

Security, respect and responsibility

– the prohibition of discrimination and other degrading treatment of children and pupils

FACT SHEET

Ministry of Education,
Research and Culture, Sweden

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In a bill entitled *Security, respect and responsibility – the prohibition of discrimination and other degrading treatment of children and pupils* (Gov. Bill 2005/06:38), the Government proposes a new Act that will apply to pre-school facilities, school-age childcare, primary and secondary school and municipal adult education. The Act is intended to promote equal rights for children and pupils and to combat discrimination on grounds of sex, ethnic origin, religion or other belief, sexual orientation or disability. It is also intended to combat other degrading treatment, such as bullying. The Act will apply to both public and privately run facilities subject to the Education Act.

The purpose of the Act

Pre-school, school and municipal adult education must provide a secure environment for all children and pupils. The new Act is therefore intended to promote equal rights for children and pupils in all facilities that are subject to the present Education Act. The Act is also intended to combat discrimination and harassment on grounds of sex, ethnic origin, religion or other belief, sexual orientation or disability. Further, it is designed to hinder and prevent other degrading treatment that is not directly attributable to these grounds of discrimination. This means that the new Act will cover all forms of degrading treatment, including bullying.

Active measures

No child and no pupil must be left without secure, clear and active protection. The educational facilities must therefore conduct active targeted efforts to prevent and combat all forms of degrading treatment. Every facility will be required to have an equal treatment plan describing planned measures. The plan must be reviewed and followed up every year. It must be a “living” document, in the sense that it must remain relevant to day-to-day activities. Each facility is free to develop an equal treatment plan based on its own needs. It is important that the children and pupils are involved and participate in drawing up, following up and reviewing the facility’s equal treatment plan.

The active measures complement the Act’s prohibition of discrimination and other degrading treatment.

The education authority (or a person appointed by the authority) must investigate and prevent further cases of harassment or other degrading treatment if a child or pupil reports having been subjected to such treatment. This also applies to degrading treatment between children or pupils.

Prohibition of discrimination

Children and pupils have a right not to be subjected to discrimination or other degrading treatment. The Act

therefore introduces the following prohibitions against discrimination:

- Direct discrimination: A child or a pupil must not be disadvantaged by discrimination on one of the five grounds of discrimination covered by the Act, i.e., sex, ethnic origin, religion or other belief, sexual orientation and disability.
- Indirect discrimination: A child or a pupil must not be disadvantaged by seemingly neutral school rules being applied, in practice, to discriminatory effect.
- Instructions to discriminate: The management of a facility must not give orders or instructions to discriminate against a person.
- Harassment: Staff are prohibited from behaving in a degrading manner towards a child or a pupil. If the degrading treatment is associated with one or more of the five grounds of discrimination it becomes harassment.

Prohibition of other degrading treatment

Not all degrading treatment is discrimination but all such treatment must be prevented. Harassment is an established concept in the context of discrimination and is thus linked to the grounds of discrimination. It is therefore necessary to distinguish between harassment and other degrading treatment. A prohibition of *other degrading treatment* is therefore being introduced in the Act to cover all forms of degrading treatment.

The prohibition applies to behaviour towards children and pupils by people in positions of responsibility at the facility. It does not apply to legitimate reprimands that are intended to maintain order and a good environment for children and pupils.

Prohibition of acts of reprisal

The Act introduces a ban on *acts of reprisal*. This means that if a child or a pupil has reported or taken part in an

investigation relating to a violation of the Act, the child or pupil must not be punished as a result.

Damages

The new Act gives children and pupils increased rights to damages for both discrimination and other degrading treatment.

Damages may be awarded if people in positions of responsibility in the institutions do not adhere to obligations under the Act. As regards discrimination or acts of reprisal, damages will be awarded for the degradation caused. In other cases, however, damages will not be payable if the degradation is minor. In addition, a child or pupil may receive compensation for damage to clothes, bicycles, etc.

A shared burden of proof

A shared burden of proof is introduced in two cases:

- The first such regulation applies in the event of discrimination and acts of reprisal. If the person representing the child or pupil presents factual circumstances that give reason to believe that discrimination or acts of reprisal have occurred, it is the responsible authority that is required to prove that no such acts have occurred.
- The second such case is when a child or a pupil feels that he or she has been subjected to harassment or other degrading treatment by another child or another pupil. If the person representing the child or pupil can show that the child or pupil has been subjected to harassment or other degrading treatment, in order to escape liability for damages the authority responsible for the facility must show that every reasonable measure had been taken to prevent or hinder such treatment.

Supervision of the Act

The Office of the Equal Opportunities Ombudsman, the Office of the Ombudsman against Ethnic Discrimination, the Office of the Ombudsman against Discrimination because of Sexual Orientation, the Office of the Disability Ombudsman and the National Agency for Education are to monitor compliance with the Act. The intention is to establish a new office at the National Agency for Education to be known as the equal treatment representative for children and pupils. The Ombudsmen and the representative

for children and pupils will have the right to bring actions for damages on behalf of a child or a pupil. The representative for children and pupils will also be responsible for providing information about the Act, giving advice on the application of the Act and directing the child or pupil to the right Ombudsman if the representative does not have the mandate to deal with the case.

Statutory limitation

From the point of view of legal certainty it is important that cases that come under the new Act are investigated and dealt with promptly. However, the time limit for bringing a case must not be so restrictive that the child or pupil risks losing any of her or his rights. The statutory limitation period is therefore two years for direct discrimination, indirect discrimination and acts of reprisal.

However, many children and young people who have been subjected, for example, to sexual harassment or other degrading treatment such as bullying are unable to talk about it in public or take part in a trial until several years later. Consequently, the Act does not contain any special statutory limitation provision for harassment and other degrading treatment. In these cases the Act on Limitation applies, which generally provides for a longer statutory limitation period.

Judicial procedure

Actions for damages under the new Act shall be brought before a general court.

Entry into force

It is proposed that the Act enter into force on 1 April 2006.

Other legislative proposals

It is important to introduce a possibility of classifying sensitive data about a child's or a pupil's personal situation as secret. The Act on Secrecy (1980:100) should therefore introduce a provision on secrecy that applies to cases before courts or authorities under the new Act.

The Prohibition of Discrimination Act should introduce a ban on discrimination in the area of state study support.



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Read more in the Government Bill *Security, respect and responsibility – the prohibition of discrimination and other degrading treatment of children and pupils* (Gov. Bill 2005/06:38). The Bill can be ordered from: the Riksdag Department for Parliamentary Documents, tel: +46 8 786 58 10, fax: +46 8 786 61 76. Additional copies of the fact sheet can be ordered from the Ministry of Education, Research and Culture, fax: +46 8 723 11 92, email: info.order@educult.ministry.se. The Bill and the fact sheet are also available on the website of the Ministry of Education, Research and Culture at: www.regeringen.se. Questions about the content of this fact sheet can be addressed to: Gunilla Zackari, tel. +46 8 405 18 06, Peter Syrén, tel. +46 8 405 18 61.