, exercise the powers available to appoint a person from a particular group, where there is a genuine occupational requirement.

Faith/Catholic Aided schools only - the school may also exercise the power conferred by the School Staffing Regulations 2009 and Standards and Framework Act 1998, and any subsequent amended/replacement legislation, in relation to staffing matters, connected with the religious character of the school.

Positive action

Positive action describes measures targeted at a particular group that are intended to redress past discrimination or to offset the disadvantages arising from existing attitudes, behaviours and structures. The trust may use lawful measures which can include:

- targeting job training at people of particular racial groups, or either gender, who have been under-represented in certain occupations or grades during the previous 12 months, or encouraging them to apply for such work
- providing facilities to meet any specific educational, training, or welfare needs identified for a specific racial group
- measures to provide training and special encouragement for returnees to the labour market after a period of time discharging domestic or family responsibilities

- special encouragement such as targeted advertising and recruitment literature, reserving places for one gender training courses or providing taster courses in non-traditional areas

Positive discrimination generally means choosing someone solely on the grounds of their gender or racial group and not on their abilities. The school will not use positive discrimination as this is illegal under UK anti-discrimination law.

Harassment, bullying and victimisation

The trust regards all forms of harassment and bullying as unacceptable and perpetrators are liable to action under the grievance and disciplinary procedures.

Similarly, victimisation of employees who complain of discrimination or harassment or who come forward in their support will result in disciplinary action against the perpetrator.

Harassment can be defined as “improper, offensive and humiliating behaviour, practices or conduct, which may threaten a person’s job security, create an intimidating, unwelcoming and stressful workplace, or cause personal offence or injury.” Advisory Conciliation and Arbitration Service

Harassment can often be identified by a series of what seem to be ‘trivial’ incidents. Furthermore it is the impression of the harassed person, not the intentions or motivations of the harasser, which are important.

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees can now complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.

Bullying may be defined as “the persistent (and often deliberate) misuse of power or position to intimidate, humiliate or undermine” (2) Association of Teachers and Lecturers ATL.

Victimisation is where an employee suffers less favourable treatment than others in the same circumstances, because they have brought proceedings or given evidence or information relating to such proceedings, or has alleged that discrimination occurred under relevant legislation.

An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

Third party harassment

The Equality Act makes employers potentially liable for harassment of employees by people (third parties) who are not employees of the school, such as customers or clients. The trust will only be liable when harassment has occurred on at least two previous occasions, and it is aware that it has taken place, and has not taken reasonable steps to prevent it from happening again. Third party harassment covers age, disability, gender reassignment, race, religion or belief and sexual orientation.

Complaints

Existing employees of the trust who feel they have been unfairly discriminated against either directly or from a third party should raise it in the first instance with their line manager or other manager where their own line manager is the subject of the complaint.

Employees who feel they have been harassed, bullied or victimised should refer to the grievance procedure. Members of the public who may be concerned that their application for employment has not been dealt with in accordance with this policy should raise their concerns via the school complaints procedure. Visitors or other members of the school community who experience or witness discrimination, bullying, harassment or victimisation should report the matter to the head teacher/principal.

Employment of ex-offenders

As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), the Chelmsford Learning Partnership complies fully with the code of practice and undertakes to treat all applicants for positions fairly.

The trust undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.

The trust can only ask an individual to provide details of convictions and cautions that the school are legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended).

The trust can only ask an individual about convictions and cautions that are not protected.

The trust is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background. The trust actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. The School selects all candidates for interview based on their skills, qualifications and experience.

An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.

All Trustees, employees and volunteers of The Chelmsford Learning Partnership will have a DBS check.

The Chelmsford Learning Partnership ensures that all those in The Chelmsford Learning Partnership who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. The Chelmsford Learning Partnership also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

At interview, or in a separate discussion, The Chelmsford Learning Partnership ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

The Chelmsford Learning Partnership makes every subject of a criminal record check submitted to DBS aware of the existence of the code of practice and makes a copy available on request. The Chelmsford Learning Partnership undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

All concerns raised with the trust will be handled in a positive and sensitive matter and in accordance with the appropriate policy / procedure.