



# Disabled children and the Equality Act 2010: What teachers need to know and what schools need to do

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## Contents

Introduction.....	2
1. The Equality Act 2010: key concepts .....	5
2. Does the Equality Act apply to all schools? .....	5
3. Who has responsibility for the school's equality duties? .....	6
4. Who counts as disabled? .....	7
5. What do the duties cover? .....	12
6. What is discrimination?.....	13
7. Direct discrimination .....	13
8. Indirect discrimination .....	14
9. Discrimination arising from disability.....	16
10. What are reasonable adjustments?.....	17
11. Harassment .....	24
12. Victimisation.....	25
13. What happens if a school does discriminate? .....	25
14. Schools' wider responsibilities.....	26
15. What is an accessibility plan?.....	27
16. What is the Public Sector Equality Duty?.....	30
17. Specific duties under the Public Sector Equality Duty .....	31
18. The Equality Act and positive discrimination.....	33
19. Publication of information.....	34
20. Wider disability responsibilities in the Children and Families Act 2014.....	35
21. Information, advice, guidance and support for disabled children, their parents and young people .....	35
22. Disability equality, inclusion and knowing how your school is doing .....	39
23. Wider considerations: embedding the duties .....	41
References.....	43
Links and resources.....	46

## Introduction

The Equality Act 2010 (the Equality Act) is designed to address the disadvantage and discrimination experienced by particular groups of people and to provide a legal framework for addressing these inequalities. The duties in the Equality Act cover most aspects of our national life: the duties apply to a wide range of responsibilities, including those of employers, landlords, and providers of services and of education. There are duties that are owed to individuals and duties to plan more widely for increased equality of opportunity.

This guide provides a summary of what teachers need to know and what schools need to do to prevent and address inequalities and ensure they do not discriminate against disabled pupils.

Whilst there is a wealth of good practice in schools, nationally outcomes for disabled children and young people and those with special educational needs (SEN) are poor<sup>1</sup>. The disadvantages that they experience have been well documented:

- a lack of ambition for children with SEN and disabilities<sup>2</sup> (SEND);
- children with SEND being excluded, absent or missing from school much more frequently than other pupils nationally, and unofficial exclusions being used<sup>3</sup>;
- the slower progress of pupils with SEN compared with their peers without SEN and with the same starting points<sup>4,5</sup>;
- poorer outcomes: disabled young people are more likely to have GCSEs as their highest form of qualification and more likely to have no qualifications at all<sup>6</sup>; and
- into adulthood, poorer educational outcomes are linked to poorer life outcomes<sup>7</sup>.

At the same time, many teachers lack confidence in, and have said that they need continuing professional development in, teaching pupils with SEN<sup>8</sup>. The combined Initial Teacher Training and Early Career Framework (ITTECF) is designed to address this concern and:

*... has been designed in the knowledge that high quality teaching is the most important way to improve outcomes for pupils – particularly those with SEND. The framework is designed to enable trainees and [Early Career*

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<sup>1</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>2</sup> We consider the overlap between SEN and disability and related data issues in section 4, below.

<sup>3</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>4</sup> Parsons S and Platt L (2017) *The early academic progress of children with special educational needs*. British Educational Research Journal. 43, 3

<sup>5</sup> NAO (2019) *Support for pupils with special educational needs and disabilities in England*

<sup>6</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>7</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>8</sup> Adams L and others (2023) *Working Lives of Teachers and Leaders: Year 1* Research report for DfE

Teachers] to take their first steps towards becoming expert teachers who can transform the lives [sic] all pupils<sup>9</sup>.

This guide is designed to raise awareness of the Equality Act among a wide group of teachers, leaders, governors, support staff, parents<sup>10</sup> and others working in and with schools. It supports a whole school approach and encourages schools to embed equality considerations in every area of school life, in planning, policies, practices and day-to-day decisions. It is designed to help teachers understand the legislation and how it applies to their work with disabled pupils in their school. It explains what the Equality Act requires of schools and of governors, trustees, proprietors and others who are the *responsible body*<sup>11</sup> for the school.

Schools have a range of duties under the Equality Act: to staff, as employees; to parents and others, where the school is providing a service to other people using the school; and to pupils, staff and others who share other *protected characteristics* as well as disability. It is often more efficient and more effective for schools to bring these duties together and embed them in wider school planning processes.

However, schools' duties towards disabled pupils differ from other Equality Act duties, in some key respects:

- the Equality Act treats disability differently, 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;
- schools' duties towards pupils are defined differently, and under different sections of the Equality Act from those towards staff and other users of the school;
- schools' duties are defined differently from those of other providers of education such as early years settings, colleges and universities; and
- under the Children and Families Act 2014 (CFA), schools have other, complementary responsibilities towards disabled children and young people and to those with SEN.

The guide includes examples illustrating practices that may amount to discrimination or that may help schools to avoid discrimination. Many of these examples are drawn from the decisions of the First-tier Tribunal (SEND) or the Upper Tribunal, both referred to in this guidance simply as the Tribunal. Other examples are drawn from schools and have been used to show how the Equality

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<sup>9</sup> DfE (2024) *Initial Teacher Training and Early Career Framework*

<sup>10</sup> Throughout this Guide, when we refer to *parents*, we include parents, carers and those with parental responsibility.

<sup>11</sup> Throughout this guide 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 guide.

Act duties work in different situations. Throughout the text, checkpoints highlight particular aspects of the duties or provide additional information or insights. There are also boxes with quotes from relevant documents and findings from research.

### Equality Act guides

This guide is one of three Equality Act guides for schools published by the Council for Disabled Children (CDC), two others being:

- *Accessibility plans and the Equality Act 2010: a handbook for schools*<sup>12</sup>
- *The Equality Act 2010 and disabled pupils: a guide for governors and trustees*<sup>13, 14</sup>.

Within this guide, at a number of points, we refer across to the companion guides for more detail, for example in relation to accessibility planning, section 15.

Neither this nor the companion guides should be used as a guide to any individual situation or as a substitute for legal advice.

References and sources of information and advice are listed at the back of the guide.

### Checkpoint: a high-quality inclusive approach

All schools can expect and must plan for disabled pupils. However, schools that provide high-quality inclusive provision for all pupils; that work in close consultation with parents and pupils themselves; that make adjustments to ensure disabled pupils participate in all aspects of school life; that accept and celebrate difference; and that do not compromise aspirations for disabled pupils are likely to realise benefits for disabled pupils as well as pupils who are not disabled. The experience of growing up together, with an appreciation of diversity, is important preparation for life beyond the school gates and contributes to a fairer society.

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<sup>12</sup> CDC (2025) *Accessibility plans and the Equality Act 2010: a handbook for schools*

<sup>13</sup> CDC (2025) *Equality Act 2010 and disabled pupils: a guide for governors and trustees*

<sup>14</sup> CDC also provides a parallel guide for early years settings and two guides for FE: one for colleges and one for governors and trustees of FE colleges, see references.

## 1. The Equality Act 2010: key concepts

The Equality Act uses two key concepts as a foundation for the duties:

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

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

Under the Equality Act, there are nine *protected characteristics*:

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

Of these, age and 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 the Equality Act.

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

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

The Equality Act applies to all schools whether they are constituted as: academies or maintained schools; nursery, primary, secondary or all-through schools; mainstream, special or non-maintained special schools; publicly-funded or independent schools; and it applies to pupil referral units and alternative provision academies. The schools' duties apply to early years provision and sixth form provision where the provision is made in a school. Where early years provision is made in a setting that is not a school, or where sixth form provision is made in a college or 16-19 academy, the law still applies, but slightly differently<sup>15</sup>. The duties covered in this guide are schools' duties. Where the duties apply differently to different types of school this is highlighted.

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<sup>15</sup> DfE (July 2011 (introduction updated June 2013, latest terminology update December 2021)) *Teachers' Standards: Guidance for school leaders, school staff and governing bodies*



There are differences in the governance arrangements for different schools, for example, between different state schools, between different independent schools and between schools in the state and independent sectors. To include all the different forms of governance, where we refer to the broader responsibilities of schools, or to duties under legislation other than the Equality Act, we refer to governing boards and to governors and trustees. For any of the duties we refer to, we make it clear where the duties apply differently to different types of school.

### 3. Who has responsibility for the school's equality duties?

Under the Equality Act, the *responsible body* of the school is responsible for meeting the duties to disabled pupils:

- For a school maintained by the local authority (LA) the *responsible body* is the governing body or the LA<sup>16</sup>. Responsibility for most school functions sits with the governing body but the LA also has functions in relation to some areas, such as some admissions functions. The *responsible body* is whichever of the governing body or the LA is responsible for the particular function.
- For an academy, the *responsible body* is the *proprietor*, which is the academy trust.
- For an independent school, the *responsible body* is the *proprietor*.
- For a pupil referral unit, the *responsible body* is the LA.

We use the term *school* to refer to all the education providers above; we use the term *responsible bodies* to refer to governing bodies, LAs, academy trusts or *proprietors* who are the *responsible body* for the school.

As an employer, the school is responsible for the actions of its employees while working for the school, and for others, *agents*, working on its behalf<sup>17</sup>, so schools need to be able to show that they have taken *all reasonable steps* to make sure employees and *agents* understand that they must not discriminate.

In respect of most *protected characteristics*, employees and *agents* are also individually liable for discrimination. However, for disability discrimination in schools this individual liability does not apply.

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<sup>16</sup> For a pupil referral unit, it is always the LA.

<sup>17</sup> This might include, for example, a sports coach working at a school but not employed by the school.

Alongside these institutional responsibilities, teachers have individual professional responsibilities under the Teachers' Standards. They:

*...must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities<sup>18</sup>.*

The Standards explicitly include duties under the Equality Act. From the very first steps in their career, teachers are expected to be aware of the impact of high-quality teaching on pupils' life chances, to adapt their teaching in a responsive way without lowering their expectations and to ensure all pupils have the opportunity to experience meaningful success<sup>19,20</sup>.

## 4. Who counts as disabled?

### Definition of disability

A person has a disability if they have a physical or mental impairment that 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, sensory impairments, mental health conditions, medical conditions and hidden impairments such as specific learning difficulties, autism, and speech, language and communication impairments.

To amount to a disability, the effect of an impairment has to be *substantial* and *long-term*. The terms are defined as follows:

- *substantial* is defined as being more than minor or trivial; and
- *long-term* is defined as lasting, or being likely to last, a year or more.

The meaning of *substantial* in the Equality Act is slightly at odds with what it means in everyday use, where we tend to think of it as being quite big, for example, a substantial meal. It may be helpful to think of *substantial* in the Equality Act as being big enough to 'have substance', hence *more than minor or trivial*.

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<sup>18</sup> DfE (July 2011 (introduction updated June 2013, latest terminology update December 2021)) *Teachers' Standards: Guidance for school leaders, school staff and governing bodies*

<sup>19</sup> DfE (2019) *Early Career Framework*

<sup>20</sup> DfE (2024) *Initial Teacher Training and Early Career Framework*



### Checkpoint: young children

A child *under the age of six* who has an impairment which does not have a *substantial* and *long-term* adverse effect on their ability to carry out normal day-to-day activities is included in the definition of disability where their impairment would have a *substantial* and *long-term* adverse effect on the ability of a child *over six* to carry out normal day-to-day activities<sup>21</sup>.

In combination, the terms *substantial* and *long-term* set a relatively low threshold; they rule out conditions such as broken limbs, which normally heal in much less than a year, and cover more people than many imagine. The Family Resources Survey carried out in 2022-2023 estimates that 11% of children may count as disabled<sup>22</sup>.

### Checkpoint: conditions included in the definition regardless of effect

The Equality Act counts some conditions as a disability regardless of the *substantial* and *long-term* adverse effect threshold:

- the Equality Act names cancer, multiple sclerosis and HIV as disabilities;
- it requires severe disfigurements to be treated as having an adverse effect on a person's ability to carry out normal day-to-day activities; and
- it includes progressive conditions, that is, conditions that get worse over time, before the effect is *substantial*.

Under regulations made under the Equality Act, people who are certified<sup>23</sup> as blind or partially sighted are also considered to be disabled<sup>24</sup>.

Disabled children and young people are covered by the SEN framework<sup>25</sup> where their learning difficulty or disability calls for *special educational provision*, that is, something additional to or different from provision made generally for others

<sup>21</sup> The Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

<sup>22</sup> Department for Work and Pensions (2024) *Family Resources survey: financial year 2022-2023*

<sup>23</sup> A person who is 'certified' as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist can be 'registered' with their local social services team.

<sup>24</sup> The Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

<sup>25</sup> The SEN framework is set out in the CFA, associated regulations and the *Special educational needs and disability code of practice: 0 to 25 years* (DfE and DH, 2015)

of the same age in mainstream education settings. The definition of disability used in the SEN framework is that used in the Equality Act<sup>26</sup>.

### Checkpoint: disability, special educational needs and medical conditions

Though the definitions of disability and SEN are covered by different legislation, in practice there is a significant overlap. Children and young people with more significant SEN, including those who have an education, health and care (EHC) plan under the CFA, are more likely to be covered by the Equality Act: not because they meet the definition of SEN or have a plan, but because they are more likely to have an impairment that has a *substantial* and *long-term* effect on their ability to carry out normal day-to-day activities.

Research by Bath and Bristol Universities<sup>27</sup> found that, on the basis of parental judgments, 40% of pupils with SEN in primary schools, 46% of pupils with SEN in secondary schools and 76% of pupils in special schools met the definition of disability<sup>28</sup>. The disability discrimination legislation in the Equality Act covers disabled children and young people whether or not they have SEN.

Children and young people who have a range of medical 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. Under the CFA, maintained schools (excluding maintained nursery schools), pupil referral units, academy schools and alternative provision academies also have responsibilities for pupils with medical conditions: they must make arrangements to support them and must have regard to statutory guidance. The guidance is designed to:

*ensure that all children with medical conditions, in terms of both physical and mental health, are properly supported in school so that they can play a full and active role in school life, remain healthy and achieve their academic potential<sup>29</sup>.*

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<sup>26</sup> The CFA, section 83(3)

<sup>27</sup> Porter J, Daniels H, Georgeson J, Hacker J, Gallop V, Feiler A, Tarleton B and Watson D (2008) *Disability Data Collection for Children's Services Research Report*. Department for Children, Schools and Families: RR062

<sup>28</sup> At the time of the research the definition of disability was that in the Disability Discrimination Act 1995; the definition in the Equality Act 2010 is substantially the same.

<sup>29</sup> DfE (2015) *Supporting pupils at school with medical conditions: Statutory guidance for governing bodies of maintained schools and proprietors of academies in England*

**SEN and disability data note:** the national data gathered from schools are based on SEN as schools do not submit, and are not asked for, disability data. Data from other sources, for example the Office for National Statistics (ONS)<sup>30</sup>, is often based on the definition of disability. You need to bear this in mind when you make comparisons with data from your own school.

For the purpose of avoiding discrimination, anticipating and making *reasonable adjustments*, and meeting wider responsibilities, schools need to know who their disabled pupils are.

There are different ways in which a school may become aware that a pupil may be disabled: they may receive information from a pupil's previous school; they may be told by the child's parents; it may be through careful observation of a child's progress and behaviour. Asking questions is an obvious way of finding out but, with no duty on either parents or pupils themselves to disclose a disability, schools need to ask questions in a way that both respects a pupil's dignity and privacy and encourages parents, or children and young people themselves, to share information. If parents think that information might be used against their child, for example to encourage them to go to a different school<sup>31</sup> rather than to support them to be included, they may be reluctant to share information.

It is important to recognise that parents may not think of their child as being disabled and may not be aware that, because of the nature and impact of their child's impairment, their child is covered by the definition in the Equality Act. Schools should therefore ask questions in the broadest possible terms and ask about any learning difficulty, disability or health condition. It may be a more productive conversation if the focus is on any adjustments that the school may need to make, rather than on the nature or existence of a disability. Schools should have this discussion around the time of admission but, because individual impairments can change, should also take regular opportunities to check with parents and with children and young people themselves.

If a claim of discrimination were made to the Tribunal, it would be no defence for the school to say that it did not know that a pupil was disabled, unless the *school could not reasonably have been expected to know* that they were disabled. If a parent shared information about an impairment or condition with

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<sup>30</sup> For example, ONS work on the DWP Family Resources Survey, and their work on outcomes for disabled people, see references.

<sup>31</sup> Office of the Children's Commissioner (2014) '*It might be better if you looked elsewhere*': An investigation into the schools admission process

any member of staff including, for example, a member of staff in the school office, the school would be deemed to know.

A key point here is whether the school knows about a pupil's impairment or condition, not whether that impairment or condition amounts to a disability under the definition in the Equality Act. Ultimately, that issue is decided by the Tribunal in the event of a claim of discrimination. This further underlines the importance of schools understanding the breadth of the definition.

Beyond these individual considerations, schools need to know who their disabled pupils are for planning purposes: to tailor their *accessibility plan* appropriately and, for schools covered by the *public sector equality duty* (PSED), to inform the way they meet those duties<sup>32</sup>. Where they are asked to, relevant schools<sup>33</sup> must also co-operate with the LA in the LA's duty, under the CFA, to identify disabled pupils and those who have or may have SEN.

### Checkpoint: disabled or 'a mainstream child'?

Some people have a relatively restricted view of what counts as a disability and may not be aware of the breadth of the definition. The risk for schools is that, in holding a narrow view of the definition, they may underestimate the number of pupils covered by the duties and may inadvertently discriminate against a disabled pupil.

In a claim of disability discrimination relating to Child P, a school recognised his SEN but did not think of him as disabled. The Tribunal determined that he met the definition and that he had been discriminated against:

*However, it was clear that the teachers at the school had a different understanding of the threshold for disability, and did not regard Child P as disabled; in their view, that category indicated a greater degree of learning or other difficulty than Child P was affected by: as the class teacher put it, Child P was "a mainstream child"*<sup>34</sup>.

<sup>32</sup> The PSED is outlined in sections 16, *What is the Public Sector Equality Duty?* and 17, *Specific duties under the Public Sector Equality Duty*.

<sup>33</sup> That is schools identified as *local partners*: maintained schools, academies, pupil referral units, non-maintained special schools and schools approved under section 41 of the CFA, see section 20, *Wider disability responsibilities in the Children and Families Act 2014*.

<sup>34</sup> Tribunal decision in the case of Child P

The Government Equalities Office (GEO) and the Women and Equalities Unit (WEU) updated guidance, in 2013<sup>35</sup>, on a range of issues to be taken into account when deciding who may be covered by the definition<sup>36</sup>. Ultimately, for pupils in school, the decision as to whether the pupil counts as disabled, and is therefore protected against discrimination under the Equality Act, is taken by the Tribunal in the event of a discrimination claim.

### Checkpoint: tendency to physical abuse

Regulations<sup>37</sup> exempt certain conditions from being considered as impairments. This includes a *tendency to physical abuse*. In August 2018, a decision by the Tribunal determined that, for children in education who have a recognised condition that is more likely to result in a *tendency to physical abuse*, the regulations do not remove a child from the definition of disability or from the protection that the Equality Act provides<sup>38</sup>.

This means that, in line with the duties set out below, schools must make *reasonable adjustments* to prevent or manage challenges presented by pupils who have disabilities that make them more prone to physical abuse, just as they must for pupils with disabilities that manifest themselves in other ways. Schools must also be able to justify any sanction as *proportionate*.

## 5. 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 in relation to:

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

The duties do not apply to the content of the curriculum; they do cover the way that the curriculum is taught, so the curriculum must not be delivered in a way that results in *harassment* or subjects pupils to discrimination or other *detriment*.

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<sup>35</sup> GEO and WEU (updated 2013) *Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability*

<sup>36</sup> The case law, from 2018, covered in the checkpoint on the 'tendency to physical abuse', post-dates this guidance.

<sup>37</sup> The Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

<sup>38</sup> Tribunal decision in the case of Child L

### Department for Education (DfE) guidance

*Excluding the content of the curriculum ensures that schools are free to include a full range of issues, ideas and materials in their syllabus, and to expose pupils to thoughts and ideas of all kinds, however challenging or controversial, without fear of legal challenge based on a protected characteristic. But schools will need to ensure that the way in which issues are taught does not subject individual pupils to discrimination<sup>39</sup>.*

The duties cover teaching and learning in classrooms, but they also apply to other aspects of school life, to lunchtimes and playtimes, school clubs, activities and trips, in effect, the whole life of the school.

## 6. What is discrimination?

The Equality Act 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 people, including disabled pupils in schools:

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

## 7. Direct discrimination

*Direct discrimination* is treating a disabled pupil *less favourably* because they are disabled<sup>40</sup>.

**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.

<sup>39</sup> Department for Education (2014) *The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities*

<sup>40</sup> Reminder: four forms of *prohibited conduct*: *direct discrimination*, *indirect discrimination*, *harassment* and *victimisation* apply to pupils who share other *protected characteristics*. Our focus in this guide is on disability.



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*. It is irrelevant whether or not there is an intention to discriminate. It is the outcome rather than the intention that is key in the eyes of the law.

*Direct discrimination* can also take place where a pupil who is not disabled is treated less favourably because they are associated with a person who is disabled, or because they are wrongly thought to be disabled, or they are treated as if they were disabled.

In some circumstances it may be necessary to treat a disabled pupil more favourably than a pupil who is not disabled, for example, by not applying the standard disciplinary sanction and adopting different strategies to support a disabled pupil in managing their behaviour. It is not *direct discrimination* against a non-disabled pupil to treat a disabled pupil more favourably.

Under the Equality Act, there is no justification for *direct discrimination*.

## 8. 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 and in a way that cannot be *justified*, see below.

Schools risk discrimination if they apply a blanket policy, a policy that is applied in the same way to all pupils but puts disabled pupils at a particular disadvantage.

**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 school 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.

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 pupil with eczema was placed at a disadvantage. These two examples are likely to be *indirect discrimination*. Both examples are based on actual cases that went to the Tribunal.

Under the Equality Act there may be justification for actions that may otherwise amount to *indirect discrimination* or to *discrimination arising from a disability*. The actions may be justified if what a school did was a *proportionate means of achieving a legitimate aim*.

The concepts of a *legitimate aim* and *proportionate means* are not defined in the Equality Act. The Equality and Human Rights Commission (EHRC) provides guidance on the meaning of the terms:

#### **EHRC guidance on *legitimate aim* and *proportionate means*:**

*Legitimate aim: to be legitimate, the aim of the provision, criterion or practice must be legal and non-discriminatory, and must represent a real, objective consideration.*

In the context of school education, examples of legitimate aims might include:

- ensuring that education, benefits, facilities and services are targeted at those who most need them;
- the fair exercise of powers;
- ensuring the health and safety of pupils and staff, provided that risks are clearly specified;
- maintaining academic and behaviour standards; and
- ensuring the wellbeing and dignity of pupils<sup>41</sup>.

*Proportionate means: 'proportionate' means appropriate and necessary, but 'necessary' does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim. On its own, the financial cost of a less discriminatory approach cannot provide justification, but it may be taken into account alongside other good reasons for the chosen practice.*

EHRC guidance adds: if a school has not complied with its duty to make relevant *reasonable adjustments*, it will be difficult for it to show that the treatment was proportionate<sup>42</sup>.

**To note:** *the more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more convincing the justification needs to be*<sup>43</sup>.

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<sup>41</sup> EHRC (2014, updated September 2023, amended July 2024) *Technical Guidance for Schools in England*, paragraph 5.34

<sup>42</sup> EHRC (2014, updated September 2023, amended July 2024) *Technical Guidance for Schools in England*, paragraph 5.38

<sup>43</sup> EHRC (2014, updated September 2023, amended July 2024) *Technical Guidance for Schools in England*, paragraph 5.37

However, schools must also think ahead when they are planning their policies. They must plan and they must make *reasonable adjustments* to these policies for disabled pupils, see section 10, below.

## 9. 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. Child M, 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 head excludes the boy.

In this case, the behaviour that led to the exclusion arose from the nature of the child's impairment and the Tribunal found that the school had discriminated<sup>44</sup>.

The school would have been able to justify the exclusion if it had been able to show that 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.

### Checkpoint: proportionate means

Child P is a disabled pupil. He has social and emotional difficulties, organisational difficulties, communication difficulties and poor self-esteem. He was excluded from school several times for infringements of the behaviour policy. The exclusions amounted to six weeks during his GCSE year, that is, 30 school days out of the statutory 45-day limit in a single academic year<sup>45</sup>, and had affected Child P's GCSE grades.

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<sup>44</sup> Tribunal decision in the case of Child M

<sup>45</sup> This means a pupil cannot have one fixed-period exclusion of 46 school days or more; and cannot have shorter fixed-period exclusions that add up to more than 45 school days in a school year.

The judgment contained the following points:

*...it is not enough for the school to show that they achieved their legitimate aim for Child P; they have to show that they did it by proportionate means. We find the means used were disproportionate; they were unnecessarily damaging to Child P. It follows that the claim of discrimination [...] is clearly made out.*

And:

*To treat everyone the same, to apply the school's rules and procedures on behaviour management regardless of disability, is to discriminate against a pupil whose disabilities call for a proportionate response, or adjustments, to be made.*

Schools also have a duty to make *reasonable adjustments* so that disabled pupils are not at a *substantial disadvantage*. In examples 2 and 3 and Child M and Child P, above, there may have been *reasonable adjustments* that the schools could have made.

## 10. What are reasonable adjustments?

Where a school's *provision, criterion or practice*, or a failure to provide an *auxiliary aid*, might put a disabled pupil at a *substantial disadvantage* compared with other pupils 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 *reasonable 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*.

**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 vision 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.

**Example 8:** Where the school policy would normally provide for a two-day exclusion, the policy is adjusted to provide an alternative punishment for a pupil where his behaviour arises from his disability. The punishment marks the seriousness of the incident, is understood by the pupil, and does not involve excluding him in these circumstances.

Any of these examples may be a *reasonable adjustment*.

In example 4, Child M, 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, a detention. This might also have constituted a *proportionate means of achieving a legitimate aim* and therefore have avoided *discrimination arising from disability*.

### **Checkpoint: reasonable adjustments and exclusions**

The EHRC provides the following guidance on *reasonable adjustments* and the exclusion of disabled pupils:

[The Equality Act] *requires schools to make reasonable adjustments for disabled pupils both to the exclusions process and to the disciplinary sanctions imposed. This might mean applying different sanctions, or applying them in a different way, to avoid putting a disabled pupil at a substantial disadvantage in relation to non-disabled pupils*<sup>46</sup>.

It is good practice, and usually more effective, to involve parents and pupils themselves in planning *reasonable adjustments*. Parents and pupils are often best placed to help schools think about what disadvantage might arise in school and what *reasonable adjustments* may work best. The principles that underpin the CFA emphasise the importance of respecting the views, wishes and feelings of children and young people, and of their participation in decision-making<sup>47</sup>. These principles should encourage and support schools in securing the effective

<sup>46</sup> EHRC (2014, updated September 2023, amended July 2024) *Technical Guidance for Schools in England*

<sup>47</sup> The principles in the CFA s19 apply directly to LAs. Schools are required to co-operate with the LA in meeting its CFA duties to children and young people with SEN and disabilities.

participation of disabled pupils in planning and implementing *reasonable adjustments*. This is likely to be supported by the school's own evidence of the beneficial impact when they do.

### Checkpoint: participation

DfE guidance on exclusions for maintained schools, academies, and pupil referral units<sup>48</sup> makes it clear that, where practical, the head teacher should give the pupil an opportunity to present their case before taking the decision to exclude. In a number of claims of disability discrimination that have gone to the Tribunal schools have been criticised for not having sought the pupil's views.

The SEN and disability code of practice (the Code)<sup>49,50</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 or limit 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 for most providers are:

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

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<sup>48</sup> Department for Education (2024) *Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - Guidance for maintained schools, academies, and pupil referral units in England*

<sup>49</sup> DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*

<sup>50</sup> For information about how the Code applies to schools, see section 20, *Wider disability responsibilities in the Children and Families Act 2014*.



## A bit more about the requirements for schools

For schools and disabled pupils, the first and third requirements apply, the second does not:

- 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 to 8, above, are relevant here;
- the second requirement, to make alterations to *physical features*, does not apply to schools. However, schools are under a duty to plan to increase accessibility, see section 15, below; and
- the third requirement, to provide *auxiliary aids*, covers the provision of auxiliary aids and services.

## A bit more about adjustments to a provision, criterion and practice

The *reasonable adjustments* duty applies to any *provision, criterion or practice*, regardless of whether it is codified in any policy.

*Competence standards*, that is standards that demonstrate *whether or not a person has a particular level of competence or ability*, are specifically excluded from the requirement to make *reasonable adjustments to a provision, criterion or practice*. See 'A bit more about competence standards', below.

## A bit more about alterations to physical features

Whilst the *reasonable adjustments* duty does not require schools to make alterations to *physical features* to meet the access needs of an individual pupil, it may be good practice to do so and, if alterations are specified as *special educational provision* in Section F of an EHC plan, it is a duty on the LA to secure them.

## A bit more about auxiliary aids and services

*Auxiliary aids* and services may include equipment, the provision of specialist advice to the school, or direct teaching or support to the disabled pupil.

It is likely that much of what schools might be expected to provide by way of *auxiliary aids* and services, under the Equality Act, could also be provided, as *special educational provision*, through the SEN framework. Where something is already provided through the SEN framework, schools can take this into account in deciding what *reasonable adjustments* to make, see checkpoint, below.

The SEN Framework requires LAs to set out what schools and other settings are expected to provide from their delegated resources and to publish this as part of

the *SEN and disability local offer*<sup>51</sup> (this is often referred to as the 'normally available' or 'ordinarily available' provision). This requirement helps to clarify the respective responsibilities of schools, LAs and other agencies.

### A bit more about reasonable adjustments and pupils with medical conditions

The CFA requires maintained schools (excluding maintained nursery schools), pupil referral units, academy schools and alternative provision academies to make arrangements for supporting pupils at the school with medical conditions and to have regard in doing so to statutory guidance, *Supporting pupils at school with medical conditions*<sup>52</sup>.

The guidance is clear that pupils with medical conditions may count as disabled under the Equality Act; that schools should ensure that these pupils can access the same opportunities at school as others; and it supports schools in understanding what may be considered *reasonable adjustments* for this group of pupils.

*Supporting pupils at school with medical conditions* also provides schools with guidance on the development of policies on the management and administration of medicines and on putting in place systems for supporting individual pupils with medical needs.

### A bit more about competence standards

We said, above, that *competence standards* are exempted from the requirement to make *reasonable adjustments* to a provision, criterion or practice.

#### Checkpoint: competence standards

*A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability*<sup>53</sup>.

If a *competence standard* would otherwise constitute *indirect discrimination*, it must be a *proportionate means to a legitimate aim*, so must be objectively justifiable and relevant to the particular course or programme of study<sup>54</sup>.

<sup>51</sup> The Special Educational Needs and Disability Regulations 2014 (SI 2014/1530) regulation 53 and Schedule 2

<sup>52</sup> DfE (2015) *Supporting pupils at school with medical conditions: Statutory guidance for governing bodies of maintained schools and proprietors of academies in England*

<sup>53</sup> Equality Act 2010 Schedule 13 paragraph 4(3)

<sup>54</sup> See case law: University of Bristol v Abrahart, [The University of Bristol -v- Dr Robert Abrahart](#)

The exemption from the *reasonable adjustments* duty relates to the pupil's ability to reach the level or standard required; it does not relate to the way in which *competence standards* are assessed, that is the method or mode of assessment.

Schools must make *reasonable adjustments* to tests, exams and assessments so that disabled pupils are not disadvantaged in demonstrating their competence by the assessment method. *Reasonable adjustments* for assessments are expected to reflect the normal ways of working within the school for that particular pupil.

*Qualifications bodies*, normally referred to as awarding organisations, are also under duties to make *reasonable adjustments*. For external awards and qualifications, each awarding organisation publishes its own policy on *reasonable adjustments* on its website.

The Joint Council for Qualifications (JCQ) publishes guidance on access arrangements, *reasonable adjustments* and special consideration for general qualifications and some vocational and technical qualifications.

The guidance is for heads of centre, members of the senior leadership team, the SENCo and, where relevant, the SEN Governor. The guidance sets out the arrangements for which decisions are delegated to the centres and those for which an application must be made to the awarding organisation.

Centre delegated decisions can be made in respect of a number of arrangements, such as alternative rooming arrangements, the provision of fidget toys and stress balls, low vision aids or magnifiers, and non-electronic ear defenders. Other arrangements such as extra time and the use of readers or scribes require application to the awarding organisation.

### The JCQ guidance

*The purpose of an access arrangement/reasonable adjustment is to ensure, where possible, that barriers to assessment are removed for a disabled candidate preventing them from being placed at a substantial disadvantage due to persistent and significant difficulties. The integrity of the assessment is maintained, whilst at the same time providing access to assessments for a disabled candidate<sup>55</sup>.*

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<sup>55</sup> JCQ (2024) *Adjustments for candidates with disabilities and learning difficulties: Access Arrangements and Reasonable Adjustments*, para 4.2.1 To note: JCQ updates its guidance annually.

JCQ also provides examples of applications that have been made for disabled students with significant difficulties and for whom complex arrangements have been made to enable the student to access the assessment<sup>56</sup>.

### A bit more about what is *reasonable*

The EHRC makes it clear that it is not possible to say what will or will not be *reasonable* in any particular situation, but provides guidance on factors that may be taken into account when deciding what is *reasonable*:

#### Checkpoint: what is reasonable?

EHRC guidance on factors that are likely to be taken into account when deciding what is reasonable includes<sup>57</sup>:

- what *special educational provision* may be being made, under Part 3 of the CFA, for a pupil who is disabled;
- the resources available to the school;
- the financial and other costs of a particular adjustment;
- how effective a particular adjustment would be;
- the practicability of the adjustment;
- the effect of the disability on the individual;
- health and safety requirements;
- the need to maintain academic, musical, sporting and other standards; and
- the interests of other pupils and prospective pupils.

Some may feel that making *reasonable adjustments* is in some way favouring disabled pupils. The Equality Act allows for more favourable treatment, see *direct discrimination*, above. At the heart of the *reasonable adjustments* duty is the recognition that treating everyone the same, regardless of disability, may result in discrimination.

#### Checkpoint: 'to treat everyone the same, ...regardless of disability, is to discriminate...'

In the case of Child P, the Judge said: *The essence of section 20 [of the Equality Act] is that reasonable adjustments may have to be made for disability: the House of Lords decision [in a different case, cited as a precedent] makes it clear that positive discrimination, in favour of disabled*

<sup>56</sup> JCQ (2023) *Case studies of disabled candidates with significant difficulties to assist SENCos and senior leaders*

<sup>57</sup> EHRC (2019) *Reasonable adjustments for disabled pupils*, England

*people, can be called for under this section. To treat everyone the same, to apply the school's rules and procedures on behaviour management regardless of disability, is to discriminate against a pupil whose disabilities call for a proportionate response, or adjustments, to be made.*

In practice, making *reasonable adjustments* prevents disadvantage and recognises that to treat disabled pupils equally, it may be necessary to do things differently for them. Schools must do what it is *reasonable* to do and are not expected to do anything unreasonable. So, under the Equality Act:

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

To make sure that disabled pupils are not at a disadvantage, schools should ensure that disabled pupils play as full a part as possible in school life. Under section 35 of the CFA, mainstream schools and maintained nursery schools are also specifically required to make sure that children with SEN engage in school activities alongside their peers. Many pupils with SEN are also disabled, see section 4, above. *Reasonable adjustments* are an important element in achieving their inclusion<sup>58</sup>.

There are many creative and inspiring examples of *reasonable adjustments* being made by schools across the country. Often schools are not aware that what they are doing counts as a *reasonable adjustment*: they are just doing what they think needs to be done to ensure that all pupils can join in all the benefits of the school with their peers. This approach, well embedded in the school's ethos, means the school is much less likely to discriminate against a disabled pupil.

## 11. 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 the Equality Act. *Harassment* would include bullying, mocking or belittling a disabled pupil.

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<sup>58</sup> For more information about *reasonable adjustments* see EHRC (2019) *Reasonable Adjustments for disabled pupils, England*

## 12. 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 from *victimisation*, whether or not they are disabled. *Victimisation* is negative action by the school when someone makes a *protected act* under the Equality Act, for example: parents make a complaint or bring a claim to the Tribunal; a disabled child reports an incident; or another pupil provides evidence of what happened. These are all *protected acts* under the Equality Act and protection from *victimisation* applies even where the initial complaint is not ultimately upheld.

## 13. 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 Tribunal. The Equality Act provides for young people over school leaving age to make a claim of disability discrimination on their own behalf<sup>59</sup>.

Parents or young people need to bring a claim of disability discrimination within six months of the action that they believe amounted to discrimination. Where discrimination has extended over a period of time and is part of a *course of action*, the six months starts from the last instance of discrimination. The Tribunal has the power to extend the six months if it considers it just and equitable to do so.

### Checkpoint: exclusions

In maintained schools, pupil referral units, academy schools and alternative provision academies, where parents<sup>60</sup> dispute the decision of the governing board<sup>61</sup> not to reinstate a permanently excluded pupil, parents can ask for this decision to be reviewed by an independent review panel<sup>62</sup>. Where parents think there may have been disability discrimination in relation to a fixed-period or permanent exclusion, they can also make a claim to the Tribunal, in parallel, should they so wish.

<sup>59</sup> Equality Act 2010 Schedule 17 paragraph 3(a)

<sup>60</sup> Or the pupil, if the excluded pupil is over 18.

<sup>61</sup> The DfE guidance uses the term 'governing board' to refer to the governing body of a maintained school, the management committee of a PRU and the academy trust of an academy.

<sup>62</sup> DfE (2024) *Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement Guidance for maintained schools, academies, and pupil referral units in England*



## Avoiding any disadvantage that might lead to a claim

Keeping *reasonable adjustments* under regular review, checking that they are working, is key to preventing any disadvantage arising for a disabled pupil that might lead to a claim. In keeping adjustments under review, staff need to consult parents and pupils themselves, and seek advice from the SENCO or specialist services.

It is helpful if there are mechanisms for raising a concern informally. However, to address situations where such mechanisms have not worked, maintained schools and maintained nursery schools are required to have in place published procedures to deal with complaints<sup>63</sup> and academies and independent schools must have a complaints procedure, which must meet the Independent School Standards<sup>64</sup>. It is in the interests of pupils, parents and schools that the formal complaints mechanism is well advertised and accessible. This may allow for the resolution of any issues without recourse to the Tribunal.

Beyond the school, there are local and national services that can support the resolution of disagreements between parents and schools:

- LAs are required to provide, and publicise, SEN and disability information, advice and support (SENDIAS) services for children and their parents, see section 21, *SEN and disability information, advice and support services*, below. SENDIAS can provide informal support in resolving disagreements.
- LAs are also required to make disagreement resolution services available for the resolution of disagreements, including those between parents or young people and maintained schools, academies, maintained nursery schools about the *special educational provision* made for a child, whether they have an EHC plan or not<sup>65</sup>.
- The Equality Advisory and Support Service provides free advice, information and guidance on equality, discrimination and human rights issues. It runs a national helpline<sup>66</sup>.

## 14. Schools' wider responsibilities

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

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<sup>63</sup> [Section 29\(1\) of the Education Act 2002](#)

<sup>64</sup> The [Education \(Independent School Standards \(England\) Regulations 2014](#) Schedule 1, Part 7

<sup>65</sup> LAs must set out details of disagreement resolution arrangements in their *SEN and disability Local Offer*.

<sup>66</sup> Equality Advisory and Support Service: [Equality Advisory and Support Service](#)

Schools must:

- look ahead and plan to make their school more accessible to disabled pupils, *the accessibility planning duty*; and
- for schools covered by the *PSED*, advance equality of opportunity for disabled people.

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; and
- discriminate against other groups of children and adults who share other *protected characteristics* under the Equality Act, for example sex, race and sexual orientation.

Schools can take *positive action* to address the impact of discrimination for particular groups of people who share *protected characteristics*. In section 18, below, we explore how this duty sits alongside other duties owed to disabled pupils.

## 15. What is an accessibility plan?

The *reasonable adjustments* duty requires schools to think ahead and make adjustments so that individual disabled pupils can participate in the whole life of the school. The accessibility planning duty requires a more planned approach to opening up key aspects of the life of the school so that, over time, disabled pupils are more comprehensively included in the whole life of the school and fewer adjustments are needed for individual disabled pupils.

The duty requires schools to draw up an *accessibility 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<sup>67</sup>.

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<sup>67</sup> The accessibility planning requirements set out in the Equality Act section 88 and Schedule 10

### Checkpoint: accessibility

Accessibility is often thought of as physical access to buildings. The accessibility planning duty is wider than this:

**The curriculum access requirements** focus on increasing the extent to which pupils can participate in the school's curriculum. This might mean, for example: addressing any restrictions and increasing the range of subjects that disabled pupils can opt for; or training PE teachers in a wider range of activities that can include disabled pupils. However, this duty is not only about timetabled lessons; it is about the collective organised experiences and activities for pupils throughout the school day and beyond, so the plan should also address any shortfall in the participation of disabled pupils in a whole range of activities, such as school councils, break and lunchtime activities, school trips and visits.

**The information requirements** focus on improving the ways in which information that is readily accessible to pupils who are not disabled can be made available to disabled pupils. There is a particular focus on taking account of the preferences of disabled pupils about how they like to receive information. This might include: making information available in an accessible electronic format for pupils using screen reading software; making sure that printed materials are provided in the correct font for pupils with vision impairment; reducing the 'reading age' of curriculum materials; or providing training for staff in making key documents available in Easy Read versions for pupils with a learning difficulty.

**The physical accessibility requirements** are also broadly expressed. This is not just about ramps and doorways, it is about how schools can improve the physical environment to increase the extent to which disabled pupils can benefit from both the education provided at the school and the wider offer of the school, the *benefits, facilities and services* at the school. This might include: introducing adjustable height benches for practical subjects; increasing colour contrast in corridors and doorways so that pupils with vision impairment can find their way around the school more independently; improving the acoustic environment through room design; improving internal facilities such as toilet and washing facilities, lifts, stairways and floor coverings or providing quiet study areas or a quiet area in the playground for pupils who find more rumbustious play areas overwhelming<sup>68</sup>.

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<sup>68</sup> The DfE sets out design and construction standards in Building Bulletins, for example, *Building Bulletin 93: Acoustic Design of Schools - Performance Standard*; and *Building Bulletin 102: Designing for disabled children*

The school's accessibility plan must be:

- a plan for a three-year period, for timing see below;
- in writing;
- implemented; and
- reviewed during the three-year period to which it relates and revised as necessary.

When they prepare an *accessibility plan*, the responsible body must have regard to the need to allocate adequate resources for implementing the plan<sup>69</sup>.

The timescales for *accessibility plans* are quite specific and a new plan must be prepared every three years, counting from 1 April 2006, when the first 'new' plans were required<sup>70</sup>. A new plan needs to be prepared on 1 March 2027, 2030, and so on and runs for the three-year period starting on 1 April in the same years<sup>71</sup>.

### Checkpoint: three-year timescale

With a specified three-year timescale for accessibility plans, schools need to consider not just where their current disabled pupils will be in three years' time but also think ahead to their new pupil intake and the range of impairments they may be able to anticipate in future.

*Accessibility plans* can be prepared as standalone documents or as part of other documents, for example, they can be incorporated into school equality schemes, school development or improvement plans or school building or estate strategies, as appropriate. The CFA requires maintained schools, academies and maintained nursery schools to publish *information as to the school's accessibility plan* in its *SEN Information Report*, along with information as to other aspects of schools' duties to disabled pupils, see section 19, below. Schools that are not covered by the duty to publish an *SEN Information Report* will nonetheless want to consider whether to publish information about their *accessibility plan* or the plan itself.

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*and children with SEN*. To note: area guidance in BB102 has been superseded, but BB102 still provides relevant design guidance.

<sup>69</sup> The Equality Act 2010 Schedule 10, paragraph 4(1)

<sup>70</sup> The Disability Discrimination (Prescribed Times and Periods for Accessibility Strategies and Plans for Schools) (England) Regulations 2005 (SI 2005/3221)

<sup>71</sup> For new schools, plans run from a month after opening to the next three-year period that applies to existing schools. Thereafter, plans follow the same three-year cycle as other schools, see Regulations above.

For all schools, a *relevant inspection may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan*<sup>72</sup>.

CDC publish a companion to this guide, a handbook for schools, that provides a more detailed account of the accessibility planning requirements and supports schools in developing and reviewing and revising, their *accessibility plan*<sup>73</sup>.

**Checkpoint:** an *accessibility plan* may helpfully be embedded in the school development or other, broader, plan that has the oversight of the senior leadership team and the governing board. This is a good way of ensuring that the plan, and progress on implementation, is monitored and it avoids good, well thought through plans gathering dust on a shelf or sitting in a forgotten folder on someone's laptop; it can help to ensure that plans happen and the benefits are realised.

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

The *PSED* is a general duty that applies to publicly-funded schools, and to other public bodies, including the DfE and Ofsted. It requires them to have due regard to the need to:

- eliminate discrimination, *harassment*, *victimisation* and other *prohibited conduct*;
- advance 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 advance 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 between those who share *protected characteristics* and those who do not.

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

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<sup>72</sup> The Equality Act 2010 Schedule 10 paragraph 3(7)

<sup>73</sup> CDC (2025) *Accessibility plans and the Equality Act 2010: a handbook for schools*

impact. If challenged, schools will need to be able to demonstrate how they had *due regard* to the requirements of the *PSED*.

The *PSED* covers all *protected characteristics* under the Equality Act. The focus in this guide is on disability.

**Checkpoint:** this part of the Equality Act applies to maintained schools, pupil referral units, nursery schools and academies (but not to other independent schools). Non-maintained special schools are covered by the general duty, above, but not by the specific duties discussed below.

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

The general duties in the *PSED*, above, apply to all public bodies including publicly-funded schools. Sitting under the general requirements, there are specific duties that apply to maintained schools, academies and pupil referral units.

The specific duties require maintained schools, academies and pupil referral units to:

- publish *equality information*; and
- prepare and publish *equality objectives*.

*Equality information* is information that shows how the school has had *due regard* in making decisions, including any analysis undertaken and the evidence used<sup>74</sup>. The EHRC suggests the evidence might include school performance data, anti-bullying policies, a school development plan and equality milestones, curriculum materials, governing body minutes, equality training materials, and parent and pupil surveys<sup>75</sup>.

This information can help schools to understand the impact of their policies, practices and decisions on different groups of pupils, identify areas of inequality that may need to be addressed, and plan more effectively. The published information must be sufficient to demonstrate the school's compliance with the general duty. It must be published at least annually but can be published more frequently, or updated as new information becomes available.

*Equality objectives*: the focus of the specific duty is on measurable outcomes that will eliminate discrimination, advance equality of opportunity and foster good relations. The school's *equality objectives* must be designed to achieve

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<sup>74</sup> EHRC (2023) *Technical guidance on the Public Sector Equality Duty: England*

<sup>75</sup> EHRC (2022) *Public Sector Equality Duty: Guidance for schools*



these outcomes. The objectives must be *specific and measurable*, with new objectives being set not more than four years after the previous objectives were set<sup>76</sup>. Schools need to consider how progress towards the objectives will be measured.

The intention is that these considerations should become embedded in schools' policies and practices so that schools routinely consider the impact of decisions they make on disabled pupils, and those who share other *protected characteristics*.

**Example 9:** 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, over the next school year.

**Example 10:** An analysis of attendance data shows that disabled pupils have higher rates of absence. The school sets an objective to reduce absences amongst disabled pupils by a third over four years. The governing board will monitor the data as part of their termly monitoring.

**Example 11:** 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 'expected' level in English at the end of Year 6 over the next two years.

**Example 12:** No disabled pupil holds any position of responsibility in the school. The school sets an objective that five disabled pupils will be in positions of responsibility in three years' time.

**Example 13:** 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.

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. It is good practice to 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 schools to

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<sup>76</sup> The Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260)

understand the impact of its policies and practices and to identify effective improvements.

The information and the objectives must be published 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 an equality policy or a school improvement plan. Schools that have an equality policy need to check that they have published information and have set objectives as required under the *PSED*.

## **18. The Equality Act and positive discrimination**

In general, the Equality Act makes positive discrimination unlawful. However, there are some specific exceptions.

The Equality Act allows for the more favourable treatment of disabled people, including disabled pupils in schools. More favourable treatment does not amount to discrimination against pupils who are not disabled, see section 7, above.

These provisions relate both to the treatment of an individual pupil and to groups of disabled pupils. It would be lawful, for example, to give priority in admissions to a disabled child applying to come to the school, to allocate a teacher with specialist subject expertise to work with a disabled pupil or to provide additional rehearsals for disabled pupils to enable them to take a full part in a school play or other event.

The Equality Act also allows schools to take *positive action* to address any disadvantage arising from the under-representation of pupils who share a *protected characteristic*, for example, in a particular subject or in a school activity. *Positive action* can overcome barriers for groups of pupils, improve education and ultimately outcomes. It is focused on groups of pupils rather than individual pupils and might, for example, involve:

- designing provision or changing the way provision is made, its timing or location to increase take-up by particular groups of pupils;
- special arrangements to increase the participation of groups of pupils in school events or activities such as school trips; or
- improving careers advice or providing mentoring for particular groups of pupils.

The Equality Act limits *positive action* in that it must be a proportionate means of achieving one or more of three aims<sup>77</sup>. However, because the more favourable treatment of disabled pupils is allowed under other parts of the Equality Act, it is not constrained by the considerations that limit *positive action*.

## 19. Publication of information

Under the CFA, maintained schools, maintained nursery schools and academy schools, are required to publish information, their *SEN Information Report*, about the implementation of their SEN policies. The detail of the SEN requirements is specified in regulations<sup>78</sup>. The CFA also requires the *SEN Information Report* to include *information as to*<sup>79</sup>:

- the arrangements for 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.

New regulations were introduced in 2018<sup>80</sup> to ensure that all public-facing websites and mobile applications are accessible to all users, especially disabled users. Primary and secondary schools and nurseries are 'partially exempt' from the regulations: they are not required to meet all the duties but they must:

- comply with the regulations in respect of 'essential administrative activities offered online'<sup>81</sup>. This includes content people need in order to use their services, for example a form that lets users outline school meal preferences; and
- publish an accessibility statement on their website or mobile app.

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<sup>77</sup> *Positive action* must be a proportionate means of achieving one or more of the following aims: address the impact of a disadvantage that is current or that has happened in the past to those who share a particular *protected characteristic*; meet the particular needs of pupils who share a *protected characteristic*; or facilitate participation in activities where participation of those sharing a particular *protected characteristic* is disproportionately low.

<sup>78</sup> The Special Educational Needs and Disability Regulations 2014 (SI 2014/1530)

<sup>79</sup> The CFA, section 69(3)(b)

<sup>80</sup> The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 (SI 2018/852)

<sup>81</sup> Web Content Accessibility Guidelines (WCAG2.1AA)

## 20. Wider disability responsibilities in the Children and Families Act 2014

There are general duties in Part 3 of the CFA owed towards disabled children, their parents and young people as well as to those with SEN. These include requirements on the LA to:

- have regard in exercising its SEND functions to the importance of key principles, in section 19 of the CFA: taking account of 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;
- identify disabled children and young people, as well as those who have or may have SEN;
- commission services jointly with other agencies;
- integrate services where this will promote well-being or improve quality of services;
- publish a *SEND Local Offer* of services, see next section;
- provide information and advice, see next section;
- keep educational, training and social care provision under review; and
- both co-operate with, and seek the co-operation of, *local partners*.

These duties apply to LAs but, as *local partners* in the duty to co-operate, maintained schools, academies, pupil referral units, non-maintained special schools and schools approved under section 41 of the CFA<sup>82</sup> should anticipate the need to co-operate with the LA in the fulfilment of these duties, including: in identifying disabled children and young people; in ensuring disabled children, their parents and disabled young people know about the information and support and the range of services available locally; in meeting high standards of participation; in respecting 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.

Schools have a range of duties under Part 3 of the CFA, many of which apply to disabled children and young people as well as those with SEN. The Code provides statutory guidance for schools on these duties. Maintained schools, academies, pupil referral units, non-maintained special schools and independent special schools approved under section 41 of the CFA are among the bodies that

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<sup>82</sup> The CFA, section 28

must have regard to the Code in exercising their SEN and disability functions under the CFA:

### **The SEN and disability code of practice**

*This means that whenever they are taking decisions they must give consideration to what the Code says. They cannot ignore it. They must fulfil their statutory duties towards children and young people with SEN or disabilities in the light of the guidance set out in it. They must be able to demonstrate in their arrangements for children and young people with SEN or disabilities that they are fulfilling their statutory duty to have regard to the Code<sup>83</sup>.*

## **21. Information, advice, guidance and support for disabled children, their parents and young people**

### **SEND Local Offer**

Under the CFA, LAs must publish a *SEND Local Offer* that sets out a wide range of information about services that support disabled children and young people and those with SEN and their parents, including, for example, information about<sup>84</sup>:

- special educational, health and social care provision;
- other educational provision, for example sports or arts provision;
- travel to and from schools;
- support to help children and young people move between phases of education, including on to further or higher education;
- provision to assist in preparing children and young people for adulthood;
- childcare, including suitable provision for disabled children and those with SEN; and
- information about how to request an EHC needs assessment, and the availability of personal budgets<sup>85</sup>.

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<sup>83</sup> DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*

<sup>84</sup> For more detail, see DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*, Chapter 4

<sup>85</sup> The Special Educational Needs and Disability Regulations 2014 (SI 2014/1530) Schedule 2

## Careers guidance

All state-funded schools in England are required to:

- secure independent careers guidance for pupils throughout their secondary education. This must include information on 16-18 education or training options, including apprenticeships, for pupils who are of compulsory school age;
- have regard to careers statutory guidance<sup>86</sup>; and
- ensure that there is an opportunity for a range of education and training providers to access pupils in year 8 to year 13 for the purpose of informing them about approved technical education qualifications or apprenticeships.

The duties apply to all students up to and including age 18 and, for young people with an EHC plan, up to the age of 25.

The statutory guidance is structured around the eight Gatsby Benchmarks which provide an inclusive framework for developing careers programmes.

### Checkpoint: Gatsby Benchmarks, SEND Perspectives

*Good career guidance ensures that all young people, whatever their needs, background or ambitions, know the options open to them and can make the informed choices needed to fulfil their potential. This is particularly important for the more than one million young people in England recognised as having SEND. Far too often, these young people can be held back by negative stereotypes and assumptions about their limitations<sup>87,88</sup>.*

The Careers & Enterprise Company supports schools to meet the Gatsby Benchmarks through its Careers Hubs, the Enterprise Adviser Network of senior business volunteers and through Careers Leader training. A range of advice and guidance is available to support schools and careers advisers<sup>89</sup>.

Over the short-, medium- and longer-term, outcomes remain poorer for young disabled pupils than their non-disabled peers<sup>90</sup> so it is crucial that guidance is informed by a good understanding of the positive impact on outcomes for disabled pupils of: raising career aspirations and broadening employment horizons; obtaining qualifications; progress to higher levels of study; and

<sup>86</sup> DfE (2023) *Careers guidance and access for education and training providers: Statutory guidance for schools and guidance for further education colleges and sixth form colleges*

<sup>87</sup> Gatsby Benchmarks (updated 2024) *SEND perspectives: For those working with young people with Special Educational Needs & Disabilities (SEND)*

<sup>88</sup> See also Gatsby Benchmarks (updated 2024) *Benchmark 3: Addressing the needs of each pupil*

<sup>89</sup> For example, DfE (2022) *Supported internships*; National Development Team for Inclusion

<sup>90</sup> DfE (2021) *Post 16 education and labour market activities, pathways and outcomes (LEO)*

meaningful work experience as well as their participation in the wider life of the school.

Whilst the duties, above, apply to pupils in their secondary years, there is evidence that ambition can be compromised at an early stage:

### House of Lords Public Services Committee

*Young disabled people may be written off as not needing advice regarding work and careers due a mistaken perception that they will never be able to move into work. These perceptions can take root at a very young age.*

*Laura Davis, told us of an occasion when she was in a nursery:*

*"They were having conversations with these little people, aged three or four, about what they want to be when they grow up. There was a boy in the room who said he wanted to be a bus (sic), and nobody questioned that, which is fine, but they skipped over the little girl with Down's syndrome. They did not ask her."*

*When Ms Davis asked the nursery staff why they had not asked this child, their response had been that they did not want to "raise their ambition"<sup>91</sup>.*

Whilst the statutory duties relate to pupils in their secondary years, there are resources to support primary schools in 'career-related learning'<sup>92,93,94</sup>; and preparation for adulthood<sup>95,96</sup>.

### The SEN and disability code of practice:

*Being supported towards greater independence and employability can be life transforming for children and young people with SEN. This support needs to start early, and should centre around the child or young person's own aspirations, interests and needs. All professionals working with them should share high aspirations and have a good understanding of what support is effective in enabling children and young people to achieve their ambitions<sup>97</sup>.*

<sup>91</sup> House of Lords Public Services Committee (2024) *Think Work First: The transition from education to work for young disabled people*

<sup>92</sup> [Introduction to primary career-related learning | Primary Platform](#) Careers & Enterprise Company

<sup>93</sup> Career Development Institute (2021) *Career Development Framework: Handbook for primary schools*

<sup>94</sup> Career Development Institute (2021) *Career Development Framework Handbook: KS3, KS4 and Post 16*

<sup>95</sup> DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*, Chapter 8, *Preparing for adulthood from the earliest years*

<sup>96</sup> Whole School SEND (2020) *Preparing for Adulthood from the Earliest Years Review Guide*

<sup>97</sup> DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*, Chapter 8, *Preparing for adulthood from the earliest years*



## SEN and disability information, advice and support services

Duties in the 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. The duty covers the provision of 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, and must provide contact details of support services, including details of the local SEN and Disability Information, Advice and Support (SENDIAS) service<sup>98</sup>.

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.

## 22. Disability equality, inclusion and knowing how your school is doing

### Accountability and the governing board

Governing boards hold their school to account through evidence on a wide range of different aspects of school life. Typically, this includes:

- data on pupil numbers, attendance, progress and attainment, suspensions, exclusions, safeguarding, wellbeing and financial management;
- information from parent surveys and pupils' views; and
- governor or trustee visits to the school.

In presenting evidence to governing boards, it is important that:

- data has been agreed between the governing board and the executive leadership<sup>99,100</sup>; and
- data and information gathering should not be unduly burdensome.

The EHRC highlights these principles in relation to information that relevant schools are required to publish in meeting the *PSED*:

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<sup>98</sup> For information about your local SENDIAS service see Links and Resources section.

<sup>99</sup> NGA, ASCL, NAHT and others (2022) *What multi academy trust boards and CEOs should expect from each other*

<sup>100</sup> NGA, ASCL, NAHT and others (2022) *What governing boards and headteachers should expect from each other*

### **EHRC guidance on information collection**

*The PSED does not require schools to routinely collect more information than they do already. In most instances, schools will already have sufficient information, either in the data that they routinely collect, through individual profiling or in the records that classroom teachers keep<sup>101</sup>.*

Much of the data that goes to the governing board is analysed by pupil characteristics and, in line with the principles, above, should, where possible, draw on existing data collections rather than new data, even if a different analysis is needed, for example to highlight aspects of the participation or performance of disabled pupils<sup>102</sup>.

Teachers will want to be involved in considering how disabled pupils are represented in data and information in relation to their respective areas of responsibility.

### **Accountability and school inspection**

When inspecting schools, Ofsted expects to see schools adapt, design or develop a curriculum with high ambition for all pupils, including disabled pupils and pupils with SEN. They expect that curriculum to be designed to meet as many needs as possible from the outset and schools to be proactive in planning adjustments to facilitate meaningful inclusion; they do not expect schools to offer a reduced curriculum to disadvantaged or disabled pupils or to pupils with SEN.

Ofsted considers how well schools promote equality of opportunity and diversity to ensure pupils understand, appreciate and respect difference. To do this, Ofsted evaluates the experience of particular individuals and groups, such as disabled pupils and pupils with SEN, looking at the experience of a small sample of pupils and considering the way the school is working with a range of agencies to ensure that pupils receive the support they need. For disabled pupils and pupils with SEN, this includes ensuring that *reasonable adjustments* are made in accordance with the Equality Act.

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<sup>101</sup> EHRC (2022) *Public Sector Equality Duty: Guidance for Schools*

<sup>102</sup> A CDC guide, *Equality Act 2010 and disabled pupils: a guide for governors and trustees*, includes a set of checkpoints to support governors and trustees in understanding how well the disability duties in the Equality Act are being implemented in their school.

Ofsted also considers how well those with responsibility for the governance of the school ensure that the school is fulfilling its statutory duties, including those under the Equality Act<sup>103</sup>.

## 23. Wider considerations: embedding the duties

This guide summarises schools' duties to disabled pupils in the Equality Act and refers to some of the duties to disabled pupils in the CFA. Compliance with the duties is, by definition, a requirement. The duties are designed to eliminate discrimination and improve equality of opportunity for disabled pupils, and others protected by the Equality Act. An effective *accessibility plan* or set of *equality objectives* makes a difference and is an efficient way of removing barriers for disabled pupils. It can also reduce the extent to which schools need to make individual adjustments for individual pupils. However, the requirements of the Equality Act are more easily met where schools:

- welcome all children and young people and their families;
- adopt values that celebrate difference and promote an inclusive ethos;
- adopt a pro-active approach to identifying barriers and finding practical solutions;
- build relationships with disabled pupils and with their families to inform and enable the participation of disabled pupils in all the opportunities at the school;
- ensure a voice for pupils themselves;
- are ambitious for disabled pupils;
- provide staff with the training and skills they need to include disabled pupils and access to more specialist support to supplement and complement what the school can provide on its own; and
- keep all their arrangements under regular review as different considerations change over time.

A whole school approach that embeds equality considerations in the culture and ethos of the school, in school policies and in everyday decisions, is more likely to achieve equality of opportunity, so:

*... that all pupils can thrive together, understanding that difference is a positive, not a negative, and that individual characteristics make people unique (Ofsted)<sup>104</sup>*

The impact of this should be that, over time, the culture and attitudes of the school community become more welcoming, outcomes for disabled pupils

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<sup>103</sup> Ofsted (2024) *School Inspection Handbook*

<sup>104</sup> Ofsted (2024) *School Inspection Handbook*

improve, and the school does not have to make so many individual adjustments for individual pupils 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 too.

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Council for Disabled Children (2025) *Accessibility plans and the Equality Act  
2010: a handbook for schools*

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Department for Education Building Bulletins:

- *Building Bulletin 93: Acoustic Design of Schools - Performance Standards*
- *Building Bulletin 102: Designing for disabled children and children with  
SEN<sup>105</sup>*

Department for Education (July 2011 (introduction updated June 2013, latest  
terminology update December 2021)) *Teachers' Standards: Guidance for school  
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<sup>105</sup> To note: area guidance in BB102 has been superseded by BB104, but BB102 still provides relevant design guidance.

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The Disability Discrimination (Prescribed Times and Periods for Accessibility Strategies and Plans for Schools) (England) Regulations 2005 (SI 2005/3221)

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United Nations (1989) *Convention on the Rights of the Child*. General Assembly resolution 44/25

Whole School SEND (2020) *Preparing for Adulthood from the Earliest Years Review Guide*



## Links and resources

Careers & Enterprise Company [Introduction to primary career-related learning: Primary Platform](#)

Complain about a school: Disability discrimination: [Complain about a school: Disability discrimination - GOV.UK](#)

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/)

Department for Education - Equality Act 2010: advice for schools: <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

Equality Advisory and Support Service: [Equality Advisory and Support Service](#)

Equality and Human Rights Commission: <https://www.equalityhumanrights.com/en>

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

Gatsby Benchmarks 2024: [Updated Benchmarks Overview | Gatsby Benchmarks](#)

Design and construction standards:

[Approved Document M: Volume 2 - Buildings other than dwellings | Part M - Access to and use of buildings | Planning Portal](#)

[BS 8300-2:2018 Design of an accessible and inclusive built environment. Buildings. Code of practice \(bsigroup.com\)](#)

[BS 8300-1:2018 Design of an accessible and inclusive built environment. External environment. Code of practice \(bsigroup.com\)](#)

National Development Team for Inclusion: [NDTi](#)

SEN and Disability Information, Advice and Support Services: [The Information, Advice and Support Services Network](#)

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)

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