

### School Improvement Liverpool

# RACE EQUALITY GUIDANCE



This guidance will explore legal requirements as well as practical approaches in tackling racist and other prejudice related incidents.

## Foreword

This guidance has been produced in order to support schools in preventing and dealing with racist incidents.

The Guidance is supported by three Professional Development Modules, each offering further exploration of key themes.

The guidance will contribute to other materials in dealing with prejudicerelated incidents.



## Contents

- **04** Introduction
- **05** Legal position
- **07** Equality Act
- 11 What do we mean by a racist incident?
- 18 Supporting the victim of racist bullying
- 19 Engaging the victim's parents

- **20** Dealing with the perpetrator
- **22** Recording and reporting
- 23 Prevention is better than cure
- **24** Formal complaints
- **27** Sources



## Introduction

Racism in any form is damaging to society in general and particularly to those groups in society against whom it is directed. Schools have a vital role in the prevention of racism in society generally.

Racist bullying is a particularly direct and often violent form of racism which can occur in any school regardless of the numbers of pupils from different ethnic groups within the school.

As schools will be aware, avoiding discrimination and promoting equality supports attainment and progression for all pupils.

### This guidance recognises that schools have a duty to:

- Tackle racist incidents, including incidents involving members of the school community that occur beyond the confines of the school;
- Promote race equality and good race relations.

### It supports schools in:

- Understanding their legal responsibilities in this area;
- Understanding about the impact of racist bullying on individuals and the wider school community;
- Reviewing key aspects of policy and practice in relation to tackling incidents;
- Recognising racist incidents and responding appropriately;
- Developing procedures for recording, reporting and monitoring racist incidents;
- Developing effective strategies towards their prevention as part of overall Behaviour,
   Equality and Safeguarding policies.

### Who is this guidance for?

This guidance is for all school staff, head teachers and governors. It may also be useful for parents and carers.

It replaces previous guidance and outlines School Improvement Liverpool's approach to racism, racial discrimination and racist bullying. It also lists further resources through which school staff can access specialist information on the specific issues that they face.

## The Legal Position

Schools' responsibility to tackle bullying was set out clearly in Section 89 of the **Education and Inspections Act 2006**:

- Provides that every school must have measures to encourage good behaviour and prevent
  all forms of bullying amongst pupils. These measures should be part of the school's
  behaviour policy which must be communicated to all pupils, school staff and parents;
- Gives head teachers the ability to discipline pupils for poor behaviour that occurs even when the pupil is not on school premises or under the lawful control of school staff

The Government made their commitment to tackle bullying very clear in the **White Paper** 'The importance of teaching,' 2010. It described the negative impact on achievement of bullying and head teachers' responsibilities were reinforced:

112. All pupils should be able to learn in safety, but we know that bullying is a significant problem for many children and young people: this is unacceptable. In a recent study, pupils who reported being bullied during a three year period did substantially worse in their GCSEs than those who reported no bullying. Government cannot address this problem directly because it is head teachers, not the Department for Education (DfE), who set the culture in schools. So it is essential that head teachers should put the expectations and processes in place to make sure that bullying will be identified and swiftly addressed. The role Government can play is to provide head teachers with easy access to the highest quality tools for the job and ensure that they are appropriately held to account.

113. We are clear that a school's anti-bullying approach must not be blind to race, gender, sexuality, faith or disability. A head teacher who is effective in handling bullying ought to know whether there is a particular prevalence of any types of prejudice-based bullying in the school, and be shaping their approach in response to make sure any such incidents are taken especially seriously.



Schools should have a policy and Code of Practice to address bullying which is shared and understood by the whole school community. Racist bullying should be clearly identified within this policy.





## The Equality Act

The Equality Act 2010 replaced and consolidated all existing equality legislation such as the Race Relations Act, Disability Discrimination Act and Sex Discrimination Act. The Act provides a single source of discrimination law making it unlawful to discriminate against pupils because of their race, disability, religion or belief or sexual orientation. These are referred to as 'protected characteristics'.

The Act defines four kinds of unlawful behaviour:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

#### **Duties under the Act**

Schools have **one general duty** under this act, but there are three tasks in this single general duty.

They must have due regard to the need to:

- Eliminate discrimination and other conduct that is prohibited by the Act;
- Advance equality of opportunity between people who share protected characteristics and those who do not share it:
- Foster good relations between people of all characteristics i.e. across all groups.

**'Due regard'** has been defined as giving relevant and proportionate consideration to the duty. For schools this means:

- Decision makers in schools must be aware of the duty to have 'due regard' when making a
  decision or taking an action and must assess whether it may have implications for people
  with particular protected characteristics;
- Schools should consider equality implications before and at the time that they develop
  policy and take decisions, not as an afterthought, and they need to keep them under
  review on a continuing basis;
- The Public Sector Equality Duty [PSED] has to be integrated into the carrying out of the school's functions, and the analysis necessary to comply with the duty has to be carried out seriously, rigorously and with an open mind it is not just a question of ticking boxes or following a particular process.

The specific duties are the arrangements schools might make in order to fulfil their obligations under the general duty. The **specific duties** require schools to:

Publish information to demonstrate how they are complying with the Equality Duties;
 Prepare and publish equality objectives\*.

The objectives should clearly illustrate what the school intends to achieve. They should be designed to address key inequalities that the school is in a position to address, and identify measurable improvements.

\*Schools should have published their initial information and first set of objectives in April 2012. They will need to update the published information at least annually and to publish objectives at least once every four years.

### **Enforcement of the Duties**

Enforcement mechanisms are similar to those in place for existing legislation.

### The 'Questions Procedure'

If a pupil believes that they have been discriminated against or harassed by the school then, before deciding whether to bring a case to court, they can ask questions of the school about their treatment.

The aim is to help establish the facts so that problems can be addressed at local level.

If a school fails to respond to the pupil's questions within 8 weeks or their response is vague or inadequate it could be viewed negatively by a court. The only exception to this would be if the school believed that giving a different response would have an impact on any criminal matters or proceedings.

A pupil or their representative can bring a case in the county court if they believe that the school has discriminated against them. Proceedings must be brought within 6 months of the contravention of the Act occurring.

If the court rules that a contravention of the Act has taken place, it can award an appropriate remedy, including damages.

### **Ofsted**



As a public body, Ofsted is also bound by the public sector equality duty (PSED) of the Equality Act 2010 and therefore is required to have due regard for equalities in its inspections and reports.

Although Ofsted no longer makes an explicit judgement about Community Cohesion, 'inspectors will evaluate... pupils' behaviour towards, and respect for, other young people and adults, including freedom from bullying and harassment that may include cyberbullying and prejudice-based bullying relating to special educational need, sexual orientation, sex, race, religion and belief, gender reassignment or disability'.

Inspectors will also '...take into account a range of evidence to judge behaviour and safety over an extended period and should consider... types, rates and patterns of bullying and the effectiveness of the school's actions to prevent and tackle all forms of bullying and harassment'.

Inspectors must check whether 'there are clear procedures for dealing with prejudice related bullying and incidents, and appropriate staff training that equips staff to identify and deal with this effectively'.

They will also consider how well the school promotes four kinds of personal development:

- Spiritual
- Moral
- Social
- Cultural.

particularly with reference to how pupils develop the skills and attitudes which enable them to participate fully and positively in multicultural Britain, and understand and appreciate the range of different cultures within school and beyond.



The Department for Education (DfE) has made it clear that they '... expect to see that the school community is a cohesive community, that children respect one another and behave with respect to one another and that their parents feel fully engaged in the school.'

### **Hate Crime**

The introduction of Hate Crime as a criminal offence reflects the seriousness with which the law takes racist incidents. Hate crime is defined as any criminal offence that is motivated by hostility or prejudice based on the victim's:

- Disability
- Race
- · Religion or belief
- Sexual orientation
- Transgender identity.

If schools feel that an offence may have been committed they should seek advice from the police.





## What do we mean by a 'racist incident'?

### **Understanding the terminology**



- Developing a shared understanding of some key terminology will help avoid confusion and misunderstandings.
- Race means a person's colour, and/or nationality and/or ethnic or national origin.
- A racial group is composed of people who have or share a colour, nationality, ethnic or national origins.
- A person has the protected characteristic of race if they belong to a particular racial group, such as 'British people'.
- Racial groups can comprise of two or more racial groups such as 'British Asians'.
- Colour blind approaches that profess to treat all people the same actually undermine equality.
- Recognising differences is an essential prerequisite for valuing and respecting diversity.



#### **Institutional racism**

Institutional racism was defined by the <u>MacPherson Report (1999)</u> as: The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage ethnic minority people.

This definition did not suggest that all institutions were racist, but since then schools have taken great care to examine their policies and practices to guard against disadvantaging any section of their community through indirect discrimination.

Can you think of any situations where a school might indirectly discriminate against a group of pupils?

- PAUSE FOR THOUGHT...



### **Racist incidents**

### The Home Office Code of Practice on Recording and Reporting Racist Incidents (April

**2000)** defined a racist incident as "any incident which is perceived to be racist by the victim or any other person". It makes clear that this definition does not in any way prejudge the outcome of any investigation into racist incidents, but ensures that all incidents are examined for the possibility of a racial dimension.

How do you ensure that all members of the school community know and understand key terms around race equality?

- PAUSE FOR THOUGHT...



### Differences between bullying and racist incidents

It is important that schools understand the difference between racist bullying and other forms of bullying.

All forms of bullying are hurtful and need to be addressed. Racist bullying is far more serious in that whilst bullying tends to affect the individual, racist bullying can have a significant impact beyond the individuals concerned.

Racist bullying affects other members of the same group in the school, the victim's family and their community. Quite often attacks are not just on the individual but their values, customs, culture, religion and traditions. Family honour and history may be besmirched.

There is a long history of racism affecting people across the world. Unfortunately, children do not necessarily grow out of it. If racist behaviour is not addressed it can lead to violent attacks and murder as in the in the case of Stephen Lawrence and Anthony Walker.

Because of the far reaching implications of behaviour motivated by racism, it is important to tackle any racist abuse whatever the preceding events, as wrong. The response to the racist incident must be completely removed from any investigation of behaviour which may have prompted the abuse and dealt with separately. The opportunity should be taken to establish clearly that racist abuse is wrong in any circumstances. This should be made clear to all concerned.

Equally important is the need to recognise that some pupils experience racism on a regular basis outside school. They may react very angrily or violently to incidents that occur in school. Schools need to be mindful when dealing with this kind of retaliation that the victim does not end up being punished for their response whilst the perpetrator gets off lightly in comparison.

### Racist incidents may include:

- Verbal abuse or threats hostile, deliberately derogatory, hurtful, insulting and generally
  negative remarks about a person's skin colour, ethnicity, religious beliefs, nationality, language
  or cultural background. The most common form of verbal abuse is name-calling, sometimes
  not taken as seriously as other forms of racist behaviour, however, the impact of this can be
  devastating. 'Bruises heal. Words cannot be unsaid.'
- Racially motivated damage to personal belongings
- Racist jokes, insults and comments
- Acts of violence against someone or a group of people because of their colour, race, nationality or religion
- Shunning other pupils or refusing to work with them because of their race, religion, colour, ethnicity, nationality
- Racist graffiti on books, walls, desks
- Distributing racist material or literature or bringing it into school
- Wearing badges or other insignia associated with racist organisations (provocative behaviour)
- Cyberbullying through texts, e-mail, Facebook and mobile phones
- Use of racist terms or comments during classroom discussions
- Mocking cultural or religious symbols or customs e.g. dress, food, language
- Encouraging others to join racist organisations
- Encouraging others to behave in a racist way/incitement





#### What to do

Dealing with such incidents can present a challenge to many members of staff. However, failure to respond to them can be perceived as condoning them and inaction towards what might be considered as minor incidents can lead to more serious incidents in the future.

It is therefore crucial that schools have in place clear and robust systems for dealing with racist incidents and that staff feel confident and supported in recognising them and responding appropriately. All schools should have clear procedures in place for dealing with racist incidents. These should be written in consultation with the staff, governors, pupils and parents.

All members of the school community, i.e. teachers and other practitioners, governors, administrative staff, support staff including lunchtime and site supervisors, and anyone else who may be working in the school, need to be aware of and understand these procedures.

Training for the whole staff is essential.

The Governing Body is ultimately responsible for ensuring the school meets its obligations. Nominate a governor to oversee this as part of a wider role in ensuring the head teacher and staff promote Race Equality.

Identify a member of the School Leadership Team to ensure incidents are recorded on a form. The different ethnic groups used for statistical reporting should be used on these forms to record the ethnicity of the victim[s] and the perpetrators of incidents of racist bullying.

The Governing Body should be informed of the number and nature of incidents each term.

An analysis of incidents should form part of the school's ongoing monitoring of its policies and procedures and inform development planning in relation to Race Equality.

### When dealing with racist incidents schools need to be mindful that:

- The role of the media in presenting and perpetrating negative stereotypes cannot be underestimated. Such stereotyping must be understood and challenged.
- National and local tensions and conflicts overseas can increase the likelihood of racial incidents. Schools need to anticipate their response to such events.
- No one should have to experience racism. Incidents need to be responded to immediately even if further investigation is required later. A quick response sends a clear message to all about the seriousness with which the school takes such incidents.
- If a response is delayed, it may be interpreted that the school condones such behaviour and might make the victim and their family view the school negatively. They may lose confidence in the school's willingness to act and may take matters into their own hands.
- The ethos of the school and the explicit values modelled are important in determining pupils' attitude and behaviour.
- Responses are seen by pupils and parents to be clear and consistent.
- Procedures are flexible to allow for professional judgement. Different situations will require different responses, but all incidents must be treated as serious.
- Pupils and parents are kept informed of the school's action at all stages.
- Procedures make clear the respective responsibilities of Governors and staff in investigating incidents which have been observed but not reported by the victim.
- The victim's family has the support they need.
- Action may be needed to address the impact on the wider school community.
- Steps are taken to ensure that good race relations are restored.



## Supporting the victim of the racist bullying

It is important that the pupil who has experienced the incident feels safe, secure, listened to and supported.

Where the incident is unintentional, the focus should be on counselling and education rather than punishment. Where it is intentional, the emphasis needs to be on ensuring the perpetrator understands the impact that their actions have had on the victim and that such behaviour is unacceptable.

### **Key actions**

- Reassure the pupil that the school views all forms of racism very seriously.
- Explain that the incident will be investigated in line with existing school procedures.
- Allow the pupil to explain what has happened. Give them time to talk initially.
- Encourage them to talk about how they feel.
- Ask the pupil what they would like to happen and agree the course of action to be taken.
- Confirm when you will meet with them again.
- Check that the pupil feels satisfied with the way in which the incident has been dealt with. Victims should never be made to feel that it is their fault.
- Reinforce the notion that the school believes that all people should be treated equally.
- You may need to monitor the pupil over time.
- Sometimes victims say that they do not want to have incidents investigated. They do not want to 'cause a fuss'. In such cases the school needs to explain that racist behaviour is not acceptable and will not be tolerated. Where an act is detrimental to the school ethos and the community, the school must act, especially if the incident constitutes a crime!
- Consider the particular vulnerability of children with special educational needs who may also be victims of racist bullying but who may find communicating their position and feelings difficult.
- Staff should be sensitive to the issue of retaliation which may be a reaction to a long series of relatively minor incidents that the victim feels have not been responded to appropriately.
- Record the incident using the agreed proforma.
- If a serious racist incident occurs outside school or involves outside perpetrators the head teacher should report the incident to the police who will investigate and take further action.
- Confidentiality should be maintained and designated staff given responsibility for ensuring information is stored securely.

## Engaging the victim's parents

- Inform the parents of the pupil who has experienced the incident (or brought the complaint).
- Describe what has happened.
- Explain what the school has done.
- Check that the parents understand why the school has acted in the way it has and that they feel that the incident/complaint has been taken seriously.
- You may want to suggest how they might support their child or ask if they need any additional support.
- Make them aware of other support agencies beyond the school where appropriate.

Sometimes, in the case of racist graffiti, there is no victim. In such cases it is even more important that schools act swiftly and send a clear message to pupils that such behaviour is unacceptable.



### Dealing with the perpetrator

#### Sanctions and education

### The perpetrator needs to know that such behaviour is unacceptable but also needs to understand why it is unacceptable.

- Explain to the pupil that the school takes all forms of racism very seriously.
- That the incident will be investigated in line with existing school procedures.
- Allow the pupil to explain what has happened. Give them time to talk.
- Give the pupil time to reflect on what they have done and to talk about how their behaviour might have made the victim feel.
- Allow the pupil to explore what led up to the incident in order to identify any attitudes or misconceptions that might need to be addressed.
- Explain the difference between racist behaviour and other forms of unacceptable behaviour and explain why this type of behaviour is taken so seriously.
- Agree sanctions in line with the school's behaviour policy.
- Inform the pupil that their parents will be informed and invited to discuss the matter with the school.
- You may need to monitor the pupil over time.
- In the most serious cases, schools may need to contact the Police.

### Communicating with the perpetrator's parents

- Inform the parents/carers of the pupil who has committed the act.
- Describe what has happened.
- Affirm the school's stance on racist behaviour.
- Explain what the school has done and why.
- Allow parents to express how their thoughts and feelings.
- Check that the parents understand why the school has acted in the way it has. You may need to deal with the parents own attitudes and views

### **Bringing the two parties together**

- Tell both parties that the school takes all forms of racism seriously. Explain why.
- Give the pupil who has experienced the incident the opportunity to explain how they feel.
- Give the perpetrator the opportunity to respond and apologise.
- Allow the victim to accept the apology.
- Aim for reconciliation between the two parties.
- Inform the parents of both parties about the incident and the action taken. Explain why the action was taken. This needs to be done on the day of the incident.

It may be necessary to carry out some follow up work with the victim, the perpetrator and the pupils who have witnessed the incident or been affected by it.

### **School Improvement Liverpool (SIL) support**

The guidance is supported by three additional CPD modules which can be tailored to meet specific school needs. EMTAS staff can also work directly with pupils delivering awareness raising lessons and assemblies as well as coordinating pupil and parent focus groups.



## Recording, reporting & monitoring incidents of racist bullying

### It is important to record all racist incidents for the following reasons:

- · To measure the school's effectiveness in responding to incidents;
- To gain a clear picture of their frequency, nature and any patterns or trends to inform preventative measures;
- To target resources effectively;
- · To identify repeat victims or perpetrators;
- To provide statistical data to contribute to strategic planning within school.

### What should be recorded?

- A description of the incident;
- Names and ethnic background of the people involved; (use the census categories used to collect statistical information about achievement in school)
- Action taken with the perpetrator(s);
- Support for victim(s);
- · When parents were informed and how;
- Whether this is a repeat victim or a repeat perpetrator;
- · The outcome;
- · Whether outside agencies were involved;
- Follow up actions;
- Implications for the school, e.g. staff training, pupil support, curriculum development;
- Other comments and reflections on the incident including its origins and any lessons learned.



### Prevention is better than cure

While it is vital that schools have clear procedures for dealing with racist incidents, it is equally as important that they develop preventative strategies.

Schools that are successful in preventing racist incidents actively work to create an environment where pupils have respect for themselves and for each other.

They do this in the following ways:

- Participation in the School of Sanctuary (SoS) Charter;
  - A School of Sanctuary is a school that is 'committed to being a safe and welcoming place for all students and their families. It is a school that helps its students, staff and wider community understand what it means to be seeking sanctuary and to extend a welcome to everyone as equal, valued members of the school community. It is a school that is proud to be a place of safety and inclusion for all.' The SoS charter will encourage schools to look at all aspects of school life from the viewpoint of individual learners and help promote inclusion at every level.
- · Staff training and development;
- Developing an inclusive school ethos where all members of the school community feel valued, respected and safe;
- Supporting pupils to develop a confident sense of personal identity;
- Support pupils to learn about diversity and empathise with others;
- Creating an inclusive curriculum;
- Tackling bias, racism and stereotyping through PSHE and Citizenship;
- Involving and engaging pupils and giving them a voice;
- Developing strong links with the community and outside agencies;
- Implementing robust policies;
- · Rigorous monitoring of policy and practice;
- Analysing racist incidents and using the data to inform policy and practice;
- Zero tolerance of racism and an awareness of its different forms;

## Formal Complaints

Race is one of the seven 'protected characteristics' under the Equality Act 2010.

If a pupil, parent or even a member of staff believes they have suffered from racial discrimination including indirect discrimination, harassment or victimisation, and feels the school has failed to respond appropriately, they may decide to take legal action.

If racist bullying is reported to a teacher and that teacher fails to act describing the bullying as nothing but harmless teasing, then the victim or the victim's parent may decide to make a claim of unlawful racial harassment to the county court.

If a teacher in conveying their beliefs about immigration was found to have been haranguing or berating a pupil or group of pupils this would constitute grounds for a claim of unlawful racial discrimination.

**Indirect discrimination** may result in a claim being made against the school. If, as in this example, the school's behaviour or exclusions policies result in a greater proportion of pupils with protected characteristics being disciplined or excluded:



### Who is liable?

As employers in schools, local authorities, governing bodies or proprietors (depending on the type of school) are responsible for any breaches of Equality Law. Employers have obligations and are liable for acts of discrimination, harassment or victimisation whether or not they knew about it or approved.

Employees of a school are personally liable for acts of discrimination, harassment or victimisation carried out by them during their employment whether or not their employer is also liable.

For example, if a teaching assistant were shown to have racially bullied a pupil and the school is able to demonstrate that it took all reasonable steps to prevent this and was therefore not liable, the pupil could still make a claim against that member of staff.

If an employee is able to prove that they were instructed to discriminate against, harass or victimise a pupil both the employee and the pupil will be able to make a claim against the employer.



### **Dealing with allegations**

In most cases a pupil (or their parent acting on their behalf) will approach the school with their complaint before resorting to legal action. Defending a claim can be lengthy, expensive and draining. It can also have a damaging impact on a school's reputation. It is likely to be in everyone's interest to try to address any complaint through the school's own procedure before a legal claim is brought. The governing bodies of maintained schools in England are required under s 29(1) of the **Education Act 2002** to have a complaints procedure to deal with all complaints relating to the school.

It is good practice to make pupils and parents aware of your complaints procedure and to ensure it is accessible to everyone, for example, by making it available in different languages or formats if appropriate.

The responsible body will need to make a realistic assessment about whether what their staff and agents have done (or failed to do) amounts to discrimination, harassment or victimisation by conducting an investigation into the complaint. Legal advice may be helpful at this stage.

There may be circumstances where a parent or pupil wants to pursue legal action rather than trying to resolve the dispute. There is no legal requirement to go through a complaints procedure first.

Parents can also make a complaint to Ofsted about a maintained school if the complaint affects the school as a whole rather than in cases to do with individual pupils. Ofsted will not deal with complaints where there is an alternative legal remedy.



## Sources

### This guidance draws on the following sources:

- Equality and Human Rights Commission What equality law means for you as an education provider
- <u>Department for Education Equality Act 2010</u> Advice for school leaders, school staff, governing bodies and local authorities
- Bill Bolloten, Insted Consultancy (2012) Equalities in the Ofsted Framework
- ATL (2005) Race equality and education: A practical resource for the school workforce
- DfE (2012) <u>Preventing and tackling bullying</u>: Advice for head teachers, staff, and governing bodies
- <u>DfE (2011) Behaviour and discipline in schools</u> advice for head teachers and school staff
- National Strategies (2007) <u>Ensuring the attainment of Black pupils: Management</u>
   <u>guide</u>
- Oldham Metropolitan Borough Council. Oldham School Improvement Group (2006)
   Guidelines and procedures for responding to racist incidents
- <u>Portsmouth City Council</u> Racist incidents in schools guidelines for reporting and dealing with racist incidents
- <u>Hertfordshire Council</u> Preventing and dealing with racist incidents A handbook for Hertfordshire schools
- Stella Dadzie (1999) Toolkit for tackling racism in schools Trentham Books
- Robin Richardson and Angela Wood (1999) <u>Inclusive schools, inclusive society, race</u>
   and identity on the agenda Trentham Books
- <u>DfE (2004) Aiming High</u>: Understanding the educational needs of Minority Ethnic pupils in mainly white schools: A guide to good practice
- Commission for Racial Equality (2002) <u>The duty</u>
   to promote race equality: A guide for schools
- DfE (2011) Official Report, Education Public Bill Committee, <u>Safeguarding Children and Young</u>
   <u>People</u>
- The Home Office (April 2000) Code of Practice on Recording and Reporting Racist Incidents.







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