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PAPER**

Equality Bodies' Interventions for Equality in the Field of Education

by Equinet Policy Formation Working Group

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**This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

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Contents

Acknowledgements.....	iii
Introduction	5
1. Legislative provision on discrimination in the field of education	7
2. Equality Body goals in the field of education	11
3. Issues addressed by Equality Bodies in the field of education	14
4. Equality Body interventions in the field of education.....	18



Introduction

This Equinet Paper compiles and categorises the discrimination issues in the field of education policy and provision that Equality Bodies come across in their work, and the responses to these issues that Equality Bodies have found to be effective.

This Equinet Paper serves to share information between Equality Bodies on the issues arising and the practice developed, and to inform any future focus on this field of work by Equinet and its members.

The preparation of this Equinet Paper involved discussion at a Policy Formation Working Group meeting convened for this purpose. A survey questionnaire, based on these discussions, was then completed by twenty-six Equality Bodies in twenty-three jurisdictions¹.

In the preparation of this Equinet Paper, most Equality Bodies indicated that the field of education policy and provision is a high priority area and an important focus in their work.

¹ Ombud for Equal Treatment in Austria, Unia in Belgium, Commission for Protection against Discrimination in Bulgaria, Office of the Ombudswoman in the Republic of Croatia, Ombudsman for Persons with Disabilities in the Republic of Croatia, Ombudsperson for Gender Equality in the Republic of Croatia, Commissioner for the Administration and the Protection of Human Rights in Cyprus, Public Defender of Rights in Czechia, Defender of Rights in France, Federal Anti-Discrimination Agency in Germany, Irish Human Rights and Equality Commission in Ireland, Ombudsperson Institution of Kosovo in Kosovo, Office of Equal Opportunities Ombudsperson in Lithuania, Centre for Equal Treatment in Luxembourg, Commission for the Rights of Persons with Disabilities in Malta, National Commission for the Promotion of Equality in Malta, Dutch Institute for Human Rights in the Netherlands, Equality Commission for Northern Ireland in Northern Ireland, The Commissioner for Human Rights in Poland, Commission for Citizenship and Gender Equality in Portugal, National Council for Combating Discrimination in Romania, Commissioner for Protection of Equality in the Republic of Serbia, Slovak National Centre for Human Rights in Slovakia, Advocate of the Principle of Equality in Slovenia, Council for the Elimination of Racial and Ethnic Discrimination in Spain, and Swedish Equality Ombudsman in Sweden.



1. Legislative provision on discrimination in the field of education

The field of education is covered under equal treatment legislation across most jurisdictions. In this, provision encompasses a prohibition on direct and indirect discrimination and on harassment and sexual harassment, and a requirement in relation to reasonable accommodation on the ground of disability. This provision usually covers a broad spectrum of discrimination grounds, including those of gender, age, disability, religion or belief, racial or ethnic origin, and sexual orientation.

Anti-discrimination legislation addresses the field of education, according to the survey, in most jurisdictions that responded, including Austria (though limited), Belgium (though limited), Bulgaria, Croatia, Cyprus (though limited), Czechia, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Northern Ireland, Poland (though limited), Romania, Serbia, Slovakia, Slovenia, Spain (though limited) and Sweden.

Limitations in this provision for anti-discrimination in the field of education are noted in:

- **Austria:** where vocational education and training, and job training are covered on the grounds of sex/gender, ethnic origin, religion and belief, sexual orientation, and age, but provision in the field of general education is restricted to the ground of ethnic origin².
- **Belgium:** where the mandate of Unia no longer addresses issues in the Flemish education system, unless it deals with labour rights and conditions of personnel.
- **Cyprus:** In Cyprus, national laws transposing the EU directives explicitly prohibit discrimination in education but only in the case of racial or ethnic origin. The Equality Body's broad mandate, however, extends to discrimination in education on the further grounds of religion or belief, community, language, colour, special needs (which covers disability), age and sexual orientation. However, gender is not covered.
- **Germany:** where FADA has no specific legal competence in the field of education, as, while the General Act on Equal Treatment prohibits discrimination in education on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation, this provision is not operative, since the federal level does not have the constitutional powers to legislate in the field of public education.

² It should be noted that the ground of disability falls within the mandate of another Equality Body in Austria.

- Northern Ireland: where the need for a single equality act to consolidate, harmonise, and simplify the protections available across all grounds, was noted.
- Poland: where the Act on the Equality Act prohibits unequal treatment in access to education and higher education but only in relation to grounds of discrimination such as race, ethnic origin, nationality and citizenship, and victims of discrimination rarely take advantage of this option even when the Act applies to them.
- Spain: where the law includes a regulation of infringements and sanctions at an administrative level, but, for its application, the creation of the 'Independent Authority for Equal Treatment and Non-Discrimination' is needed but remains pending.

Such limitations demonstrate the need for comprehensive EU equal treatment legislation to address equality in education, currently only provided for on the ground of race or ethnic origin.

In some instances, it is noted that discrimination is also addressed to an extent in broader education legislation, as in Austria, Czechia, France, Kosovo, Poland, Portugal, Romania, Serbia, Slovakia, and Slovenia. It is noted that in some cases, this approach can be coupled with limited enforcement in relation to discrimination by bodies referenced under such legislation. There are further instances noted in the survey of specific education-related legislation addressing disabled people, including in Bulgaria, Croatia, Ireland, and Lithuania (an ongoing legislative process).

In a number of instances, this body of legislative provision is underpinned by Constitutional provision in relation to equality and in relation to education. International human rights instruments are noted as making a useful contribution in creating positive conditions for Equality Body intervention in this field of education, most particularly, but not only, the UN Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child. This contribution is further strengthened in jurisdictions where the UN Convention on the Rights of Persons with Disabilities has been incorporated into national legislation, such as Malta for example.

Some Equality Bodies report statutory equality duties provided for in their equal treatment legislation that apply to the education sector, or parts of it. Others, as in Poland, have made recommendations for the introduction of such provisions, in particular to apply to school

statutes. Statutory equality duties are valuable in requiring educational establishments to be proactive in relation to non-discrimination and equality and for advancing planned and systematic approaches to equality in policy making and programme development in the field of education.

In Ireland, for example, a statutory equality duty to have regard to the need to eliminate discrimination, promote equality of opportunity, and protect human rights covers the higher level of education establishment, and those responsible for policy making and programme development in this field. In Northern Ireland, public bodies, including the Department of Education and a number of higher-level education establishments, are under a statutory equality duty to have due regard to the need to promote equality of opportunity and must take defined steps in doing so. In Sweden, the Discrimination Act obliges those responsible for schools to take active measures to prevent discrimination and harassment, though compliance is noted as low.

Some Equality Bodies report **national policy strategies** of relevance for equality and education provision, including in relation to LGBTI+ people, as in Portugal for example, and on the gender ground, as in Croatia and Portugal for example. These national policy strategies provide a supportive and enabling context for Equality Body interventions in the field of education.

Strategies of equality mainstreaming are noted as important in this field and as creating important foundations for Equality Body interventions. Mainstreaming addresses educational practices and school dynamics, and integrates equality in the curricula, as well as in educational projects. In Portugal, there is a positive example noted in relation to gender mainstreaming.



2. Equality Body goals in the field of education

Equality Bodies do not tend to have strategies that are specific to particular fields of intervention. In such a context, set and defined goals can be difficult to identify. However, goals are identifiable from the priorities pursued by Equality Bodies.

The Ombudswoman in Croatia, captures an interesting approach to identifying its goals in this field, identifying the key determinants in relation to the education system as including:

- the availability of education (establishment and financing of educational institutions);
- the accessibility of education (free primary education for all, and secondary and higher education in line with certain abilities);
- the acceptability of education (education of a certain quality, in line with certain standards); and
- the adaptability of education (adapted to different groups).

The predominant goal evident from the work reported was that of **addressing and preventing discrimination**, with a concern for equal treatment, equal conditions, equal opportunities, and the fulfilment of rights. Within this, there was a particular concern for access to education noted by some Equality Bodies. There was an additional dimension to this goal noted by some Equality Bodies, of seeking to ensure a broad knowledge and understanding of rights among those affected by discrimination, and to give visibility to the issue of discrimination within the educational system.

A safe, welcoming and inclusive school environment was another element for Equality Body goals in this field, linked to this goal of non-discrimination. This was evident from the number of Equality Bodies reporting a particular concern in their work to address issues of harassment and sexual harassment experienced in educational establishments. In this there was a particular focus on access, safety, and inclusion across the discrimination grounds.

In some instances, a focus on structural or institutional discrimination, was evident as part of this goal concerning discrimination. This included a focus on desegregation of educational provision in a number of jurisdictions. A specific concern was noted in one instance with ensuring tests for advancement in education are adapted for diversity, in particular cultural diversity, and, more specifically, in another instance in relation to potential bias in algorithmic testing for access to higher level education.

Statutory equality duties have a particular contribution to make to the elimination of structural and institutional forms of discrimination, if effectively implemented. These duties were noted as underpinning the focus on achieving equality in the education system and Equality Bodies make an important contribution to their implementation, in particular through effective forms of equality mainstreaming.

Broader goals of equality, in terms of outcomes from the education system, were articulated in many instances, tackling inequalities in both access and attainment.

There was a particular focus, in this, on the concept of the inclusive school or, more broadly, an inclusive education system. This focus often starts with the ground of disability, but encompasses a wider range of grounds for some Equality Bodies.

A concern to promote positive action by educational establishments, ensure an equality competence among staff of educational establishments, and support equality mainstreaming in policy-making was evident in driving equality goals. These goals for Equality Bodies are further concerned with educational content, addressing such as stereotyping in text books.

There was a further set of goals evident in relation to realising the capacity of the education system to shape future societal perspectives and behaviours, and to advance a shared society. In this there was a focus on shared learning spaces, and on the curriculum content. The inclusion of topics of equality, non-discrimination, and relationships and sexuality, encompassing diverse sexual identities, in the curriculum was particularly noted. In Portugal, for example, there has been initiative on wide-ranging Citizenship Education in this regard.

The focus for such goals of Equality Bodies encompasses all levels of education from early childhood education to higher level education.



3. Issues addressed by Equality Bodies in the field of education

The disability, gender, racial or ethnic origin, sexual orientation, religion or belief, and age grounds were all noted as being addressed in the work of Equality Bodies in the field of education. The socio-economic status ground was mentioned in a range of jurisdictions. Alongside shared issues of discrimination and harassment, specific issues emerge for each ground, with some of these issues being common across the grounds.

The disability ground is prominent in the work of Equality Bodies. In this there was a particular focus on ensuring inclusive schools and access for disabled students, alongside a concern to avoid forms of segregation where disabled people might be directed to special education facilities or separate education streams, or subject to reduced timetables. The lack of provision of supports to disabled people within the education system, and the lack of processes for assessing individual needs and making reasonable accommodation of disabled people in educational establishments, emerged as core issues in this work. Particular issues of lack of sign language interpretation and lack of assistive and accessible technology were noted, as well as issues of harassment and bullying.

The gender ground is equally prominent in this work of Equality Bodies. In this, there was a focus on issues of segregation when it comes to STEM subjects, and of the gendered impact of education provision. There was a concern to render gender equality as transversal to education in a school context, address gender stereotyping, and challenge patriarchal values that shape curricula and institutional practice in education provisions. Sexual harassment emerged as an issue of some concern, alongside a focus on the need for education on issues of gender equality, gender-based violence, and relationships and sexuality. Pregnancy related discrimination was also identified as an issue.

Specific issues of recognition of gender identity emerged, specifically for trans people. These issues include the right to self-determine one's gender identity, the provision of facilities that take account of issues of gender identity, gender-neutral uniforms, use of preferred names and pronouns, and securing documentation in one's preferred gender.

The racial or ethnic origin ground is of significant scale in the work of Equality Bodies in the field of education. Access issues were noted for Travellers and Roma and for asylum seekers, including issues of early school leaving. The particular issue of foreign minors, especially those recently arrived and not speaking the language of the country, not securing school places due to inadequate provision within the education system was noted.

Segregation was noted as an issue of significant concern, most particularly for Travellers and Roma. Access barriers in the design of admission policies and low expectations and reduced timetables and requirements were also noted for Travellers and Roma.

More broadly on this ground, issues of racist harassment were noted, including mobbing and discriminatory and racist remarks and attitudes. Concern was noted at the lack of a focus on diverse cultures and on the issues around cultural diversity in the curriculum. Issues for national minorities, in terms of education in their own language also emerged. The ground of nationality was also referenced in relation to recognition of diplomas.

In relation to the **sexual orientation ground**, issues of discriminatory attitudes and remarks, and of harassment were evident, including mobbing and bullying. The absence of a focus on diverse sexual identities in curricula, including for relationships and sexuality courses, was also noted as an issue.

In relation to the **religion or belief ground**, issues of restrictions on religious-related attire were evident, of failure to adapt school menus to take account of religious imperatives, and of exemption from religion courses. Issues of single denominational school provision and lack of non-denominational or multi-denominational alternatives were noted. Issues of harassment on the ground of religion were also noted.

In relation to the **age ground**, a range of issues emerge in the work of Equality Bodies, mainly for older people. Issues include the use of age limits in relation to: access to higher level education and other educational opportunities; registration fees, and access to some school-based services, such as speech therapy. They include issues of lack of access to lifelong learning and further education, and of digital inequality barriers for older people. Lack of capacity in the level of provision at pre-school level emerged as an issue at the other end of the age spectrum, as well as access to education for young people with caring responsibilities.

The **ground of socio-economic status**, though not covered in all jurisdictions, emerges as a further focus in the work of Equality Bodies in the field of education. This can also be an intersectional issue for a number of other grounds. Issues of access were noted, particularly in relation to higher levels of education.

More broadly, intersectionality across these grounds was noted as of relevance to the work of Equality Bodies in the education field. Intersectionality with the socio-economic status ground was noted in particular. This focus on intersectionality, in the work of Equality Bodies and in the provisions made in equal treatment legislation, would appear to be somewhat under-developed.



4. Equality Body interventions in the field of education

Equality Bodies noted engagement in the full range of types of interventions open to them in this field of education: hearing cases; litigation; support for good practice; communication work; research; and policy advice. The nature of the interventions prioritised can be influenced by the Equality Body mandate, particularly in relation to Equality Bodies as multi-mandate bodies; and by the Equality Body functions, particularly in relation to Equality Bodies having a decision-making function.

An Equality Body leadership that is activist in its pursuit of goals in this field was noted as a key enabler. Multi-mandate bodies noted a valuable capacity to address the full spectrum of issues in the field of education.

Additional types of intervention were noted, in particular:

- including a focus on education issues as part of international reporting mechanisms under international human rights instruments, as well as advancing a focus on education in national monitoring of these instruments, in particular where Equality Bodies have a central role in the monitoring mechanisms required under the UNCRPD;
- cooperation and partnerships with other key institutions, in particular the Ombudsman for Children, School Inspectorate, School Teacher Training Centres, and local authorities with responsibilities in this field;
- dialogue and partnerships with civil society organisations working on equality in this field of education; and
- stakeholder meetings and joint initiatives with schools, universities and other relevant education stakeholders, including the Ministry of Education.

In engaging with these types of interventions the traditional barriers experienced by Equality Bodies emerge: limited resources, and limited competences.

Limited resources impede, in particular:

- the scale and reach of communication interventions,
- the scale and reach of support of good practice,
- the scale of research interventions, and
- the scale of litigation.

Lack of competences impedes, in particular, interventions of:

- hearing and investigating cases, for lack of powers to make legally binding decisions and to impose sanctions, with recommendations not being respected,
- litigation, for lack of legal standing to take cases, and
- providing policy advice, in terms of no requirement on the authorities to respond to recommendations and no mandatory underpinning for recommendations made by Equality Bodies.

A particular challenge noted in relation to **hearing cases** arises where the parents are responsible for making a request for a non-binding opinion of the Equality Body, and there is a challenge for the Equality Body in issuing a non-binding opinion in the best interests of the child where the parents' strategy might be perceived as contrary to these best interests. A further barrier in this field of intervention is lack of implementation of recommendations made and limited follow-up possible to secure implementation. More generally, limitations in the remedies and sanctions available were noted as a barrier in hearing cases and in litigation interventions.

A particular barrier noted in relation to **litigation interventions** was that of high levels of under-reporting. This can differ across the grounds and is particularly noted in relation to Roma. Own initiative casework was noted as important in such a context. Another barrier noted by some equality bodies is lack of competence among the judiciary in relation to this field of non-discrimination. The costs of legal proceedings and the length of time involved act as a barrier. There was some, though limited, focus noted on strategic litigation in this field and the work in this strand of intervention is largely reactive. Referral and access to pro-bono litigators has enabled interventions of litigation where Equality Bodies have lacked the necessary competences.

The work of Equality Bodies shifts from the reactive to a more proactive focus in providing policy advice and in supporting good practice. In this regard, the **provision of policy advice** by Equality Bodies was emphasised. This involves making submissions and recommendations in relation to policies, strategies, and legislative initiatives that relate to education. It includes participation on diverse working groups addressing this topic. It further involves making recommendations in relation to the education field in the annual reports of some Equality Bodies.

An inadequate engagement by the authority responsible for the policy, strategy or legislation was noted as a significant barrier to such policy advice interventions. The importance of transparent and timely processes or procedures for such interventions was emphasised, though noted as lacking in many instances. Building relationships with relevant actors in civil society and in the political parties was noted as enabling this work.

Action in support of good practice would appear to be less evident across the full range of equality bodies. Nonetheless, there was a significant body of work by Equality Bodies reported in supporting good practice, with a particular focus on training teachers and young people, but also on providing guidance and toolkits for teachers and schools and other relevant entities. The limited time and resources available to educational establishments and related institutions was noted as a barrier to their making this type of intervention. High levels in staff turnover, particularly in institutions responsible for developing policy and programmes, was noted as limiting the impact of such interventions. The potential of statutory equality duties to assist in interventions to advance good practice was noted.

In communication interventions, engagement in public debate in the media, and hosting webinars and organising events on topics related to this field were noted as valuable in advancing a public and political focus on inclusive education. Casework can be a useful foundation for media interventions by Equality Bodies. A further dimension to communication work was noted as being in relation to ensuring students are aware of their rights to non-discrimination and how to exercise these rights, including through information campaigns targeting students.

The challenge of scale was noted in this area of communications interventions in that the equality body is competing for attention in a space that is dominated by those institutions, with significant levels of resources, that would underpin embedded stereotypes. Another barrier noted was the disinformation and rumours spread by anti-gender movements and far right groups.

In relation to research interventions, a number of Equality Bodies have monitored and gathered equality data in this field. Data gathering was noted as critical in a context where the responsible authorities are not gathering the relevant data. Lack of such data was noted as a barrier to research activities in this field. Reports by Equality Bodies on the unequal

outcomes for some groups through the education system have been a basis for recommendations for positive action to address these.

Analysis of discrimination cases in the field of education, and reviews of current provision through the education system were noted as valuable topics for research initiatives.

Such data gathering and reports can also inform and feed communication interventions by the Equality Body. Research can also inform the search for policy influence. In Northern Ireland, for example, the Equality Body is developing a 'Statement on Equality in Northern Ireland' that includes education as a constituent part, which will highlight findings from analyses of data to identify differences in equality outcomes from a range of population indicators for each area of life.

Partnerships and strong networks with research institutes and universities, and with civil society organisations, was noted as having enabled research interventions by Equality Bodies.

Public trust in the Equality Body was noted as an important enabler for Equality Body interventions in the field of education.

Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gv.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudswoman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudsman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

KOSOVO*

Ombudsperson Institution
www.oik-rks.org

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

Commission for the Rights of Persons with Disability
www.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
ncpe.gov.mt

MOLDOVA

Equality Council
www.egalitate.md

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

Commission for Prevention and Protection against Discrimination
www.kszd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
bip.brpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
cite.gov.pt/web/pt

PORTUGAL

High Commission for Migration
www.acm.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

Slovak National Centre for Human Rights
www.snspl.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.igualdad.gob.es

SPAIN

Institute of Women
www.inmujeres.gob.es

SWEDEN

Equality Ombudsman
www.do.se

UKRAINE

Ukrainian Parliament Commissioner for Human Rights
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