

Swedish Code of Statutes

Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students (2006:67).

Issued: 16 February 2006

In accordance with a decision¹ by the Riksdag², the following is enacted.

Purpose and scope of the Act

Section 1

The purpose of this Act is to promote equal rights for children and school students and to combat discrimination on grounds of sex, ethnic origin, religion or other belief, sexual orientation or disability. This Act also has the purpose of combating other degrading treatment.

This Act is applicable to education and other activities referred to in the Education Act (1985:1100).

Definitions

Section 2

In this Act the following terms have the meaning set out in this section.

school student: a person being educated or applying for an education under the Education Act (1985:1100),

child: a person taking part in or applying to a pre-school activity or school-age child care under the Education Act,

staff: employees and contractors in education and other activities,

ethnic origin: the condition of belonging to a group of persons who have the same national or ethnic origin, race or skin colour,

sexual orientation: homosexual, bisexual or heterosexual orientation,

disability: permanent physical, mental or intellectual limitations of a person's functional capacity that, as a consequence of injury or illness, existed at birth, have arisen since then or may be expected to arise,

¹ Government Bill 2005/06:38, Committee Report 2005/06:UbU4, Riksdag Communication 2005/06:149. ² Compare Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22, Celex 32000L0043), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16, Celex 32000L0078) and Directive 2002/73/EC of the European Parliament and of the Council 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269, 5.10.2002, p. 15 (Celex 32002L0073).

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harassment: conduct that degrades a child's or school student's dignity and that

1. is related to

- ethnic origin (ethnic harassment)
- religion or other belief (harassment on grounds of religion or other belief)
- sexual orientation (harassment on grounds of sexual orientation),
- disability (harassment on grounds of disability),
- sex (harassment on grounds of sex) or

2. is of a sexual nature (sexual harassment),

other degrading treatment: conduct that otherwise degrades a child's or school student's dignity.

Responsibility for employees and contractors

Section 3

The organiser of an activity referred to in Section 1, second paragraph is responsible for the employees and contractors in this activity complying with the duties specified in this Act when they act in their post or within the framework of their contract.

Mandatory provisions

Section 4

Terms in an agreement that restrict duties under this Act have no legal force.

Active measures

Goal-oriented work

Section 5

The organiser of the activity shall ensure that it is conducted in a goal-oriented manner in order to promote the purposes specified in Section 1, first paragraph. Special provisions on this are set out in Sections 6–8.

Equal treatment plan

Section 6

The organiser of the activity or the person designated by the organiser shall ensure that there is an equal treatment plan for each individual activity. The plan shall aim to promote the equal rights of children and school students irrespective of sex, ethnic or national origin, religion or other belief, sexual orientation or disability and to prevent and hinder harassment and other degrading treatment. The plan shall set out the measures planned. The plan shall be followed up and reviewed each year.

Duty to prevent and hinder harassment and other degrading treatment

Section 7

The organiser of the activity or the person designated by the organiser shall take measures to prevent and hinder children and school students from being subjected to harassment and other degrading treatment.

Duty to investigate and take measures against harassment and other degrading treatment

Section 8

If the organiser of the activity, the head teacher or some other person with a corresponding management function or some other staff member becomes aware that a child or a school student in the activity considers that he or she has been subjected to harassment or other degrading treatment in connection with the conduct of the activity, the organiser or the person designated by the organiser shall investigate the circumstances and, where necessary, take the action that can reasonably be required to prevent the continuation of the harassment or other degrading treatment.

Prohibition of discrimination

Direct discrimination

Section 9

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not disadvantage a child or a school student by treating the child or school student worse than the representative of the activity treats, has treated or would have treated some other child or school student in a comparable situation if the disadvantageous treatment is related to sex, ethnic origin, religion or other belief, sexual orientation or disability.

Indirect discrimination

Section 10

The organiser of the activity, the head teacher or some other person with a corresponding management function or some other staff member must not disadvantage a child or a school student by the application of a provision, a criterion or a procedure that is apparently neutral but that in practice particularly disadvantages children or pupils of a particular sex, ethnic origin, religion or other belief, sexual orientation or disability. This does not apply, however, if the provision, criterion or procedure can be motivated by a legitimate aim and the means are appropriate and necessary to achieve the aim.

Harassment

Section 11

The organiser of the activity, the head teacher or some other person with a corresponding management function must not subject a child or a school student to harassment.

Instructions to discriminate

Section 12

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not give orders or instructions to discriminate against a child or a school student in his or her activity under Sections 9–11.

Prohibition of other degrading treatment

Section 13

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not subject a child or school student to other degrading treatment.

Prohibition of reprisals

Section 14

The organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member must not subject a child or school student to reprisals because the child or school student has reported or complained that someone in the activity has acted contrary to this Act or because the child or school student has taken part in an investigation under this Act.

Damages

Section 15

If the organiser of the activity, the head teacher or some other person with a corresponding management function or another staff member sets aside his or her duties under Sections 6–14, the organiser shall both pay damages to the child or school student for the degrading treatment and pay compensation for any other damage caused by the setting aside of the duty. However, damages for degrading treatment in cases other than discrimination or reprisals are not payable if the degradation is minor.

If there are special reasons, the damages for degrading treatment can be reduced or cancelled.

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Supervision

Section 16

The Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation, the Disability Ombudsman and the National Agency for Education shall each ensure that this Act is followed in their areas of responsibility.

At the request of an Ombudsman or the National Agency for Education the organiser of the activity, the head teacher or some other person with a corresponding management function is required to supply the information on circumstances in the activity that can be of importance for the supervision.

Legal proceedings

Section 17

Cases concerning damages under this Act shall be dealt with in accordance with the provisions of the Swedish Code of Judicial Procedure concerning procedures in civil cases where conciliation in the matter is permitted.

In such cases it may, however, be ordered that each party shall bear its litigation costs, if the party that has lost the case had reasonable grounds for bringing the dispute to court.

Burden of proof

Section 18

If a child or a school student who considers that he or she has been discriminated against under Sections 9–12, subjected to other degrading treatment under Section 13 or subjected to reprisals under Section 14 presents circumstances that give grounds to presume that he or she has been discriminated, subjected to other degrading treatment or subjected to reprisals, the organiser of the activity shall show that the discrimination, other degrading treatment or reprisals have not taken place.

Section 19

If a child or school student shows that he or she has been subjected to harassment or other degrading treatment by another child or school student in connection with the conduct of the activity, then, in order to escape liability for damages, the organiser shall show that every reasonable measure had been taken to prevent or hinder such treatment.

Right to bring an action

Section 20

In a dispute on damages under 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 as a party for a child or school student who consents to this. For children and school students under 18 years who are not married the custodians shall give consent.

If an Ombudsman or the National Agency for Education brings an action under the first paragraph, the Ombudsman or the Agency may also bring another action in the same proceedings as the representative of the child or school student.

The provisions of the Swedish Code of Judicial Procedure concerning parties with respect to disqualification, personal appearance and examination on oath as well as other questions relating to evidence shall also apply to the person on whose behalf an Ombudsman or the National Agency for Education brings an action under the first paragraph.

Statutory limitation, etc.

Section 21

Legal proceedings in a case on damages under Section 9, 10, 12 or 14 shall be initiated within two years from the date of the action complained about or from the last date on which a duty should have been fulfilled. Otherwise the right to initiate legal proceedings 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 is treated as if it had been brought by the child or school student himself or herself.

This Act enters into force on 1 April 2006 and is applicable to cases of damage that take place after its entry into force.