

## Anti-Discrimination and Rights Policy

### I

1. The **Supreme Court of India**, in the case of ***National Legal Services Authority v. Union of India and Others (Writ Petition (Civil) No. 400/2012)*** para 55, page 62) in April 2014 has declared that, *“discrimination on the basis of sexual orientation and gender identity, impairs equality before law and equal protection of law and violates Article 14 of the Constitution.”*

Additionally, the Supreme Court has stated, in the case of Suresh Kumar ***Koushal and Anr. v. Naz Foundation and Others (Civil Appeal No. 10972 of 2013, para 38, page 77)***“... Section 377 IPC does not criminalize a particular people or identity or orientation.” Discriminating against persons on the basis of their actual or perceived sexual orientation and gender identity goes against the protection of the Constitution as stated above. Additionally, it also causes isolation, depression, lack of school belonging, fall in educational aspiration and suicidal ideation.

2. **Specifically stating that the school condemns discrimination and bullying based on “sexual orientation” or “gender identity” sends a clear message that everyone will be respected and be afforded equal access to opportunities in school regardless of their sexual orientation or gender identity.**

3. Accordingly, all schools, whether public or private, adopt the following policy for sexual rights and against discrimination. This policy applies to all students, staff (both, teaching non-teaching and visiting), school administration and visitors to the school. This policy applies both, at school (whether or not during school hours) and at all school outings and events. This policy is in addition to existing school policies against bullying and discrimination:

1. *“Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom...”* (The **Supreme Court of India**, in the case of ***National Legal Services Authority v. Union of India and Others (Writ Petition (Civil) No. 400/2012)*** para 20, page 16)).

Accordingly, everyone is entitled to respect and acceptance regardless of their actual or perceived sexual orientation or gender identity.

2. Everyone has a fundamental right against discrimination based on their actual or perceived sexual orientation or gender identity.
3. No one shall be discriminated against or bullied on the basis of actual or perceived sexual orientation or gender identity.
4. Everyone is guaranteed full and effective participation in school activities and classes and equality of access to all opportunities in school regardless of their actual or perceived sexual orientation and gender identity.
5. The **Supreme Court of India**, has, in the case of ***National Legal Services Authority v. Union of India and Others (Writ Petition (Civil) No. 400/2012) para 62, page 66*** held that, *“Article 19(1)(a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one’s right to expression of his self- identified gender. Self-identified gender can be expressed through dress, words, action or behaviour or any other form.”* Accordingly, everyone has a right to identify in their self-identified gender through dress, words, action or behaviour or through any other form.
6. Everyone is guaranteed the right to privacy. The right to privacy includes the choice to disclose or to not disclose information relating to one’s sexual orientation or gender identity, as well as decisions and choices regarding both one’s own body and consensual sexual and other relations with others (The Yogyakarta Principles, cited by the **Supreme Court of India**, in the case of ***National Legal Services Authority v. Union of India and Others (Writ Petition (Civil) No. 400/2012) page 22***).
7. All administrative personnel, school staff (whether teaching, non- teaching or visiting) and students shall receive continuing comprehensive sexuality education where true and

accurate information shall also be given about sexual orientation, gender identity related and related aspects of body image.

8. The **Indian Psychiatric Association** has issued a statement stating that, *“based on existing scientific evidence and good practice from the field of psychiatry, Indian Psychiatric Society would like to state that there is no evidence to substantiate the belief that homosexuality is a mental illness or a disease.”* Additionally, the **Supreme Court, in the case of National Legal Services Authority v. Union of India (Writ Petition (Civil) No. 400/2012) page 25)** has cited the Yogyakarta Principles adopted by several nations of the world. These Principles specifically state that, *“Notwithstanding any classifications to the contrary, a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.”* All school counselors must be in trained in accordance with these statements.
9. The staff (teaching and non- teaching) and the administration are required to intervene when they witnesses sexual orientation or gender identity related bullying or discrimination. Students are also encouraged to intervene when they witnesses such discrimination or bullying and inform the discriminator/bully that their behaviour is in contravention of this school policy.
10. Every school shall develop its procedure for complaint, enquiry and redress of incidents of bullying and discrimination. The redressal committee should be constituted by persons who are well trained in the field of sexuality. The committee should also contain some experts from outside the school. The procedure should be guided by the need to maintain the confidentiality of the complainant unless expressly authorized otherwise, the need to hear both the parties and the need for a redressal mechanism focused on teaching the errant, to respect persons regardless of their actual or perceived sexual orientation or gender identity. Punishments and suspensions should be used sparingly against students.

## II

### DEFINITIONS

**Bullying-** A person is being bullied or victimized when they are exposed, whether or not, repeatedly and over time, to negative actions by any member of the staff (teaching, non-teaching or visiting), administration or student body.<sup>1</sup> These behaviors include physical, verbal, and sexual victimization and sexual harassment, but also indirect and relational victimization, all or either of which are carried out either physically or virtually.

**Verbal victimization<sup>2</sup>-** Verbal victimization includes being called names, teased, insulted, or threatened to be hurt or beat up.

**Physical victimization<sup>3</sup>-** Physical victimization includes being threatened or injured with a weapon, punched, kicked, hit, beaten, pushed, chased or followed, spit on, having objects thrown one, and having property damaged or stolen.

**Sexual victimization<sup>4</sup>-** Sexual victimization includes rape and sexual abuse. It includes making someone the target of sexual jokes, comments, or gestures, being touched or grabbed in a sexual way, being flashed or mooned, and being pressured for a date. Sexual victimization includes the offences listed under the Indian Penal Code and the Protection of Children from Sexual Offences Act, 2013 and other laws in force for the time being in India.

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<sup>1</sup> This definition has been adopted from the definition of bullying propounded by Dan Olweus who is considered the pioneer in this field. The original definition can be found here. Dan Olweus, "Understanding and Researching Bullying: Some Critical Issues" in Shane R. Jimmerson et. al. ed. *Handbook of Bullying in Schools: An International Perspective* (New York: Routledge, 2010) at 9.

<sup>2</sup> Kate L. Collier et. al., "Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychosocial and Health Outcomes" 2013 50 (3-4) *Journal of Sex Research* 1.

<sup>3</sup> Kate L. Collier et. al., "Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychosocial and Health Outcomes" 2013 50 (3-4) *Journal of Sex Research* 1.

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**Relational victimization**<sup>5</sup>- Relational victimization includes purposefully excluded by peers from activities. Indirect victimization refers to behaviors such as having rumors or lies spread about oneself. It includes cyberbullying, being teased, or threatened by means of the internet, phone/text messaging, or through other electronic communication.

**LGBT**- LGBT stands for lesbian, gay, bisexual and transgender and along with heterosexual they describe people's sexual orientation or gender identity.

**Lesbian**- A lesbian woman is one who is romantically, sexually and/or emotionally attracted to women.

**Gay**- A gay man is one who is romantically, sexually and/or emotionally attracted to men.

**Bisexual**- A bisexual person is someone who is romantically, sexually and/or emotionally attracted to people of both sexes.

**Sexual Orientation**- Sexual Orientation refers to a person's enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes (The **Supreme Court of India**, in the case of *National Legal Services Authority v. Union of India (Writ Petition (Civil) 400/2012, para 20, page 16)*).

**Transgender**- Transgender is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to the stereotype of their biological sex. It includes Hijra (whether they have undergone the nirvana procedure or not) persons and many other counter-heteronormative identities such as Kinnar, Jogtas, Shiv- Shaktis, Jogappas, Aravani, Thirunangi, Kothi, Panthi, Khush, Giriya and many more. It includes transsexual persons and gender queer persons as well. Transgender includes persons who intend to undergo Sex Reassignment Surgery (SRS), who do not intend to undergo SRS or who have undergone SRS (these persons are specifically called transsexual persons) to align their biological sex with their gender identity to become biologically male or female. Not everyone whose appearance or

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<sup>5</sup> Kate L. Collier et. al., "Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychosocial and Health Outcomes" 2013 50 (3-4) Journal of Sex Research 1.

behaviour is gender-atypical will identify as a transgender person. Many transgender people live part-time or full-time in another gender. Transgender people can identify as transsexual or another gender identity. (Adopted from Supreme Court, ***National Legal Services Authority v. Union of India (Writ Petition (Civil) 400/2012 para 11, page 9)***).

**Gender Identity-** Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity includes within its definition, the right of an individual to ***self-identify***, without having to undergo any medical or psychological test, and irrespective of medical intervention, as a man, woman or transgender person. (Adopted from The Supreme Court of India, ***National Legal Services Authority v. Union of India (Writ Petition (Civil) 400/2012 para 19, page 15-16)***).