

# Disabled Children and the Equality Act 2010:

What teachers need to know and what schools need to do, including responsibilities to disabled children and young people under the Children and Families Act 2014



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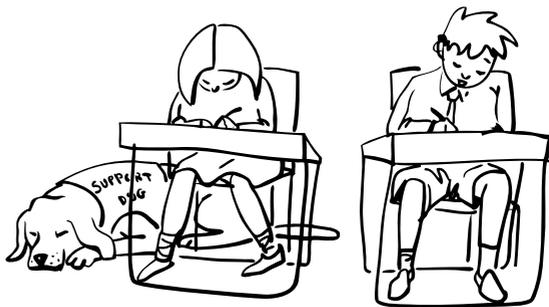
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## 1. Introduction

In 2010 most of the Disability Discrimination Act was replaced by duties in the Equality Act 2010 (EqA). Further changes were implemented in 2011, when new regulations on the Public Sector Equality Duties were passed. The Department for Education (DfE) consulted on further changes to schools' duties and these came into force in September 2012.

In September 2014, most of the provisions in the Children and Families Act 2014 (CFA) were implemented. Some of the duties in CFA cover disabled children and young people as well as those with special educational needs (SEN).

This booklet sets the disability discrimination duties in EqA in the context of duties to disabled children and young people brought in by CFA. It provides a short guide to what teachers need to know and what schools need to do to address inequalities and ensure they do not discriminate against disabled pupils.

Research for the Equality and Human Rights Commission (EHRC)<sup>i</sup> highlighted teachers' commitment to addressing inequality and improving children's lives as being a key driver for school work on the equality duties. Alongside these principled commitments, the need to meet the requirements in the legislation was also identified as a factor driving schools' work on equalities. Many teachers will want to understand and promote the principled, moral and human rights commitments that underpin EqA; some teachers will be in the position of needing to know and to inform colleagues about the statutory

requirements. This short guide seeks to support teachers in the latter task.

The booklet includes examples illustrating practices that may amount to discrimination or that may help schools to avoid discrimination. Checkpoints highlight particular aspects of the duties, or provide additional information.



## 2. Disability discrimination duties

By the time EqA was introduced, schools had become familiar with the duties in the Disability Discrimination Act (DDA), and the equivalent race and sex discrimination legislation. Whilst the architecture of the disability discrimination duties in EqA is rather different from that of the DDA, most of the duties have broadly similar practical implications for schools. If schools were meeting their duties under the earlier legislation they will probably have found that they needed to make few changes in order to meet the requirements in EqA.

While most of the duties are familiar, some of the concepts are different. The duties apply to nine different aspects of equalities and to most aspects of our national life. The focus of this booklet is primarily on how the duties apply to disabled pupils in schools in England. Most of these duties are set out in Part 6 of EqA and most of the duties apply equally to maintained schools, academies, independent and non-maintained schools. Where the duties apply differently this is highlighted.

Schools will want to address many aspects of their equality duties together, in particular bringing together planned work to address inequalities and embedding this in school planning processes. However, different groups of pupils protected under the legislation may need a different approach: different groups of pupils will need to be consulted and involved in different ways; different issues affect different groups of pupils more or less; and particular duties in EqA only apply to disabled pupils. The purpose of this booklet is to bring together all the duties that apply to disabled pupils and to provide a short and accessible guide to these duties for schools.

Throughout this guide there are reminders of the wider duties under EqA, as they apply to other groups of pupils and to other people in the school community: teachers and other staff employed at the school and other groups of people who use the school, such as parents, governors and the local community.

### 3. Disability responsibilities in the Children and Families Act 2014

CFA changes the SEN framework and brings in responsibilities for local authorities (LAs) that apply to disabled children and young people as well as those with SEN. In particular, LAs must take into consideration the key principles set out in section 19. These include the importance of: taking into account the views, wishes and feelings of children, their parents and of young people; their full participation in decision-making; information and support to enable them to participate in decision-making; and of support to achieve the best possible educational and other outcomes. LAs must identify disabled children and young people as well as those with SEN; must commission services jointly with other agencies; must integrate services where it will promote well-being or improve quality of services; must publish a local offer of services; must provide information and advice; must keep services under review; and must both co-operate with, and seek the co-operation of, local partners.

All of these duties apply equally to disabled children, their parents, and to disabled young people as well as to those with SEN.

These duties apply to local authorities but, as local partners in the duty to co-operate, schools can anticipate the need to co-operate with the local authority in the fulfillment of these duties. In particular, schools can anticipate the need to co-operate with the local authority in identifying disabled children and young people; in ensuring disabled children, their parents and disabled young people know about the information and support available locally and know about the range of services available to disabled children and young people through the local offer. They can also anticipate being expected to co-operate with the LA in meeting high standards of participation; respect for the views, wishes and feelings of disabled children, their parents or of disabled young people; and in securing the best possible educational and other outcomes.

These general duties all apply to disabled children and young people and to those with SEN. Where specific duties under CFA apply to schools in respect of disabled children and young people, these are highlighted in the relevant section of this booklet.

Part 3 of CFA introduced a definition of young people, that is, those who are over compulsory school age but under 25. Where this booklet refers to pupils, it refers to children and young people who are in school, including those who are under or over statutory school age; where the booklet refers to *young people*<sup>1</sup>, it uses the definition in Part 3 of CFA.

## 4. The Equality Act 2010

EqA brought all the pre-existing equality duties together in a single legal framework. It extended the duties to include protection from discrimination for pupils who are pregnant or have recently given birth and pupils who are undergoing gender reassignment. When it was introduced, EqA replaced nine different Acts of Parliament and almost a hundred different sets of regulations.

EqA removed some anomalies and inconsistencies between the different pre-existing equality duties; some of the changes to the disability duties came about because of the consolidation of all the different duties. However, disability is treated differently in important respects, most notably in that, for most groups, equality is rooted in equal treatment, but for disabled people, and for disabled pupils, schools may, and often must, treat them more favourably.

EqA uses two important terms as a foundation for the duties:

- *protected characteristics*; and
- *prohibited conduct*.

It is important to be familiar with these terms and what they mean.



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<sup>1</sup> Throughout this booklet italics are used to indicate that a term or expression has a particular meaning which is defined in legislation or explained in guidance. Many of these terms or expressions are explained in this booklet.

## 5. Protected characteristics

Under EqA, the *protected characteristics* are:

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

Of these, age, marriage and civil partnership do not apply to schools' duties towards their pupils, though they do apply to schools' employment duties and wider duties under EqA.

## 6. Prohibited conduct

*Prohibited conduct* is the general term applied to discriminatory behaviour that is unlawful under EqA. The different forms of prohibited conduct are summarised and explained below.

## 7. Does the Equality Act apply to all schools?

EqA applies to all schools: to independent schools, academies and maintained schools; to nursery schools, primary schools and secondary schools; to mainstream schools and maintained and non-maintained special schools. It also applies to sixth forms in schools. If sixth form provision is made in a college,

the law still applies, but slightly differently. The duties covered in this booklet are the schools' duties. Where the duties apply differently to different types of school this is highlighted.

## 8. Who has responsibility for the duties?

It is the *responsible body* for the school who has responsibility for the duties in EqA. For a maintained school the *responsible body* is the governing body; for an academy, it is usually the Academy Trust; and for an independent school, the proprietor.

Whilst the institutional responsibilities lie with the responsible body, teachers have individual professional responsibilities under the Teacher Standards<sup>ii</sup>. *They must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.* These explicitly include duties under EqA.



## 9. Who counts as disabled?

The definition of disability in EqA is the same as the definition in the DDA. The definition is broad. EqA says that a person has a disability if they have *a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.*

*A physical or mental impairment* includes learning difficulties, mental health conditions, medical conditions and hidden impairments such as specific learning difficulties, autism, and speech, language and communication impairments.

In deciding whether someone is disabled, it is the effect of an impairment that has to be considered. If the impairment has a *substantial* and *long-term effect* on a person's ability to carry out normal day-to-day activities it may amount to a disability. *Substantial* is defined as being more than *minor or trivial*; *long-term* as *a year or more*.

These terms set a relatively low threshold; they rule out broken limbs, which normally heal in much less than a year, but cover more people than many imagine. Research carried out by the Office of National Statistics<sup>iii</sup> for the Office of Disability Issues, estimated that about 9 percent of children aged 11 to 16 may be disabled.

Changes to the SEN framework, in Part 3 of CFA, do not change the linkage between the definitions of SEN and disability. Disabled children and young people continue to be covered by the SEN framework where their disability prevents or

hinders them from making use of facilities that are generally provided, and they require special educational provision, that is, something additional or different from provision made generally for others of the same age. CFA makes it clear that the definition of disability used in the SEN framework is that used in EqA.

**Checkpoint: disability and special educational needs**

Though the definitions of disability and SEN are covered by different legislation, in practice there is a significant overlap; in particular, children with more significant SEN, including those who have a statement (under the Education Act 1996) or an education, health and care plan (under CFA) are more likely to be covered by EqA, not because they have a statement or plan, but because they are more likely to meet the definition in EqA.

Research by Bath and Bristol Universities<sup>iv</sup> estimates that about a quarter of disabled children do not have SEN. Children who have a range of health conditions, such as epilepsy, diabetes or more severe forms of asthma and eczema, are likely to be covered by the definition of disability but may not be identified as having SEN.

The disability discrimination legislation in EqA covers disabled children and young people whether or not they have SEN.



The onus is on the school to find out whether a pupil is disabled. If a claim of discrimination were made to the Tribunal, it would be no defence to say that the school did not know that a pupil was disabled, unless the school can show that they took *reasonable steps* to find out. What would constitute *reasonable steps*? Asking is an obvious way of finding out, so is careful observation of children's progress and behaviour. When schools are asking questions, it is important to ask in such a way as to encourage parents, or children and young people themselves, to share information. If parents think that information might be used against their child, rather than to support them, they may be reluctant to share information with the school.

It is important to recognise that parents may not be aware that their child is covered by EqA and may not think of them as being disabled. Schools should therefore ask questions in the broadest possible terms and ask about any learning difficulty, disability or health condition.

Where they are asked to, schools must co-operate with the LA in their duty to identify disabled pupils, as well as those with SEN, and can anticipate this by gathering information in readiness.



**Checkpoint:** Some people have a relatively restricted view of what counts as a disability: they consider people with a sensory or physical impairment to be disabled but may not be aware that the definition of disability is much wider than that.

The risk for schools is that, in underestimating the number of pupils who may be covered by the legislation, they may inadvertently discriminate against a disabled pupil and may contribute to an underestimation of the number of pupils for whom particular services need to be made available locally.

The Office for Disability Issues<sup>v</sup> provides guidance on a range of issues to be taken into account in deciding who may be covered by the definition. Ultimately this is a decision taken by the courts or, for pupils in school, the Tribunal.

## 10. What do the duties cover?

Schools must not discriminate against a pupil, or a child or young person who might become a pupil at the school. EqA covers:

- admissions;
- the provision of education;
- access to any *benefit, facility or service*;
- exclusion or other forms of *detriment*, that is, other forms of disadvantage.

The duties cover not just teaching and learning in classrooms, but lunchtimes, clubs and activities, school trips and, in effect, the whole life of the school.

## 11. What is discrimination?

EqA sets out the four main forms of *prohibited conduct* that apply to all pupils who share *protected characteristics*. These are:

- *direct discrimination*;
- *indirect discrimination*;
- *harassment*; and
- *victimisation*

In addition, the following forms of prohibited conduct apply to disabled pupils in schools, and to disabled people in other contexts:

- *discrimination arising from a disability*;
- a failure to make *reasonable adjustments*

## 12. Direct discrimination

Direct discrimination is treating a disabled pupil *less favourably* because they are disabled.

**Example 1:** a pupil with Down's syndrome is not permitted to go on a trip to a museum. Staff decide that because of her learning difficulty she will not be able to participate in the activities arranged for the visit.

In this example, it is because of the child's disability that the staff decide she will not go on the trip. This is likely to be *direct discrimination*. Under EqA, there is no justification for direct discrimination.

## 13. Indirect discrimination

Indirect discrimination is applying a *provision, criterion or practice* that puts a disabled pupil at a disadvantage compared with someone else who is not disabled.

**Example 2:** a primary school has a healthy snacks policy. A pupil with diabetes is told she cannot eat her high calorie snack in the playground at break time and is told to sit outside the head teacher's office instead.

**Example 3:** a secondary academy requires all pupils to wear the school uniform from a specified provider. A pupil has severe eczema which is exacerbated by the particular fabric used in the uniform trousers.

It is relatively easy for schools to discriminate by applying a blanket policy, a policy that is applied in the same way to all pupils but puts disabled pupils at a particular disadvantage. In the 'healthy snacks' example, the policy was applied in the same way to all pupils; only the girl with diabetes was placed at a disadvantage. In the 'uniform' example, the policy was applied in the same way to all pupils but only the boy with eczema was placed at a disadvantage. These 2 examples are likely to be *indirect discrimination*.



Under EqA there may be justification for actions that may otherwise amount to *indirect discrimination* or to *discrimination arising from a disability*, if what a school did was a *proportionate means of achieving a legitimate aim*. However, schools must think ahead when they are planning their policies and must plan and make *reasonable adjustments* to these policies for disabled pupils. This does not mean that they have to change their policies for pupils who are not disabled though, in many cases, that may offer a simpler solution; they do need to make *reasonable adjustments* for disabled pupils.

## 14. Discrimination arising from disability

Discrimination arising from disability is treating a disabled pupil unfavourably because of something arising in consequence of their disability.

**Example 4:** a school behaviour policy sets a two-day exclusion for any pupil who swears at a teacher. A pupil with a communication impairment misunderstands an instruction from the teacher; he responds inappropriately; the teacher interprets his response as insolence; the incident escalates to the point where the pupil swears at the teacher; the boy is excluded.

In example 4, the behaviour that led to the exclusion may have arisen from the nature of the child's impairment and the exclusion may amount to *discrimination arising from disability*. The school may be able to justify the exclusion, but only if it was a *proportionate means of achieving a legitimate aim*, for example that the exclusion was a *proportionate means* of maintaining behavioural standards at the school.

The concepts of a *legitimate aim* and *proportionate means* are taken from European Union law and are not defined in EqA. Non-statutory guidance from the Equality and Human Rights Commission indicates that these terms may be taken to have the following meaning<sup>vi</sup>:

- a *legitimate aim* may include such aims as ensuring the wellbeing and dignity of pupils, the fair exercise of power, and the maintenance of academic and behavioural standards;
- *proportionate* means *appropriate and necessary*. It would need to be shown that the same legitimate aim could not be achieved by a less discriminatory means.

However, the school also has a duty to make *reasonable adjustments* so that disabled pupils are not at a *substantial disadvantage*. In examples 2, 3 and 4, above, there may be reasonable adjustments that the school could have made.

## 15. What are reasonable adjustments?

Where something a school does might put a disabled child at a *substantial disadvantage* compared with other children who are not disabled, schools must take reasonable steps to avoid that disadvantage. This is usually referred to as the *reasonable adjustments duty*.

The duty is anticipatory: it requires schools to think ahead and make adjustments so that disabled pupils can participate in the whole life of the school and in order to avoid any disadvantage that might otherwise occur.

Schools can often avoid *indirect discrimination* and *discrimination arising in consequence* of a disability by thinking ahead and planning and making *reasonable adjustments*. In the exclusion example, example 4, above, *reasonable adjustments* might have included: staff training on communication impairments; training on how to communicate with this pupil in particular; and, in the event that the incident occurred despite all such adjustments, a further adjustment might have been to provide an alternative form of punishment, for example an internal exclusion might have been used, and might have constituted a *proportionate means of achieving a legitimate aim*.

**Example 5:** the timetable is adjusted to provide time for the reinforcement of new skills for a pupil with learning difficulties.

**Example 6:** a student with a visual impairment sits at the back of the class to accommodate her field of vision.

**Example 7:** pupils with dyslexia are given a green card to indicate to teachers that they may need extra time to complete written tasks.

Any of these examples may be a *reasonable adjustment*. It is good practice to involve parents and pupils themselves in planning reasonable adjustments. Parents and pupils are often best placed to help schools in thinking about what disadvantage might arise in school and what reasonable adjustments may work best. The principles in section 19 of CFA emphasise the importance of respecting the views, wishes and feelings of disabled children and young people and of their participation in decision-making.

These principles, along with schools' own evidence of impact, should encourage and support schools in securing effective participation.

Where a pupil is both disabled and has SEN, the *SEN and disability code of practice*<sup>vii</sup> encourages a consideration of special educational provision and reasonable adjustments alongside each other.

Sometimes schools may need to call on specialist advice to inform the planning of reasonable adjustments but most reasonable adjustments consist of adjustments to policies and practices, cost little or nothing and are relatively easy to implement once teachers recognise the need for adjustments and see the benefits for disabled pupils. The essence of reasonable adjustments is that they anticipate where disadvantage may arise and are put in place to prevent that happening.

The reasonable adjustments duty includes three key requirements that apply to most providers of services. To make sure that disabled people are not at a substantial disadvantage, the requirements are:

- to make adjustments to any provision, criterion or practice;
- to make alterations to physical features; and
- to provide auxiliary aids and services.



For schools and disabled pupils, the requirements apply differently:

- the first requirement, to make adjustments to any provision, criterion or practice, relates to the way schools organise themselves, deploy resources, and the day-to-day practices that they follow, whether or not these are articulated in a written policy. Examples 5, 6, and 7, above, are relevant here;
- the second requirement, to make alterations to physical features, does not apply to schools. Instead, schools are under a duty to plan to increase accessibility. The *accessibility planning duty* is described below;
- the third requirement, to provide auxiliary aids and services, applies to schools under the EqA, but did not apply to them under the DDA. Following consultation, this duty came into force in September 2012. Since then, the provision of auxiliary aids and services has been included in schools' duties to make reasonable adjustments.

**Checkpoint:** since September 2012, schools have been required to make reasonable adjustments that include the provision of auxiliary aids and services for disabled pupils.

It is likely that much of what schools might be expected to provide by way of auxiliary aids and services is already provided through the SEN framework. Since 1981, the SEN framework has required schools and, where necessary, the local authority to make provision to meet the special educational needs of disabled children, including what would have been called 'auxiliary aids and services' under EqA.

However, some children may be covered by the definition in EqA, but not by the SEN framework, for example children with a range of health needs. In consequence, since September 2012, schools may have identified an increase in the number of children for whom they may need to make reasonable adjustments including the provision of auxiliary aids and services.

CFA introduces a duty on maintained schools, including Academies, and pupil referral units, to make arrangements for supporting pupils at the school with medical conditions. In 2014, the DfE published guidance, *Supporting pupils at school with medical conditions*<sup>viii</sup>. This is statutory guidance, to which schools must have regard. The guidance is clear that schools should ensure that children with medical conditions can access the same opportunities at school as any other child. It recognises that children with medical conditions may be disabled.

It provides schools with guidance on the development of policies on the management and administration of pupils' medicines and on putting in place systems for supporting individual pupils with medical needs. This guidance supports schools in understanding what may be considered reasonable adjustments for this group of children.



Since 2001, regulations<sup>ix</sup> have required local authorities to set out what schools are expected to provide from their delegated resources and what they, the local authority, might expect to provide from their retained resources. The requirement, under CFA, to publish a *local offer*, builds on this requirement and helps to clarify the respective responsibilities of schools, local authorities and other agencies. Something that is expected to be provided by schools from their delegated budget, under the SEN arrangements, may well be judged to be *reasonable* under EqA.

Some teachers may feel that making reasonable adjustments is in some way favouring disabled pupils; in practice making reasonable adjustments prevents disadvantage and recognises that to treat disabled children equally, it may be necessary to do things differently.

Schools must do what it is reasonable to do and are not expected to do anything unreasonable. So, under EqA:

- there is no justification for failing to make a reasonable adjustment;
- schools, along with other service providers, are not permitted to charge for making a reasonable adjustment.

**Checkpoint: there is no justification for failing to make a reasonable adjustment.**

There are many creative and inspiring examples of reasonable adjustments on the three DVDs in a publication from the Department for Education, *Implementing the Disability Discrimination Act in Schools and Early Years Settings*<sup>x</sup>. The examples were identified and recorded before the introduction of EqA, so references are to the DDA. However, the examples are just as relevant under EqA.

## 16. Harassment

Harassment is behaviour which violates the dignity of a disabled pupil, or creates an *intimidating, hostile, degrading, humiliating or offensive environment* for them, and is prohibited conduct under EqA. Harassment would include bullying, mocking or belittling a disabled pupil.

## 17. Victimisation

Many parents are reluctant to challenge their child's school, not least because they worry that it will in some way affect how the school treats their child. The legislation protects people who are taking any action under EqA: parents who may be making a claim, a child who may be reporting an incident, another pupil who might be providing evidence of what happened. These are all *protected acts* under EqA.



## 18. What happens if a school does discriminate?

If a parent thinks that their child may have been discriminated against, they can make a claim of disability discrimination to the First-tier Tribunal (SEN and Disability) which is referred to here as *the Tribunal*, though it is often known by its former acronym, SENDIST. CFA amended EqA and brought in new rights for young people to make a claim of disability discrimination on their own behalf.

Parents, or young people, need to bring a claim of disability discrimination within six months of the action that they consider amounted to discrimination. Where discrimination has extended over a period of time, the six months is timed from the last instance of discrimination. Parents and young people have longer, an additional three months, to bring the claim if they seek conciliation, which is available through the Tribunal.

**Checkpoint:** since 2011, claims of disability discrimination in a permanent exclusion, from a maintained school or an Academy, have been heard by the Tribunal.

CFA also brings in the potential for children to make claims of disability discrimination to the Tribunal in their own right. CFA allows for pilot schemes and for substantive arrangements to enable this to happen. These arrangements can only be made following appropriate orders being approved by Parliament. Pilot schemes cannot start until 2016 and further time is allowed between approval by Parliament and the start of any substantive arrangements.

## 19. Schools have wider responsibilities too

In addition to their responsibilities to individual disabled children, schools have duties to disabled pupils collectively, to other disabled people and to people who share other protected characteristics.

Schools must:

- look ahead and plan to make their school more accessible to disabled pupils, *the accessibility planning duty*;
- improve equality of opportunity for disabled people, under the *public sector equality duty*.

Schools must not:

- discriminate against other disabled people: disabled teachers and others employed at the school, disabled parents, carers and other people using the school;
- discriminate against other groups of children and adults who share other *protected characteristics* under EqA, for example sex, race and sexual orientation.



## 20. What is an accessibility plan?

An accessibility plan is a plan that sets out how, over time, the school is going to:

- increase access to the curriculum for disabled pupils;
- improve the physical environment of the school to increase access for disabled pupils; and
- make written information more accessible to disabled pupils by providing information in a range of different ways.

Schools' plans must be in writing and must be resourced and implemented. Accessibility plans cover a three year period. The first ones were required to be published in 2003. New plans are due in April 2015, 2018 and so on.

Plans must be reviewed and revised as necessary. Guidance on and good practice in accessibility planning, along with a template for a school accessibility plan, are provided in the publication from the DfE quoted above, *Implementing the Disability Discrimination Act in Schools and Early Years Settings*<sup>xi</sup>.

Accessibility plans can be published as standalone documents and must be published on the school's website, see below. In addition, school accessibility plans can be published as part of another document, for example they can be incorporated into school equality schemes or the school development or improvement plans.

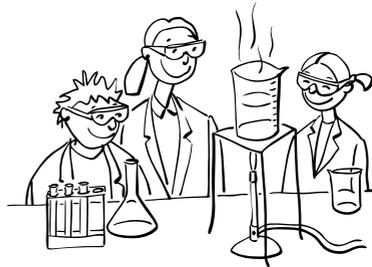
**Checkpoint:** an accessibility action plan may helpfully be embedded in the school development plan. This is a good way of ensuring that the plan, and progress on implementation, has the oversight of the senior leadership team and the governing body. This avoids good, well thought through plans sitting in a desk drawer or gathering dust on a shelf; it can help to ensure that plans happen and the benefits of the plans are realised.

## 21. Publication of information

Under CFA, schools, including Academies and nursery schools, are required to publish information about their SEN policies. The detail of the SEN requirements is specified in regulations<sup>xii</sup>. The SEN information requirements include the publication of key information about aspects of schools' duties to disabled pupils:

- information about the admission of disabled pupils;
- the steps taken to prevent disabled pupils from being treated less favourably than other pupils;
- the facilities provided to assist access to the school by disabled pupils; and
- the school's accessibility plan.

This information must be published on the school's website.



## 22. Information & support for children, parents, & young people

Duties in CFA require LAs to make information, advice and support available to disabled children, their parents and to disabled young people, as well as to those with SEN. Since September 2014, new requirements have replaced the provision made available, in the past, through parent partnership services, and have broadened this to include provision for: children and young people, as well as parents; disabled children, their parents and disabled young people, as well as those with SEN; and information, advice and support on health and social care provision, as well as education and training. LAs must draw these services to the attention of parents, children and young people, schools and colleges. Schools must include contact details for support services for the parents of pupils with SEN, including details of the local Information, Advice and Support Service, formerly known as the parent partnership service. Schools will want to make sure that parents, children and young people know about these services and have access to the information, advice and support that they provide.

## 23. What is the Public Sector Equality Duty?

The Public Sector Equality Duty (PSED) is a general duty that applies to schools, and other public bodies. It requires schools to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other *prohibited conduct*;

- improve equality of opportunity; and
- foster good relations between different groups of people: those who share a *protected characteristic* and those who do not.

Having *due regard* to the need to improve equality of opportunity involves having *due regard* to the need to remove or minimise disadvantage, to meet the needs of pupils who share *protected characteristics* and to encourage their participation in public life and, in a school, in the life of the school. Fostering good relations includes having *due regard* to the need to tackle prejudice and promote understanding.

The PSED replaced the Disability Equality Duty and similar duties in respect of race and sex equality. It extends the approach to other characteristics protected under the EqA.

**Checkpoint:** This part of EqA applies to maintained schools and academies but does not apply to other independent schools. Non-maintained special schools are covered by the general duty, above, but not by the specific duties discussed below.

Many schools that were not covered by the Disability Equality Duty under the DDA nonetheless chose to follow the requirements as a matter of good practice. For the same reason, many choose to follow the PSED.

## 24. Specific duties under the Public Sector Equality Duty

Sitting under the general requirements, discussed above, there are specific duties. The general requirements apply to all schools; the specific duties apply to maintained schools and Academies.

The specific duties require maintained schools and Academies to:

- publish equality information annually; and
- prepare and publish equality objectives at least every four years.

Regulations require schools to publish information to *demonstrate their compliance* with the general duty. This information was first required to be published in April 2012 and must be published annually thereafter.

Schools must also prepare and publish objectives to achieve the core aims of the general duty: to eliminate discrimination, increase equality of opportunity and foster good relations. Objectives must be specific and measurable and new objectives must be published within four years.

To achieve these objectives, the school will need to put in place specific actions. Some of the actions needed may require staff training, curriculum adjustments, detailed work with parents, the involvement of pupils and the engagement of other agencies, but the focus of the specific duty is on measurable

outcomes that will eliminate discrimination, improve equality of opportunity and foster good relations. The intention is that these considerations should become embedded in schools' policies and practices.

- **Example 8:** information gathered by the school shows that disabled pupils are under-represented in participation in after-school activities. The school sets an objective of increasing the participation of disabled pupils in after-school activities to ten percent of all of those attending.
- **Example 9:** an analysis of attendance data shows that disabled pupils have higher rates of absenteeism. The school sets an objective to halve absenteeism amongst disabled pupils over four years.
- **Example 10:** a primary school identifies a significant attainment gap at the end of Key Stage 2 between disabled pupils and pupils who are not disabled. The school sets an objective to double the number of disabled pupils who achieve NC Level 4 or 'expected' level in English at the end of Year 6.
- **Example 11:** nodisabled pupil holds any position of responsibility in the school. The school sets an objective that 5 disabled pupils will be in positions of responsibility in 3 years time.
- **Example 12:** the school's analysis of behaviour incidents shows significant over-representation of disabled pupils. The school sets a target to halve the number of behaviour incidents involving disabled pupils.

Having *due regard* is a key term in the general duty. To show *due regard* schools will need to have considered how their policies and practices affect disabled pupils before they implement them, rather than wait until they can see the actual effect of them. If challenged, schools will need to be able to show how they have demonstrated *due regard*.

Schools are expected, and it is certainly good practice, to involve disabled pupils in considering what information should be gathered and what objectives should be set. The best schools will seek parents' views as well. Involving disabled pupils, parents, staff and others in the development of equality objectives, or the review of the school's accessibility plan, can help to identify effective improvements.

Regulations came into force in September 2011 that set 6 April 2012 as the deadline for the publication of information and the setting of the first equality objectives. Information must be published annually and new objectives must be published by April 2016 and every four years thereafter. Publication has to be somewhere that is accessible to the public; most schools use their website.

As with an accessibility plan, the information and objectives required under the specific duties can be published as part of another document, for example: as part of a single equality scheme or a school improvement plan. Schools that already have a disability equality scheme or a single equality scheme may not need to make many changes but they will need to check that they have published the required information and have set objectives as part of the scheme.

## 25. Why are these general duties important?

An effective accessibility plan or set of equality objectives can make a difference and can be an efficient way of removing barriers for disabled pupils. It can reduce the extent to which schools need to make individual adjustments for individual pupils.

The aim of the public sector equality duty is to make sure that equality considerations are taken into account in every day decisions made by schools. The impact should be that, over time, the culture and attitudes of the school community become more welcoming, outcomes for disabled pupils improve, and the school does not have to make so many individual adjustments for individual children because, in the widest sense, the school is more accessible for all pupils. In general, schools find that improving the school for disabled pupils has the effect of improving the school for everyone: other pupils, staff and parents.

**Philippa Stobbs**

Council for Disabled Children



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- ix. The Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001 (2001 no: 2218)

- x. Department for Education and Skills (2006) *Implementing the DDA in schools and early years settings*. Reference for ordering from DfE publications: 0160-2006DOC-EN

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- xii. The Special Educational Needs and Disability Regulations (2014) Statutory Instrument 2014 no: 1530

## Related links

Council for Disabled Children (CDC)  
[www.councilfordisabledchildren.org.uk/](http://www.councilfordisabledchildren.org.uk/)

Children's Rights Alliance England (CRAE)  
[www.crae.org.uk/](http://www.crae.org.uk/)

United Nations Convention on the Rights of the Child  
[www.ohchr.org/en/professionalinterest/pages/crc.aspx#](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx#)

First-tier Tribunal (SEND)  
[www.gov.uk/special-educational-needs-disability-tribunal/overview](http://www.gov.uk/special-educational-needs-disability-tribunal/overview)





## About the Council for Disabled Children

The Council for Disabled Children (CDC) is the umbrella body for the disabled children's sector in England, with links to the other UK nations. CDC works to influence national policy that impacts upon disabled children and children with Special Educational Needs (SEN) and their families. The CDC Council is made up of a variety of professional, voluntary and statutory organisations, including disabled young people and parent representatives. CDC's broad based membership and extensive networks of contacts provides a unique overview of current issues. It also enables us to promote collaborative and partnership working among organisations.

CDC hosts the following networks and projects:

- IASS Network
- Independent Support
- Making Ourselves Heard
- Preparing for Adulthood
- Special Educational Consortium
- Transition Information Network

CDC is also part of the consortium that delivers the Every Disabled Child Matters campaign.



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