

The Public Sector Equality Duty

Introduction

The Equality Act 2010 has replaced and unified all existing equality legislation such as the Race Relations Act, Disability Discrimination Act and Sex Discrimination Act. It aims to ensure that people have equality of opportunity in accessing and experiencing public services. This means that schools (including academies and free schools) cannot unlawfully discriminate against pupils because of their disability, gender, race, religion or belief, sex and sexual orientation. The Equality and Human Rights Commission is the regulator with responsibility for the equality duty. In September 2022 Keeping Children Safe in Education, added specific information in Part Two about the safeguarding duties encompassed by the Equality Act and the Public Sector Equality Duty.

The public sector equality duty and specific duties

A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

There are two kinds of duty that schools must meet: **the general** which is the Public Sector Equality Duty (PSED) and **the specific**. To fulfil the general requirement, the DfE guidance states that:

- decision makers in schools must be aware of the duty to have “due regard” when making a decision or taking an action
- 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 regular review
- the 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
- schools cannot delegate responsibility for carrying out the duty to anyone else.

The **specific duties** require schools to have published information showing compliance with the public sector equality duty, plus at least one equality objective. They will then need to update the published information at least annually and to publish objectives at least once every four years. The emphasis is on transparency - making information available so that the school’s local community can see how the school is advancing equality in line with the PSED, and what objectives it is using to make this happen.

Due regard

“Having due regard” is defined as the need to:

1. Remove or minimise disadvantages
2. Take steps to meet different needs
3. Encourage participation when it is disproportionately low

What does this mean for schools?

When making a decision or taking an action a school must assess whether it may have implications for people with particular protected characteristics.

- It should consider equality implications before and at the time that it develops policy and takes decisions; not as an afterthought, and it needs to keep them under review.
- It should consciously consider each aspect of the duty
- It should assess the risk and extent of any adverse impact that might result from a policy or decision and the ways in which the risk may be eliminated before the adoption of a proposed policy.

- The equality duty has to be integrated into the carrying out of a school’s functions, including safeguarding. Schools need to do this themselves and cannot delegate responsibility for carrying out the duty to anyone else.

Protected characteristics

The following are the protected characteristics under the Equality Act 2010:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

The protected characteristics of ‘age’ and ‘marriage and civil partnerships’ do not apply to schools.

Discrimination

It is unlawful for a school to discriminate against an applicant or pupil in relation to:

- Admissions
- The provision of education
- Access to any benefit, facility or service
- Exclusions
- Any other detriment

Exceptions that apply to certain types of school can be summarised as follows:

- Single-sex schools are allowed to admit pupils of only one sex.
- Mixed schools with single-sex boarding are allowed to offer boarding to only one sex.
- Schools with a designated religious ethos are allowed to discriminate on the grounds of religion or belief in admissions, and in the provision of education or access to any benefit, facility or service.
- Selective schools are permitted to refuse admission to disabled applicants who fail the admissions process even if the failure is as a consequence of something arising from their disability.
- Residential schools are permitted, in some circumstances, to restrict access to communal accommodation based on sex or gender reassignment.
- Charity schools are permitted to provide benefits only to people with a particular protected characteristic.

Reference: Technical Guidance for Schools in England

What is positive action?

In some circumstances, schools will need to meet the needs of pupils in different ways so they can receive the same standard of education as everyone else does. The positive action provisions of the Equality Act 2010 permit schools to take proportionate steps to help particular groups of pupils to overcome disadvantages connected to protected characteristics (like gender, race, sexual orientation etc).

Accessibility planning

Schools and local authorities must carry out accessibility planning for disabled pupils. These are the same duties that previously existed under the Disability Discrimination Act and have been replicated in the Equality Act. Schools must implement accessibility plans which are aimed at:

- increasing the extent to which disabled pupils can participate in the curriculum

- improving the physical environment of schools to enable disabled pupils to take better advantage of education, benefits, facilities and services provided, and
- improving the availability of accessible information to disabled pupils and their parents.

Reasonable adjustments and when they have to be made

The duty to make reasonable adjustments applies only to disabled people.

- Where something a school does places a disabled pupil at a disadvantage compared to other pupils then the school must take reasonable steps to try and avoid that disadvantage.
- Schools will be expected to provide an auxiliary aid or service for a disabled pupil when it would be reasonable to do so and if such an aid would alleviate any substantial disadvantage that the pupil faces in comparison to non-disabled pupils.

Schools are not subject to the other reasonable adjustment duty to make alterations to physical features because this is already considered as part of their planning duties.

From September 2012, schools and local authorities have a duty to supply auxiliary aids and services as reasonable adjustments where these are not being supplied through special educational needs statements or from other sources. In practice this will already be being done in many cases.

Why equality matters to schools

The public sector equality duty requires schools to have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and foster good relations for pupils, staff and others using school facilities.

Meeting these three requirements contributes greatly to achieving outstanding progress and attainment because achievement of these aims means that pupils work – whether it is in class or in the school – in an ethos and atmosphere of dignity and fairness, where they are free to develop themselves, knowing that differences are respected and they are encouraged to become independent learners and take responsibility for their actions and become good citizens.

Evaluating the effectiveness of equality

Achievement

It is expected that a school has data about the school population and differences of outcome, and analyses up-to-date data on the composition of its pupils broken down by year group, ethnicity and gender, and by proficiency in English. This will include detail about significant differences in attainment between girls and boys, and between pupils of different ethnic backgrounds.

The quality of teaching

Focused attention is paid to the needs of specific groups of pupils, for example those who are learning English as an additional language or disabled pupils and those who have special educational needs and there is extra or special provision for certain groups, as appropriate to the school and its circumstances.

Behaviour and safety

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.

Pupils are confident that staff will address all issues of discrimination and prejudice including the use of derogatory language.

Leadership and management

The school can demonstrate positive action of how the school is advancing equality and tackling discrimination; for example, in a statement of overarching policy, references in the school improvement plan or its self-evaluation documents, the prospectus, routine bulletins and newsletters, and occasional letters to parents.

Minutes of governors’ meetings, staff meetings and senior leadership team meetings, and the minutes of the School Council demonstrate the school’s responsibilities under the Equality Act. Before introducing important new policies or measures, the school carefully assesses their potential impact on equalities, its current and prospective pupils and parents, positive or negative, and keeps a record of the analysis and judgements which it makes. The data are available for public scrutiny. Evidence from parental questionnaires reveals no prejudice or discrimination of a group or individual.

The Brown Principles

There are six principles, called the Brown Principles, established by case law that underpin what due regard means:

- awareness – all staff should know and understand what the law requires
- timeliness – the implications for equalities of new policies and practices should be considered before they are introduced
- rigour – there should be rigorous and open-minded analysis of statistical evidence, and careful attention to the views of staff, and the views of pupils and their parents
- non-delegation – compliance with the PSED cannot be delegated
- continuous – due regard for equalities should be happening all the time
- record-keeping – it is good practice to keep documentary records, for example in the minutes of staff meetings and governor meetings.

Additional guidance and further reading

- The Equality Act 2010 and schools (DfE guidance)
<https://essexprimaryheads.co.uk/files/the-equality-act-2010-and-schools.pdf>
- DfE Equality Act guidance <https://www.gov.uk/guidance/equality-act-2010-guidance>
- Public Sector Equality Duty Guidance for Schools in England
- Inspecting equalities – briefing for section 5 inspection (September 2013)
- Keeping Children Safe in Education 2023
- Objectives and the Equality Duty: a guide for Public Authorities
- Technical guidance for schools in England
- Reasonable Adjustments for Disabled Pupils
- Equal Choices, Equal Chances – primary resources
<https://www.equalityhumanrights.com/en/primary-education-resources>

Lesson activity ideas

<https://www.equalityhumanrights.com/en/lesson-activity-ideas>