

Education HR Service

Equality and Diversity in Employment Policy

**The Bishop William Ward C of E
Primary School**

Changes to the policy – October 2013

The main changes are detailed below:

Item No:	Heading	Change details
8.1	Third Party Harassment	Removal of this provision following the repeal of s40 of the Equality Act by s.65 of the Enterprise and Regulatory Reform Act 2013.

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Equality and Diversity in Employment Policy

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1. Statement of Intent

The school / academy recognises the value of, and seeks to achieve, a diverse workforce which includes people from differing backgrounds, with different skills and abilities. The school/academy will take positive steps to create an employment culture through its governing body, managers and other employees, workers and volunteers, in which people can feel confident of being treated with fairness, dignity and tolerance, irrespective of their individual differences. This commitment extends to the whole school/academy community and others connected with it. This policy complements other equalities policies within the school/academy.

2. Objectives of the policy

The school will uphold its obligations under law not to discriminate in any of its activities against employees or applicants for employment on the grounds of their sex, sexual orientation, marriage and civil partnership, disability, race (which includes colour, nationality and ethnic or national origins) age, religion or belief. The protected characteristics within the Equality Act 2010 are given in Section 5.

The school/academy further seeks to ensure fair treatment to all jobseekers and employees on employment matters whether or not their personal circumstances and differences are covered by the law and to consider the practicality of accommodating the particular needs of all groups.

The school has in place a range of policies, procedures and practice in relation to recruitment, selection, employment, training and development which support and complement its Equality and Diversity in Employment Policy and it will operate these in a way which is consistent with the objectives of this Policy. The school/academy will provide training to ensure that everyone understands the Equality and Diversity in Employment Policy and the legal position underpinning it.

Behaviour or actions by members of staff against the spirit and/or the letter of the law or this policy will be considered serious disciplinary matters and may in some cases, lead to dismissal.

This policy deals with matters of employment in the broadest sense, and this includes the protection of staff from harassment, discrimination or victimisation by any member of the school/academy community or other persons connected with it.

3. Responsibilities

It is recognised that everyone influences how equality is achieved and that everyone has a responsibility to uphold the law and principles of equality of opportunity. In addition to these general responsibilities, there are other specific responsibilities.

The Governing body has responsibility for:

- supporting the implementation of the equality and diversity in employment policy;
- ensuring employment and recruitment policies and practice are non-discriminatory in word and operation;
- collating, analysing and monitoring policy and practice, initiating appropriate action;
- ensuring complaints are investigated and dealt with effectively;
- ensuring appropriate training takes place for governors and employees.

Headteacher and other managers have responsibility for:

- ensuring that the equality and diversity in employment policy is implemented in employment and management practices;
- ensuring the policy is brought to the attention of all employees/workers/volunteers and that they all receive appropriate training;
- encouraging good practice and dealing appropriately with breaches of this policy;
- monitoring the operation of relevant policies and procedures;
- a member of the senior management team is the nominated lead on equalities issues.

All employees, volunteers and workers have a responsibility to:

- act within equal opportunities legislation and to comply with the school/academy policy;
- take part in training and comply with measures introduced to ensure equal opportunities and non-discrimination;
- report to their line manager, or other appropriate person, any breaches of this policy enacted against him/herself or another person by another employee, pupil or another person connected with the business of the school/academy.

4. Monitoring

The school recognises that equality of opportunity can only be achieved by monitoring what is actually happening and then using this information to modify and improve future practice. The school/academy will monitor the application of its policies and procedures and their impact on

staff and applicants and revise them as necessary. In accordance with the Data Protection Act, all data will be used in such a way as to preserve anonymity.

The new single Equality Duty (which comes into force 6 April 2011) covers the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

In accordance with the general duty, the school will be proactive in the elimination of discrimination, harassment, victimisation and any other conduct that is unlawful under the Act; the advancement of equality of opportunities and fostering good relations between employees.

In accordance with the specific duty, the school (if employing 150 or more employees) will publish information on its policies and practices that have had an effect on its employees in its annual reports by no later than 31 December 2011.

5. Legal Definitions

5.1 Direct discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (perceptive discrimination see 5.1.1) or because they associate with someone who has a protected characteristic (associative discrimination see 5.1.2).

No-one will be directly or indirectly discriminated against on the grounds of their:

- Age
- Disability or Health
- Gender re-assignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race (which includes ethnic origin; colour or nationality)*
- Religion or belief
- Sex
- Sexual orientation

* other than as allowed for by legislation in schools/academies with a religious character, whereby certain regard and preferences may be given in certain circumstances in respect of appointment, remuneration, promotion and termination. See Appendix B.

5.1.1 Associative discrimination

Associative discrimination is discrimination against a person because they have an association with someone with a 'particular protected characteristic'. Associative discrimination applies to race, religion, belief and sexual orientation age, disability, gender reassignment and sex.

5.1.2 Perceptive discrimination

Perceptive discrimination is discrimination against a person because the discriminator thinks the person possesses that characteristic, even if in fact, they do not. Perceptive discrimination applies to age, race, religion, belief, sexual orientation, disability, gender reassignment and sex.

5.1.3 Proportionate means of meeting a legitimate aim

Indirect discrimination can be justified if you can show that you acted reasonably in managing your school i.e. that it is 'a proportionate means of achieving a legitimate aim'.

A legitimate aim might be any lawful decision you make in running your school, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that you have looked at 'less discriminatory' alternatives to any decision you make.

Example - the long term aim of reducing inequality between men's and women's pay is always to be regarded as a legitimate aim for the purposes of justifying pay practices that indirectly discriminate against women. Therefore, short term pay protection schemes introduced with the aim of removing long-term inequalities in pay may be capable of being objectively justified, provided that their use is a proportionate way of achieving that aim.

5.2 Indirect discrimination

Indirect discrimination can occur when a condition, rule, policy or even a practice in the school is applied to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if the school/academy can show it acted reasonably, for example that it is a 'proportionate means of achieving a legitimate aim'. (See 5.1.3)

Indirect discrimination applies to age, race, religion or belief, sex, sexual orientation, marriage and civil partnership, disability discrimination and gender reassignment.

5.3 The Protected Characteristics

While the school is committed to not discriminating on any grounds, there are "certain protected characteristics" in law. The following defines the protected characteristics under the Equality Act.

5.3.1 Age

The Act protects people of all ages from unlawful discrimination,

Direct discrimination - treating someone less favourably because of their actual or perceived age, or because of the age of someone with whom they associate. E.g. advertising for job applicants less than 25 years only. This treatment can only be justified if it is a proportionate means of achieving a legitimate aim.

Indirect discrimination – can occur where there is a policy, practice or procedure which applies to all employees, but particularly disadvantages people of a particular age. For example, a requirement for job applicants to have worked in a particular industry for 10 years may disadvantage younger people. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

The Act continues to allow employers to have a default retirement age of 65 until April 2011.

5.3.2 Disability

Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport. Long term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life. Substantial means more than minor or trivial. In most circumstances, a person will have the protected characteristic of disability if they have had a disability in the past, even if they no longer have the disability.

Employers must make reasonable adjustments in the recruitment and employment of disabled people. This can include, for example, adjustments to recruitment and selection procedures, to terms and conditions of employment, to working arrangements and physical changes to the premises or equipment. In assessing the reasonableness of the adjustment, the employer will consider:

- proportionality and impact of the adjustment on the role
- the costs/financial support available
- medical opinion from the employee's doctor and the occupational health advisor.
- impact on the operational requirements of the school.

Direct discrimination – treating someone less favourably than other employees due to an actual or perceived disability, or because they associate with a disabled person.

Indirect discrimination – An example would be where an individual has a tendency to make spelling mistakes arising from dyslexia. This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

Note: In accordance with the new Act, employers may not request information concerning an individual's sickness and attendance record prior to the selection stage. Once the preferred candidate has been selected, then sickness and attendance records can be obtained from the

referee and applicant, as part of the pre-employment checks prior to a firm offer. The interview panel may not ask general questions about the individual's sickness and attendance record but may ask relevant questions to establish whether the applicant will be able to carry out a function that is intrinsic (e.g. majority of the work involves manual handling) to the work concerned once reasonable adjustments are in place;

5.3.3 Gender reassignment

The Act defines gender reassignment as a protected characteristic. This applies to people who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex. Gender reassignment is a personal process, that is moving away from one's birth sex to the preferred gender, rather than a medical process.

Protection is provided where, as part of the process of reassigning their sex, someone is driven by their gender identity to cross-dress, but not where someone chooses to cross-dress for some other reason.

In order to be protected under the Act, there is no requirement for a transsexual person to inform their employer of their gender reassignment status. However, if an employee is proposing to undergo gender reassignment or is still in the process of transitioning, they may want to discuss their needs with their employer so the employer can support them during the process.

Where an individual has been diagnosed as having 'gender dysphoria' or 'gender identity disorder' and the condition has a substantial and long term adverse impact they may also be protected under the disability discrimination provisions of the Act.

Direct discrimination – treating someone less favourably than other employees because of their gender reassignment, whether actual or perceived, or because they associate with someone who intends to undergo, is undergoing or has undergone gender reassignment.

Indirect discrimination – An example would be where an employer starts an induction session for new staff with an ice-breaker designed to introduce everyone in the room to the others. Each employee is required to provide a picture of themselves as a toddler. One employee is a transsexual woman who does not wish her colleagues to know that she was brought up as a boy. When she does not bring in her photo, the employer criticises her in front of the group for not joining in. It would be no defence that it did not occur to the employer that this employee may feel disadvantaged by the requirement to disclose such information. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

5.3.4 Marriage and civil partnership

The Act protects employees from discrimination on the grounds of being married or in a civil partnership.

Marriage will cover any formal union of a man and woman which is legally recognised in the UK as a marriage. A civil partnership refers to a registered civil partnership under the Civil Partnership Act 2004, including those registered outside the UK.

Only people who are married or in a civil partnership are protected against discrimination on this ground. The status of being unmarried or single is not protected. People who only intend to marry or form a civil partnership, or who have divorced or had their civil partnership dissolved, are not protected on this ground.

Direct Discrimination - treating someone less favourably than other employees on the grounds of them being married or in a civil partnership, actual or perceived, or because they are associated with a person who is married or in a civil partnership.

Indirect Discrimination – An example of this could be where an applicant for a job is treated less favourably because it is considered that they will not be as committed to the job as a single person because they have marital or partnership commitments.

5.3.5 Pregnancy and maternity

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

Direct discrimination – treating someone less favourably because of their actual pregnancy or perceived pregnancy, or because of the pregnancy of someone with whom they associate.

Indirect discrimination - An example could be where an employee has been off work because of pregnancy complications since early in her pregnancy. Her employer has dismissed her in accordance with the sickness absence management policy. This policy is applied regardless of sex. The dismissal is unfavourable treatment because of her pregnancy and would be unlawful even if a man would be dismissed for a similar period of sickness absence, because the employer took into account the employer's pregnancy related sickness absence in deciding to dismiss. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

5.3.6 Race

For the purposes of the Act, 'race' includes colour, nationality and ethnic or national origin. A person has the protected characteristic of race if they belong to a particular racial group. A racial group can be made up of two or more different racial groups (for example Black Britons).

Direct discrimination – treating someone less favourably because of their actual or perceived race, or because of the race of someone with whom they associate.

Indirect discrimination – can occur where there is a policy, practice or procedure which applies to all employees, but particularly disadvantages people of a particular race. An example could

be a requirement for all job applicants to have GCSE Maths and English: people educated in countries which don't have GCSE's would be discriminated against if equivalent qualifications were not accepted. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

5.3.7 Religion or belief

In the Equality Act, religion includes any form of religion which has a clear structure and belief system. It also includes a lack of religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

Belief means any religious or philosophical belief or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Examples of philosophical beliefs include Humanism and Atheism. Political beliefs are not protected.

A belief which is not a religious belief may be a philosophical belief. A belief need not include faith or worship of a God but must affect how a person lives their life or perceives the world.

For a philosophical belief to be protected under the Act:

- It must be genuinely held
- It must be a belief and not an opinion or viewpoint based on the present state of information available;
- It must be a belief as to a weighty and substantial aspect of human life and behaviour;
- It must contain a certain level of cogency, seriousness, cohesion and importance;
- It must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

Direct discrimination – treating someone less favourably because of their actual or perceived religion and belief, or because of the religion or belief of someone with whom they associate. (See Appendix B)

Indirect discrimination – An example would be where a school announces that from next month staff cannot wear their hair in dreadlocks, even if the locks are tied back. This is an example of a policy that has not yet been implemented but which still amounts to a provision, criterion or practice. The decision to introduce the policy could be indirectly discriminatory because of religion or belief, as it puts the employer's Rastafarian employees at a particular disadvantage.

The employer must show that the provision, criterion or practice can be objectively justified. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

5.3.8 Sex

A person's sex refers to the fact that they are male and female.

Direct discrimination – treating someone less favourably because of their actual or perceived sex, or because of the sex of someone with whom they associate.

Indirect discrimination – can occur where there is a policy, practice or procedure that applies to all employees, but particularly disadvantages employees of a particular sex. For example, a requirement that job applicants must be six feet tall could be met by significantly fewer women than men. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

5.3.9 Sexual orientation

Sexual orientation is a protected characteristic. It means a person's sexual orientation towards:

- persons of the same sex (i.e. the person is a gay man or a lesbian);
- persons of the opposite sex (i.e. the person is heterosexual); or
- persons of either sex (ie the person is bisexual)

Sexual orientation relates to how people feel as well as their actions. Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation and it also covers discrimination connected with manifestations of that sexual orientation. These may include someone's appearance, the places they visit or the people they associate with.

Direct discrimination – treating someone less favourably because of their actual or perceived sexual orientation, or because of the sexual orientation of someone with whom they associate.

Indirect discrimination – an example would occur if an employer only placed a job advert in newspapers aimed at gays and/or lesbians as heterosexuals tend not to read such publications. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

5.3.10 Equal pay

The Equality Act retains the Equal Pay Act 1970 that was previously in place which provides that men and women should receive equal pay for equal work. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment. However, the Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they

would have received better remuneration from the school if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work with the school. This would be a claim under sex discrimination.

5.3.11 Pay secrecy

The school will not prevent or restrict its employees from having discussions to establish if they believe pay differences exist that are related to a protected characteristic. The school may, in particular circumstances, require its employees to keep pay rates confidential from outside the workplace e.g. a competitor organisation.

6. Occupational requirements

The school may where appropriate, exercise the powers available to appoint a person from a particular group, where there is a genuine occupational requirement.

Faith/Catholic Aided schools only

The school may also exercise the power conferred by the School Staffing Regulations 2009 and Standards and Framework Act 1998, and any subsequent amended/replacement legislation, in relation to staffing matters, connected with the religious character of the school. See 5.1 & Appendix B.

7. Positive action

Positive action describes measures targeted at a particular group that are intended to redress past discrimination or to offset the disadvantages arising from existing attitudes, behaviours and structures. The school may use lawful measures which can include:

- Targeting job training at people of particular racial groups, or either gender, who have been under-represented in certain occupations or grades during the previous 12 months, or encouraging them to apply for such work.
- Providing facilities to meet any specific educational, training, or welfare needs identified for a specific racial group
- Measures to provide training and special encouragement for returnees to the labour market after a period of time discharging domestic or family responsibilities.
- Special encouragement such as targeted advertising and recruitment literature, reserving places for one gender training courses or providing taster courses in non-traditional areas.

Positive discrimination generally means choosing someone solely on the grounds of their gender or racial group and not on their abilities. The school will not use positive discrimination as this is illegal under UK anti-discrimination law.

8. Harassment, bullying and victimisation

The school regards all forms of harassment and bullying as unacceptable and perpetrators are liable to action under the grievance and disciplinary procedures. Similarly, victimisation of employees who complain of discrimination or harassment or who come forward in their support will result in disciplinary action against the perpetrator.

Harassment can be defined as “improper, offensive and humiliating behaviour, practices or conduct, which may threaten a person’s job security, create an intimidating, unwelcoming and stressful workplace, or cause personal offence or injury.”¹ ACAS

Harassment can often be identified by a series of what seem to be ‘trivial’ incidents. Furthermore it is the impression of the harassed person, not the intentions or motivations of the harasser, which are important.

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees can now complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception (see 5.1.1) and association (see 5.1.2).

Bullying may be characterised as “Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”. (ACAS).

Victimisation is where an employee suffers less favourable treatment than others in the same circumstances, because they have brought proceedings or given evidence or information relating to such proceedings, or has alleged that discrimination occurred under relevant legislation.

An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

¹ ACAS – Advisory Conciliation and Arbitration Service

9. Complaints

Existing employees of the school who feel they have been unfairly discriminated against, harassed, bullied or victimised should raise it in the first instance with their line manager or other manager where their own line manager is the subject of the complaint. Employees should refer to the grievance procedure for further information.

Members of the public who may be concerned that their application for employment has not been dealt with in accordance with this policy should raise their concerns via the school/academy complaints procedure.

Visitors or other members of the school community who experience or witness discrimination, bullying, harassment or victimisation should report the matter to the head teacher/principal.

All concerns raised with the School will be handled in a positive and sensitive matter and in accordance with the appropriate policy/procedure.

Appendix A

Supporting organisations and documentation

i. **The European Human Rights Guidance on the Equality Act 2010**

The Equality and Human Rights Commission provides guidance and good practice advice on the Equality Act. It includes guidance for employers and education providers.

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

ii. **Disability Services in Essex**

An easy-to-use guide containing information about groups and organisations that support disabled people (including information on financial advice, support groups and other disabled services) can be found at

<http://www.essex.gov.uk/Health-Social-Care/Care-for-Adults/Easy-Guide-Services/Pages/Disability-Services.aspx>

There is also an information advice line available from Disability Essex manned by disabled volunteers and operates from Monday to Friday each week. The helpline is available on 0844 412 1770.

iii. **Employers forum on disability**

Essex County Council is a member of this forum. The forum provides legal updates and briefing sheets on disability issues such as guides on adjustments for people with visual and hearing impairments, with progressive or fluctuating conditions, with mental health problems, with dyslexia and, a practical guide to Health and Safety and the Equality Act. Information or details of publications are available from the forum helpline on 0207 403 3020.

iv. **Equality and diversity in employment policy**

This policy covers statement of intent, objectives, definitions, legal context, responsibilities and complaints procedures.

v. **Fixed-term employees - guidance**

This is advice about the Fixed-term Employees Regulations 2002 which prevents unlawful discrimination against staff on the basis of their fixed-term status.

vi. Grievance procedure

This is a procedure for dealing with complaints of unfair treatment including allegations by members of staff of harassment or bullying.

vii. Part-time working – legislative framework and best practice guidance

This is a guide about the Part-time Employees Regulations 2002 which provides advice and guidance for school/academy about flexible working and fair and equal treatment of part-time staff.

viii. Pre-employment checks procedure

This procedure sets out the requirements and procedures for obtaining pre-employment checks.

ix. Recruitment policy

This policy set out safer recruitment and selection procedures with guidance on legal requirements and best practice.

Appendix B

Staffing Regulations 2009 - Guidance on Managing Staff Employment in Schools. Chapter 9 - Staff at Schools with a Religious Character

For Voluntary Aided Schools Only

The governing body may give preference with regard to the appointment, remuneration and promotion of teachers at the school, to persons

- whose religious opinions are in accordance with the tenets of the school; or
- who attend religious worship in accordance with those tenets; or
- who give, or are willing to give, religious education at the school in accordance with those tenets.

The governing body may have regard, in connection with the termination of the employment of a teacher, to any conduct by which is incompatible with the precepts of, or with the upholding of the tenets of the school.

Items i) and ii) also apply to reserved teachers in foundation and voluntary controlled schools with a religious character.

When appointing a head teacher who is not to be reserved teacher, the governing body with a religious character may have regard to that person's ability and fitness to preserve and develop the religious character of the school.

Reserved teachers - where the number of teachers at foundation and voluntary controlled schools with a religious character is more than two, the teachers shall include persons who are selected for their fitness and competence to teach religious education in accordance with the school's trust deed or with the tenets of the school and are specifically appointed to do so. These are known as 'reserved teachers'. The number of reserved teachers must not exceed one fifth of the total number of teachers including the head teacher. The head teacher can be selected on these grounds but must count towards the one fifth quota (s 58 of the School Standards and Framework Act 1998).

Support staff

Voluntary aided schools may discriminate on religious grounds where being of a particular religion or religious denomination is a genuine occupational requirement (GOR) (Employment Equality (Religion or Belief) Regulations 2003).

It must not be assumed that a 'blanket' approach to GOR can be applied to all support staff. The governing body must be able to demonstrate that it is reasonable and proportionate for an employee to be of a particular religion or belief for the job in question.

The governing body cannot apply religious criteria in connection with the employment of a member of the school's support staff who was in employment at the school on 1 September 2008, for as long as they continue to be employed at the school.

When considering whether a GOR might apply, governing bodies should consider the following issues:

- Do the duties for which the GOR is claimed represent a substantial part of the post and would the objectives of the job be achieved without the application of the faith requirement?
- Does the school have sufficient employees who could carry out the duties without undue inconvenience?

A GOR cannot be used to maintain a balance or quota of employees of a particular religion or belief.

The governing body should periodically consider whether the requirement continues to apply, particularly when recruiting, as jobs may change over time.



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