

# Bullying and the Law

Revised April 2017

## This guide

This briefing provides information about bullying and the law for schools and the wider children's workforce in England. As well as information on bullying for all children and young people, it has an additional element of things to consider for disabled children and young people and those with special educational needs (SEN).



## What is Bullying?

The Anti-Bullying Alliance defines bullying as:

*The **repetitive, intentional hurting** of one person or group by another person or group, **where the relationship involves an imbalance of power**. Bullying can be physical, verbal or psychological. It can happen face-to-face or through cyberspace.*

There is no legal definition of bullying.

## Schools duties and safeguarding

Schools have a duty of care to protect all their pupils and provide a safe, healthy environment, and these obligations are highlighted in law and guidance detailed in this briefing.

The Department for Education (DfE) has produced guidance for all schools, including academies and free schools, which outlines its duties towards preventing and tackling bullying in schools: <https://www.gov.uk/government/publications/preventing-and-tackling-bullying>

The Education Act 2002 Section 175 placed a legal duty on maintained schools and Local Authorities to safeguard and promote the welfare of children.

The Government has also issued statutory guidance under s175 called Keeping children safe in education September 2016<sup>1</sup> this applies to all schools including academies, free schools, alternative provision, maintained nursery schools and independent schools. It describes what schools and colleges should comply with. Schools also have obligations under the statutory guidance Working Together to Safeguard Children 2015<sup>2</sup>. 'Safeguarding' covers more than child protection. The guidance states that it specifically covers issues such as health and safety and bullying.

<sup>1</sup> <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419595/Working\\_Together\\_to\\_Safeguard\\_Children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf)

A failure to have necessary arrangements in place under section 175 may be grounds for the Secretary of State to take action against a Local Authority or Governing Body.

Some incidents of bullying may also be a child protection issue. A bullying incident should be addressed as a child protection issue under the [Children Act 1989](#) when there is 'reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm'<sup>3</sup>. These concerns **must** be reported to the member of staff in school responsible for child protection and then reported to the local authority's children's social services.

## Schools Behaviour / Anti-Bullying Policy

[Section 89 of the Education and Inspections Act 2006](#) states that maintained schools **must** have measures to encourage good behaviour and prevent all forms of bullying amongst pupils. Some schools choose to include this information in an anti-bullying policy, whilst others include it in their behaviour policy. ABA believes that for the purpose of clarity it is better to include it in an anti-bullying policy that is separate to the behaviour policy but which cross refers to the behaviour policy if necessary. These measures **must** be communicated to all pupils, school staff and parents.

The head teacher **must** follow through and adopt the policy and all students, parents and teachers should be notified of it once it has been decided.

Pupils should be involved in both the drafting of their anti-bullying policy and its monitoring, by being encouraged to discuss the policy and its effectiveness. Involving pupils in this way is compatible with children and young people's rights to participate under [Article 12 United Nations Convention on the Rights of the Child 1989](#).

### Section 89 of the Education and Inspections Act 2006:

s89 Determination by head teacher of behaviour policy

*(1) The head teacher of a relevant school must determine measures to be taken with a view to—*

- (a) promoting, among pupils, self-discipline and proper regard for authority,*
- (b) **encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils,***
- (c) securing that the standard of behaviour of pupils is acceptable,*
- (d) securing that pupils complete any tasks reasonably assigned to them in connection with their education, and*
- (e) otherwise regulating the conduct of pupils.*



<sup>3</sup> Children Act 1989 – Part V, s47(1)(b),(5),(5ZA)

(5) The measures which the head teacher determines under subsection (1) may, to such extent as is reasonable, include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.

(6) The measures determined by the head teacher under subsection (1) must be publicised by him in the form of a written document as follows—

- (a) he must make the measures generally known within the school and to parents of registered pupils at the school, and**
- (b) he must in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons who work at the school (whether or not for payment).**

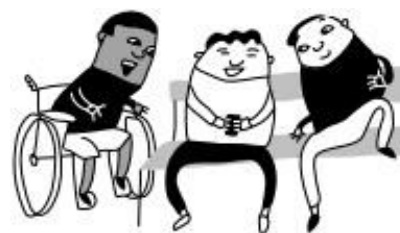
## Academies, Free Schools and Independent schools

The [Independent School Standards \(England\) \(Amendment\) Regulations 2012](#) state that the proprietor of an academy or other independent school is required to ensure that an effective anti-bullying strategy and health & safety strategy is drawn up and implemented.

## Discrimination - The Equality Act 2010

Under the [Equality Act 2010](#) it is against the law to discriminate against anyone because of:

- age
- being or becoming a transsexual person
- being married or in a civil partnership
- being pregnant or having a child
- **disability**
- race including colour, nationality, ethnic or national origin
- religion, belief or lack of religion/belief
- sex
- sexual orientation



These are called 'protected characteristics'. A person is protected from discrimination in the following areas:

- at work
- **in education**
- as a consumer
- when using public services
- when buying or renting property
- as a member or guest of a private club or association



You're also protected from discrimination if:

- you're associated with someone who has a protected characteristic, eg a sibling or friend
- you've complained about discrimination or supported someone else's claim

Schools **must** follow the Equality Act 2010. Staff must act to prevent discrimination, harassment and victimisation within the school. If you think a child is being harassed in school you **must** act to prevent it.

You can find guidance on the Equality Act 2010 for schools here:

<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

The definition of disability under the Equality Act:

**“a person has a disability if they have a physical or mental impairment which has a long term and substantial adverse effect on their ability to carry out normal day-to-day activities”.**

Guidance says that when considering the definition of disability:

- disregard aids, medication and treatment; that physical or mental impairment includes sensory impairments such as those affecting sight or hearing and severe disfigurement;
- 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.

A key provision is a **Public Sector Equality Duty**. This duty covers age, disability, gender reassignment, pregnancy and maternity, race, religion – and places a duty on **all publicly funded schools and colleges (s149) to:**

- eliminate unlawful discrimination, harassment and victimisation



- advance equality of opportunity between people who share a protected characteristic and people who do not share it
- foster good relations between people who share a protected characteristic and people who do not share it

**This Equality Duty applies to all decisions taken by the Governing Body or Proprietor of all publicly funded schools. Under this duty schools should discuss and gather information to ensure the decision they take will not increase disablist name calling and bullying.**

There is also a duty towards disabled pupils and students to provide **reasonable adjustments** for them, including auxiliary aids (s20). The object of the duty is to avoid as far as possible by reasonable means, the disadvantage which a disabled pupil experiences because of their disability.<sup>4</sup> This is an anticipatory duty - acted upon before a particular disabled pupil attends school or is involved in an incident.

As name calling is one of the most frequent occurrence of disablist bullying and has been shown to disproportionately involve and impact on disabled children and students; then minimising it is an important reasonable adjustment. It does have an adverse impact on pupils' wellbeing and achievement. Therefore, **ensuring steps are taken to tackle disablist behaviour and name calling would come under this duty. Creating a positive class environment by discussion with peers about the impacts of disablist name calling and teasing/ridiculing would be a reasonable adjustment.** Creating a system of peer support and mentoring where such language and behaviour is challenged would be another. Recording all such incidents and positively dealing with them would also be a reasonable adjustment.

Making such adjustments would also ensure that the schools public sector duty to eliminate harassment is being met.

A whole school consensus on how such incidents are dealt-with is important, including midday supervisors who should be included in any training that the school undertakes. Staff using their power to belittle or to hold up to ridicule any pupil is always unacceptable. **Doing this to a disabled child is likely to be unlawful.** This includes disparaging remarks about a disabled child's work e.g. handwriting when they may have an impairment which impacts on fine motor control, or is messy, when they have a specific learning difficulty, or finding someone with general or specific learning difficulties reading aloud amusing. If the language or comment used by a member of staff about or to a disabled pupil draws in a negative way on their impairment should be challenged by senior staff.

Under the Equality Act there are also a range of different forms of discrimination towards individual disabled people that are unlawful.

- Direct Discrimination:** treating someone less favourably because of their 'disability' (s13)
- Indirect Discrimination:** where a provision, criteria or practice puts a disabled person at a substantial disadvantage and it cannot be shown as a proportionate means of achieving a legitimate aim (s19)

<sup>4</sup> <http://www.equalityhumanrights.com/private-and-public-sector-guidance/education-providers/schoolsguidance/key-concepts/reasonable-adjustments>

- iii. **Discrimination arising from disability** (s15)
- iv. **Harassment:** when a person (A) engages in unwanted conduct towards (B) because they are disabled and that conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B (s26).

All four of these, especially **iv**, could be claimed when persistent bullying of disabled pupils by name calling, ridicule or malicious teasing involving disablist language takes place to the detriment of the pupil.

The UK is a signatory of the 'United Nations Convention on the Rights of Persons with Disabilities' Article 8(26) requires the Government to adopt immediate and effective means of **"b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities"**<sup>5</sup>

## Bullying Outside of School

The Department for Education released the following statement in regards to bullying outside of school premises:

*"Head teachers have the legal power to make sure pupils behave outside of school premises (state schools only). This includes bullying that happens anywhere off the school premises, eg on public transport or in a town centre."*

Through [Section 89 clause 5 of the Education and Inspections Act 2006](#) head-teachers have the power to discipline their students for any bullying incidents outside of school *"to such an extent that is reasonable."* (see also p2 Schools' Behaviour/Anti-bullying policies)

DfE's [Preventing and Tackling Bullying guidance](#)<sup>6</sup> says about schools duties to tackle bullying outside of schools:

*Teachers have the power to discipline pupils for misbehaving outside the school premises "to such an extent as is reasonable. This can relate to any bullying incidents occurring anywhere off the school premises, such as on school or public transport, outside the local shops, or in a town or village centre.*

*Where bullying outside school is reported to school staff, it should be investigated and acted on. The headteacher should also consider whether it is appropriate to notify the police or anti-social behaviour coordinator in their local authority of the action taken against a pupil. If the misbehaviour could be criminal or poses a serious threat to a member of the public, the police should always be informed.*

*In all cases of misbehaviour or bullying the teacher can only discipline the pupil on school premises or elsewhere when the pupil is under the lawful control of the staff member. More detailed advice on teachers' powers to discipline, including their power to punish*

<sup>5</sup> <http://www.un.org/disabilities/default.asp?id=268>

<sup>6</sup> Preventing and tackling bullying - Department for Education - page 6

*pupils for misbehaviour that occurs outside school, is included in '[Behaviour and discipline in schools – advice for headteachers and school staff](#)'. "*

## Bullying on home to school transport

The above section 'Bullying outside of school' applies on school transport.

## Schools' ability to search a student's property

Schools can search students' property in some circumstances. Section 85 clause 3A of the Education Act

2011 states that a school doesn't need the consent of the child in question if they believe "*that there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency*". For example if the child is carrying prohibited items into school property. Prohibited items include; alcohol; drugs; weapons; tobacco or any pornographic images.

All these items can be confiscated without question. Any search that may take place must have two members of staff present; the searcher and the witness and ideally both would be of the same sex as the perpetrator. Any complaints by parents regarding the search must be made to the head teacher who should ask for a copy of the complaints procedure.

## Cyberbullying and the law

As stated above, the Education and Inspections Act 2006 gives the head teacher the power, 'to such an extent that is reasonable'<sup>8</sup>, to regulate the conduct of pupils when they are offsite. This power is very relevant to cyberbullying because much cyberbullying does take place out of school, partly because the technology used in cyberbullying, such as social networking services and smartphones, may be restricted in schools. However, the impact of cyberbullying can affect the lives and school lives of young people, so what takes place offsite has a direct impact onsite.



The [Education Act 2011](#) gives additional powers to schools – screening, searching and confiscation, including of electronic devices. There is DfE advice on this in "[Screening, searching and confiscation – Advice for Head Teachers, staff and governing bodies](#)". This even includes the power to delete certain content. There are conditions to the use of all of these powers, so the DfE Guidance should be referred to.

Some cyberbullying activities could be criminal offences under a range of different laws, including the [Malicious Communications Act 1988](#) and the [Protection from Harassment Act 1997](#). There have been some instances of such prosecutions in the UK.

The Malicious Communications Act of 1988 makes it an offence for:

- 1) Any person who sends to another person—
  - (a) a letter, electronic communication or article of any description which conveys—
  - (i) a message which is indecent or grossly offensive;

(ii) a threat; or

(iii) information which is false and known or believed to be false by the sender; or

(b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature,

is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.<sup>7</sup>

**If you are worried that activity may be illegal it is important that you speak to the Police.**

## Hate crimes and incidents

A **hate crime** is any occurrence that is perceived by the victim, or any other person to be one of the following:

- racist
- homophobic
- transphobic (discrimination against transsexual or transgender people)

Or because of a person's:

- religion
- beliefs
- gender identity or
- **disability**

A hate crime is not only limited to a personal attack. Name calling, violence, property attacks such as graffiti, verbal attacks, and abusive messages either by phone, mail or via the internet can also be seen as hate crimes. No hate crime is too minor to report to the police, they will record all incidents brought to their attention whether or not a crime has been committed.

## Hate incident

A hate incident is any incident, which may or may not be a crime, which the victim or any other person perceives to be motivated by hostility or prejudice towards any aspect of a person's identity.

**You can contact Stop Hate UK if you think that a child or young person in your school might have been victim of a hate crime/incident. Their website is: <http://www.stophateuk.org/> or you can call 0800 138 1625.**

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<sup>7</sup> The Malicious Communications Act 1988 - s1(1)



## Bullying and the police

**No matter how bad bullying can seem, many incidents of bullying are not actually crimes, and therefore might not be a matter for the police.** The best people to deal with them are parents, teachers, other responsible adults and young people themselves.

**But some types of bullying are illegal and should be reported to the police.** This includes bullying that involves:

- violence or assault
- theft
- harassment and intimidation over a period of time including calling someone names or threatening them, making abusive phone calls, and sending abusive emails or text messages (one incident is not normally enough to get a conviction)
- anything involving hate crimes (see above)

As stated above some incidents of bullying may be a 'hate crime' but 'hate crime' is not a criminal offence in and of itself.

## Criminal law

Although bullying in itself is not a specific criminal offence in the UK, it is important to bear in mind that some types of harassing or threatening behaviour – or communications – could be a criminal offence, for example under the Protection from Harassment Act 1997, the Malicious Communications Act 1988, the Communications Act 2003, and the Public Order Act 1986.

If school staff feel that an offence may have been committed they should seek assistance from the police.

