

## Act Prohibiting Discrimination and other Degrading Treatment

*Name of organisation:*

Swedish Equality Ombudsman

### **Act on the prohibition of discrimination and other degrading treatment of children and pupils (2006:67)**

Promulgated: 16 February 2006

Purpose and scope of the Act

**Section 1.** The purpose of this Act is to promote equal rights for children and pupils and to combat discrimination on grounds of sex, ethnic origin, religion or other faith, sexual orientation or disability. The Act is further intended to combat other degrading treatment.

This Act applies to education and other activities covered by the Education Act (1985:1100).

#### **Definitions**

**Section 2.** The follow definitions are used for the purposes of this Act:

**pupil:** anyone receiving education or applying for education under the Education Act (1985:1100),

**child:** anyone taking part in or applying to enter a pre-school or school-age childcare activity under the Education Act,

**staff:** employees and subcontractors in education and related activities,

**ethnic affiliation:** when someone belongs to a group of people of the same national or ethnic origin, race or colour,

**sexual orientation:** homosexual, bisexual or heterosexual orientation,

**disability:** lasting physical, mental or intellectual impairment of a person's ability, which, due to injury or illness, was present at birth, developed subsequently or may be expected to develop,

**harassment:** behaviour that violates a child's or a pupil's dignity, and which

1. is associated with

- ethnic affiliation (ethnic harassment),
- religion or other faith (harassment due to religion or other faith),
- sexual orientation (harassment due to sexual orientation),

- disability (harassment due to disability),
- sex (harassment due to sex), or

2. is of a sexual nature (sexual harassment)

other degrading treatment: behaviour that otherwise violates a child's or a pupil's dignity.

### **Responsibility of employees and contractors**

**Section 3.** The authority responsible for the activities described in Section 1, paragraph 2, are also responsible for ensuring that employees and subcontractors comply with their obligations under the Act in the course of their duties or assignments.

### **Mandatory provisions**

**Section 4.** Contractual terms and conditions that limit the obligations pursuant to this Act are invalid.

### **Active measures**

#### **Goal-oriented work**

**Section 5.** The authority responsible for the activity concerned shall ensure that goal-oriented efforts are made in pursuit of the aims described in Section 1, paragraph 1. Special provisions in this respect are described in Sections 6-8.

#### **Equal treatment plan**

**Section 6.** The authority responsible for the activity concerned, or anyone appointed by that authority, shall ensure that an equal treatment plan is drawn up for each individual activity. This plan shall aim to promote equal rights for children and pupils regardless of sex, ethnic affiliation, religion or other faith, sexual orientation or disability, and shall also aim to prevent and preclude harassment and other degrading treatment. The measures planned in this regard are to be included in the equal treatment plan, which is to be followed up and reviewed annually.

#### **The duty to prevent and preclude harassment and other degrading treatment**

**Section 7.** The authority responsible for the activity concerned, or anyone appointed by that authority, shall take measures to prevent children and pupils from being subjected to harassment or other degrading treatment.

### **The duty to investigate and take action against harassment and other degrading treatment**

**Section 8.** Should the authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, learn that a child or pupil feels that he or she has been subjected to harassment or other degrading treatment in the course of that activity, the responsible authority or anyone appointed by that authority shall investigate the circumstances and where appropriate take whatever measures may be reasonably required to prevent further harassment or other degrading treatment.

### **Prohibition against discrimination**

#### **Direct discrimination**

**Section 9.** The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, may not disadvantage a child or pupil by treating him or her less favourably than that person or body treats, has treated or would treat any other child or pupil in a comparable situation, when such treatment is related to the child's or pupil's sex, ethnic affiliation, religion or other faith, sexual orientation or disability.

#### **Indirect discrimination**

**Section 10.** The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, may not disadvantage a child or pupil by applying a provision, a criterion or method of procedure that appears neutral but which in practice is especially disadvantageous for children or pupils of a particular sex, ethnic affiliation, religion or other faith, or sexual orientation, or for those with a disability. This does not apply, however, if the provision, criterion or method of procedure can be objectively justified as being in pursuit of a reasonable goal and the means are appropriate and necessary to the achievement of this goal.

#### **Harassment**

**Section 11.** The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, may

not subject a child or pupil to harassment.

#### **Instruction to discriminate**

**Section 12.** The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, may not issue orders or instructions providing for the discrimination of a child or pupil as defined in Sections 9-11.

#### **Prohibition of other degrading treatment**

**Section 13.** The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, may not subject a child or pupil to other degrading treatment.

#### **Prohibition against reprisals**

**Section 14.** The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, or any other member of staff, may not subject a child or pupil to reprisals because he or she has reported or called attention to an infringement of this Act on the part of someone engaged in that activity, or because he or she has taken part in an investigation pertaining to this Act.

#### **Damages**

**Section 15.** In the event of failure on the part of the responsible authority, the head teacher or anyone in a corresponding senior position, or any other member of staff, to fulfil their obligations pursuant to Sections 6-14, the responsible authority shall a) pay damages to the child or pupil for the violation caused, and b) pay compensation for other injury or loss caused by this failure. Damages for violations in cases not involving discrimination or reprisals are not payable, however, if the violation is of a minor nature.

If there are special grounds for doing so, damages for violation may be reduced or cancelled.

#### **Supervision**

**Section 16.** The Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, and the National Agency for Education shall ensure

compliance with this Act in their respective fields.

The authority responsible for the activity, the head teacher or anyone in a corresponding senior position, must if requested by an Ombudsman or by the National Agency for Education, supply whatever information concerning the situation these bodies consider necessary to the proper supervision of the activity.

### **Legal action**

**Section 17.** Cases concerning damages pursuant to this Act shall be dealt with in accordance with the provisions of the Code of Judicial Procedure regarding litigation in disputes where conciliation is permitted.

In such cases, however, each party may be ordered to pay his or her own court costs, if the party that lost the case had reasonable cause to take the dispute to court.

### **Burden of proof**

**Section 18.** If a child or pupil who considers that he or she has been discriminated against pursuant to Sections 9-12, subjected to other degrading treatment pursuant to Section 13, or subjected to reprisals pursuant to Section 14, and presents circumstances that support such a claim, it is up to the authority responsible for the activity to show that discrimination, degrading treatment or reprisals did not occur.

**Section 19.** If a child or pupil shows that he or she has been subjected to harassment or other degrading treatment by another child or pupil in the course of an activity, the authority responsible for that activity shall, in order to avoid liability for damages, show that all reasonable steps have been taken to prevent or preclude such treatment.

### **Right to bring an action**

**Section 20.** In a dispute concerning damages pursuant to this Act, the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman or the National Agency for Education may bring an action on behalf of a pupil if the said individual consents to such a course. In the case of children and pupils under 18 years of age who are unmarried, the consent of the guardian/custodian is required.

When bringing an action pursuant to paragraph 1 above, the Ombudsman or the National Agency for Education may also in the same proceedings bring another action as representative for that child or pupil.

The provisions of the Code of Judicial Procedure concerning parties with respect to disqualification, personal attendance, examination under oath and other matters relating to evidence shall also apply to the child or pupil on whose behalf an Ombudsman or the National Agency for Education brings an action pursuant to paragraph 1.

#### **Limitation periods, etc**

**Section 21.** An action in a case concerning damages pursuant to Sections 9, 10, 12 or 14 shall be instituted within two years of the alleged act having been committed or of the date by which an obligation should have been discharged at the latest. Otherwise, the right to take legal action is forfeited.

**Section 22.** An action brought by the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman or the National Agency for Education shall be treated as if the action had been brought by the child or pupil in question.

#### **Transitional provisions**

2006:67 This Act enters into force on 1 April 2006 and applies to loss, injury or damage sustained after that date.