



Disabled students and the Equality Act 2010: What colleges need to know and do

(plain text version)

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Introduction

Across their lives disabled people experience poorer outcomes than non-disabled people. Speaking in 2021 of a research programme to continue improving disability data in the UK, the Office for National Statistics (ONS) said:

An important part of ONS's work is to identify inequalities in society. As today's findings show, there are some stark differences between the experience of disabled and non-disabled people, from education and work to the experience of crime, including domestic abuse.¹

In education, the ONS found that disabled people were less likely to have a degree, more likely to have GCSEs as their highest form of qualification and more likely to have no qualifications at all. Poorer educational outcomes are linked to poorer life outcomes for disabled people with lower levels of employment, home ownership and wellbeing, and with higher levels of anxiety, loneliness and experience of domestic abuse².

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, providers of services and education. Different parts of the Equality Act cover different responsibilities. Colleges have responsibilities under different parts of the Equality Act, as employers, as providers of services and public functions and as providers of education. The main focus of this guide is on the responsibilities of colleges as providers of education to students.

¹ Josephine Foubert, Census and disability analysis team, Office for National Statistics. 18 February 2021

² ONS (2021) *Outcomes for disabled people in the UK: 2021*

The Equality Act covers people with a range of different *protected characteristics*³. The focus of this guide is on the *protected characteristic of disability*, see section 4, for the definition. Many of the duties are the same for all *protected characteristics* but there are ways in which the disability duties differ from the duties to those who share other *protected characteristics*:

- 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 students, colleges may, and often must, treat them more favourably.
- Some forms of discrimination, such as failure to comply with the reasonable adjustments duty, only apply to disabled people.
- Under the Children and Families Act 2014 (CFA), colleges have other, complementary responsibilities towards disabled young people and to those with special educational needs (SEN).

Colleges play an important part in addressing inequalities, offering a wide range of qualifications and an even wider range of courses, with mainstream and supported learning opportunities for students with high needs and offering a fresh start to young people who have not flourished in secondary school.

The framing of colleges' commitment to equalities comes from the ethos and values set by the governors or trustees. This is key in determining how well embedded the duties are into the everyday life of the college; how well college staff are aware of and understand the duties; how welcome all students feel; and the degree of mutual respect between all the different parties involved in the life of the college: teachers, leaders,

³ Throughout this guide italics are used to indicate that a term or expression has a particular meaning which is defined in the legislation or explained in guidance. Many of these terms or expressions are explained in this guide.

governors, trustees, support staff, young people themselves, and their families.

This guide is designed to support colleges in understanding their responsibilities to disabled students under the Equality Act, avoiding discrimination, and playing their part in addressing inequalities. It explains what the Equality Act requires of colleges and of the governors, trustees and others who are the *responsible body* for the college. It should not be used as a guide to any individual situation or as a substitute for legal advice.

The guide includes examples illustrating practices that may amount to discrimination or that may help colleges to avoid discrimination, and, throughout the text, Checkpoints highlight particular aspects of the duties or provide additional information or insights. The references section provides links to relevant websites, including sources of further information.

1. The Equality Act 2010: key concepts

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

- *protected characteristics*
- *prohibited conduct*.

The Equality Act protects people from *discrimination, harassment* and *victimisation* based on *protected characteristics*. 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, the *protected characteristic* of marriage and civil partnership does not apply to colleges' duties towards their students; it does apply to colleges' duties to others under other parts of the Equality Act: employment and the provision of services to other users of the institution.

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 in section 6.

2. Who is this guide for?

Part 6, Chapter 2, of the Equality Act sets out the duties covering the provision of further and higher education. These duties apply to: *universities; other institutions within the higher education sector; institutions within the further education sector; and 16 to 19 Academies.*

This guide is for the following education providers in England; throughout the guide, we refer to all of these providers as 'colleges':

- further education college corporations
- sixth-form college corporations⁴
- further education designated institutions⁵
- 16 to 19 academies.

Specialist further education colleges are covered by the same duties as other providers, though their decision-making reflects the fact that their provision is specifically designed for disabled young people.

This guide is for governors, trustees, college leaders, teachers and other staff in colleges. Boards of governors and trustees have the legal responsibilities for the Equality Act duties, and are responsible for ensuring that everyone working in their college understands how the duties affect day-to-day decision-making. The intention is that this guide will support governors and trustees in meeting this responsibility.

A companion guide, *Equality Act 2010 and disabled students: A guide for FE governors and trustees*, speaks directly to governors and trustees in respect of their Equality Act duties and how these relate to their broader duties to set the strategic direction for their college, meet the statutory

⁴ Including: Catholic sixth-form colleges designated as having a religious ethos; and sixth-form colleges where they are converting to become 16 to 19 academies. They are covered by the same Equality Act duties.

⁵ Institutions designated under section 28 of the Further and Higher Education Act 1992

requirements and hold leaders to account for the performance of the college.

Throughout this guide we use the term *colleges* to refer to the education providers listed. We also use the term to speak to those with the legal responsibility, at the same time as informing those with operational duties.

The Equality Act duties cover all *protected characteristics*, with particular duties that apply to disabled students. The focus of this guide is on disabled students.

The Equality Act duties apply to the provision of further education, adult education and higher education. Some sections of the guide are more focused on young people including sections where we explain how the disability duties sit alongside the SEN duties in the Children and Families Act 2014 (CFA) for young people up to the age of 25. We indicate where a section is particularly focused on younger students. However, many of the messages in these sections are also relevant to adult students.

Local authority (LA) duties in relation to further education are not covered.

The Equality Act covers a range of functions. Colleges have responsibilities to employees under Part 5 and to parents, carers, visitors and other users of the college under Part 3, the provision of services and public functions. The focus of this guide is on the duties of colleges as providers of education to disabled students.

3. Who has responsibility for the Equality Act duties in colleges?

It is the *responsible body* that has responsibility for the Equality Act duties in relation to their provision. The *responsible body* is different for differently constituted provision:

- For further education corporations, sixth-form college corporations and designated institutions, it is the *governing body*, usually referred to as the board of governors.
- For 16 to 19 Academies, it is the *proprietor*, that is the Academy Trust.

Under the employment sections of the Equality Act, the *responsible body* is responsible for the actions of those working for them, as employees or as their agents. This means that they are responsible for any unlawful acts by their employees, unless they can show that they took *all reasonable steps* to prevent the *prohibited conduct*, that is, the *discrimination, harassment or victimisation*, from taking place.

Individual employees and agents are also liable for discrimination. This means that anyone working at a college could expose both themselves and the responsible body to a claim of discrimination, if they discriminated or carried out other prohibited conduct.

It is therefore important to ensure that everyone working for the college understands the duties.

Colleges are not usually responsible for *prohibited conduct* by others who are not their employees or agents, for example, organisations providing work placements for students. However, case law indicates that if a college continued to use an organisation where there was *discrimination*, or other *prohibited conduct*, it could be found to be legally responsible⁶.

⁶ EHRC (2014) *Technical guidance on further and higher education*

Example 1: A student with a learning disability is placed with a local country park for work experience. The country park refused to make *reasonable adjustments* for the student and asked the college to find a different placement. If the college continued to place disabled students there without taking any action to address the discrimination, they may be held to be legally responsible for the discrimination.

4. Who counts as disabled?

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

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

In deciding whether someone is disabled, it is the effect of an impairment that has to be considered. If the impairment has a *substantial* and *long-term* effect on a person's ability to carry out normal day-to-day activities it may amount to a disability.

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

These terms set a relatively low threshold. They rule out conditions such as broken limbs, which normally heal in much less than a year, but cover more people than many imagine.

Checkpoint: disability data

The 2021 Census found that 11.3% of young people aged 15-19 were disabled. This represents a significant increase since the 2001 and 2011 censuses, both of which found that 5.15% of 15-19 year-olds were disabled⁷.

⁷ Some of the increase may be attributable to changes in the questions asked; these changes were made to align better with the definition of disability in the Equality Act.

Disability increases with age and the 2021 census found that 12% of people aged 35-39, 20.9% of people aged 55-59 and 34.8% of people aged 75-79 were disabled⁸.

Checkpoint: inclusions in the definition

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 Act, people who are certified⁹ as blind or partially sighted are also considered to be disabled.

Government Equalities Office (GEO) and the Women and Equalities Unit (WEU) updated guidance, in 2013¹⁰, on a range of issues to be taken into account when deciding who may be covered by the definition.

Checkpoint: exclusions from the definition

Some conditions are specifically excluded from counting as an impairment under the Equality Act¹¹:

- addiction to alcohol, nicotine or any other substance;
- a tendency to set fires;

⁸ ONS (2023) Disability by age, sex and deprivation, England and Wales: Census 2021

⁹ 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.

¹⁰ GEO and WEU (2011, updated 2013) Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability'

¹¹ The Equality Act 2010 (Disability) Regulations 2010 (S.I. 2010/2128)

- a tendency to steal;
- a tendency to physical or sexual abuse of other persons¹²;
- exhibitionism; and
- voyeurism.

In addition, *seasonal allergic rhinitis*, hay fever, on its own, is not considered an impairment, though it can be taken into account where it aggravates the effect of another condition.

For younger students

Disabled young people are covered by the SEN framework¹³ where their learning difficulty or disability calls for special educational provision, that is, something additional to or different from provision made generally for others of the same age in mainstream education settings. The definition of disability used in the SEN framework is that used in the Equality Act.

Checkpoint: disability, SEN, medical conditions and young people

Though the definitions of disability and SEN are covered by different legislation, in practice there is a significant overlap. 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 an EHC 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.

Young people who have a range of medical conditions, such as epilepsy, diabetes or more severe forms of asthma and eczema, are

¹² For further information on this point, see page 11.

¹³ The SEN framework is set out in the CFA, associated regulations and the *Special educational needs and disability code of practice: 0-25 years* (DfE and DH, 2015)

likely to be covered by the definition of disability but may not be identified as having SEN.

There are different ways in which a college may become aware that a student may be disabled. Young people are usually asked for information about prior attainment and the existence and nature of any learning difficulty, disability or health problem on application or enrolment forms. This information is incorporated into the Individualised Learner Record (ILR) returns to the Department for Education (DfE)¹⁴. However, the way in which questions are asked can influence the answers¹⁵. With no duty on students themselves to disclose a disability, colleges need to ask questions in a way that both respects a student's dignity and privacy and encourages young people to share information. If a young person thinks that information might be used against them, for example to keep them out of the college or away from a particular course, rather than to support them to be included, they may be reluctant to share information.

It is likely that parents of many disabled applicants and disabled students will continue to be involved in discussions about their college application, their studies and their welfare, where disabled young people are happy for them to be involved.

The SEN and disability Code of Practice

As young people develop, and increasingly form their own views, they should be involved more and more closely in decisions about their own future. After compulsory school age (the end of the academic year in which they turn 16) the right to make requests and decisions under the Children and Families Act 2014 applies to them directly, rather than to their parents. Parents, or other family members, can continue

¹⁴ Until March 31st 2025, returns were made to the ESFA. Since then, returns are sent to the DfE.

¹⁵ Rose, C (2006) *Do You Have a Disability-Yes or No? Or Is There a Better Way of Asking? Guidance on Disability Disclosure and Respecting Confidentiality*

*to support young people in making decisions, or act on their behalf, provided that the young person is happy for them to do so, and it is likely that parents will remain closely involved in the great majority of cases*¹⁶.

It is important to recognise that young people may not think of themselves as being disabled, their parents likewise, and may not be aware that, because of the nature and impact of their impairment, they are covered by this aspect of the Equality Act. Colleges should therefore ask questions in the broadest possible terms and ask about any learning difficulty, disability or health condition. It may help to focus the discussion on any adjustments that the college may need to make, rather than on the nature or existence of a disability. To tailor support to meet individual needs, some colleges encourage young people to contact them to discuss any support needs before admission, or, even, before applying.

Some young people may have a person-centred profile, a 'communication passport' or an 'About Me' document, that provides a pen portrait and a summary of what helps them, their likes and dislikes. This can provide a basis for the discussion of the young person's support needs and can support effective transitions.

Colleges should have this discussion around the time of admission but, because individual impairments can change, should also take regular opportunities to check with young people. Where a disabled student has an EHC plan, the annual review provides this opportunity. However, a student may not have declared a disability around the time of admission, so colleges need to be alert to any information that might emerge, for example through careful observation of a student's progress and behaviour, that may indicate the student may be disabled.

¹⁶ DfE and DH (2015) *Special educational needs and disability code of practice: 0-25 years*. Paragraph 8.13

For students of all ages

For the purpose of avoiding discrimination, anticipating and making reasonable adjustments, and meeting wider responsibilities, colleges need to know who their disabled students are. Many of the issues considered for knowing who your younger disabled students are, are relevant to students of all ages, including:

- the need to ask questions in a way that both respects a student's dignity and privacy and encourages them to share information;
- the need to ask questions in the broadest possible terms and ask about any learning difficulty, disability or health condition;
- the need to respect a request for confidentiality, whilst recognising that this might affect what *reasonable adjustments* are made;
- students not necessarily thinking of themselves as being disabled and not being aware that they have the protection of the Equality Act;
- focusing the discussion on any adjustments that the college may need to make; and
- the need to keep adjustments under review as needs or the demands of different courses or activities change.

It is important to keep the progress and behaviour of all students under review. Careful observation, accompanied by professional curiosity, can help colleges to understand who their disabled students are.

Checkpoint: disabled or 'just badly behaved'?

Where a disabled student is seen as acting out or aggressive, there is a risk that they are seen as being 'badly behaved'. This in turn can lead to a disciplinary response and the risk of exclusion, rather than a consideration of adjustments that might reduce the problematic behaviour. Where aggressive behaviour arises from an

underlying impairment, for example, because of heightened anxiety arising from changes to their regular timetable for an autistic student, the duty requires adjustments to reduce the anxiety that is leading to the presenting behaviour. A disciplinary response to such behaviour should not drive out professional curiosity about an underlying impairment and the need for adjustments. There is otherwise a risk of discrimination.

The risk of discrimination increases where people are not aware of the breadth of the definition and have a relatively restricted view of who may count as being disabled.

Difficult or challenging behaviour may be an indication of an underlying impairment. It may be helpful for colleges to know of a Tribunal judgment that relates to disabled pupils in schools:

Checkpoint: case law on *children in education* and a *tendency to physical abuse*¹⁷

A number of conditions including the *tendency to physical abuse* are listed in regulations as being excluded from counting as an impairment for the purposes of the definition of disability, see section 4. However, there is case law 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 provides¹⁸.

Colleges will want to be aware of this judgment, but the position over the *tendency to physical abuse* is uncertain in relation to colleges and young people and adults and has not been tested in court.

¹⁷ For pupils in schools, a claim of disability discrimination goes to the First-tier Tribunal (SEND) and an appeal against their decision goes to the Upper Tribunal.

¹⁸ Upper Tribunal decision in the case of Child L, August 2018

Under the Equality Act, a claim of discrimination against a college goes to the county court, see section 12. If a claim went to court, it would be no defence for the college to say that it did not know that a student was disabled, unless the college *could not reasonably have been expected to know* that they were disabled. If a student shares information about an impairment or condition with any member of staff including, for example, a receptionist, the college would be deemed to know.

We make the point, that the careful observation of a student's progress and behaviour or, for a young person up to the age of 25, the recognised existence of SEN may indicate an underlying impairment that may amount to a disability under the Equality Act. Should a claim go to court, such indications may be treated as evidence that the college could *reasonably have been expected to know* about the student's impairment.

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

Beyond these individual considerations, colleges need to know who their disabled students are, for planning purposes: to inform the way they meet the *public sector equality duty*, see section 14. In addition, where they are asked to, colleges must co-operate with the LA in the LA's duty, under the CFA, to identify disabled students and those who have or may have SEN.

Checkpoint: disabled students no longer at the college or not at the college

The duties apply to disabled students at the college, to disabled applicants to the college and, in some circumstances, to disabled

former students at the college, for example, providing a reference or convening a reunion.

Where a disabled person is not a student at the college, the duties also apply in relation to conferring a qualification.

5. What do the duties cover?

Colleges must not discriminate against disabled students in relation to:

- admissions
- the way they provide education
- access to any benefit, facility or service
- exclusions.

Admissions

Admissions covers the decision whether to admit to the college or to a particular course and includes:

- The terms on which admission is offered.
- The arrangements for deciding who is offered admission. This covers a wide range of activities associated with recruitment and the admissions process, such as open days, recruitment fairs, site visits, and taster courses as well as the more formal parts of the application process itself.
- The refusal to admit someone who has applied to be a student at the college.

Marketing of the college, and courses at the college, is also covered by the Equality Act. This includes advertisements to the general public. If messages in marketing material discouraged disabled people from applying or led them to believe that they might not be welcome, this may amount to *direct discrimination*.

Colleges must not discriminate against a disabled applicant by refusing to admit them because of their disability or for a reason related to their disability, and must consider what *reasonable adjustments* might be made to enable the applicant to be admitted.

Example 2: A young person with cognitive and communication impairments has applied to the college. They do not have an EHCP. The young person is refused admission to the college on the grounds that they do not believe that they can meet the young person's needs. However, they reject the young person without exploring whether there were *reasonable adjustments* that they could make. This may amount to disability discrimination.

It is important to plan as smooth a transition as possible to college and to anticipate students' needs. Colleges use opportunities, such as visits and open days, both to advertise the range of courses and other facilities at the college and to learn about the needs of students who may be interested in applying.

When a college becomes aware that a disabled young person may be applying to the college, the college should work with the young person well in advance of their likely arrival including deciding what *reasonable adjustments* would have to be made.

Where a young person has an EHC plan, discussions about post-16 options will be part of the necessary preparing for adulthood focus of annual reviews from at least Year 9. Where it becomes clear that a particular college is the student's preferred option, the LA should involve that college in the process (see Checkpoint). The timely sharing with the college of relevant information by the young person's current education setting will also be important here.

Checkpoint: a college helping shape an EHCP where a young person is intending to transfer to them

Where it is clear that a young person wants to attend a college when they leave school, as part of the annual review of the EHCP that college *must co-operate, so that it can help to shape the EHC plan, help to define the*

*outcomes for that young person and start developing a post-16 study programme tailored to their needs*¹⁹.

Reasonable adjustments, that the college must make, can take into account *special educational provision* that is made under the CFA, see section 10.

The provision of education and access to other services

Colleges must not discriminate in the way in which they provide:

- education; and
- access to any benefit, facility or service.

The duties cover the provision of all of the benefits, facilities or services, both educational and non-educational, that a college provides or offers to provide to students. This includes everything from teaching and learning to resources and equipment; from library services to leisure and sports facilities; from welfare services to careers advice. In effect, the duties cover the whole life of the college.

Further education and sixth-form colleges have an important role in tailoring education to meet local needs:

Checkpoint: tailoring provision

DfE guidance sets out that the board should:

- *oversee the shaping of the curriculum to meet students' needs in the context of local and national skills priorities*²⁰

¹⁹ DfE and DH (2015) *Special educational needs and disability code of practice: 0-25 years*, paragraph 8.24

²⁰ Education quality section of DfE (updated 2024) FE and sixth-form college corporations: governance guide

- understanding *the student profile, such as protected characteristics, prior attainment and disadvantaged backgrounds*²¹; and
- *understand student expectations and needs relating to progression to training, apprenticeships, employment, more advanced qualifications or higher education*²²

Exclusion and other detriment

Colleges must not discriminate:

- by excluding a disabled student
- by subjecting the student to any other *detriment*.

Colleges must not discriminate against a student by excluding them, that is removing them or withdrawing them from a course, or from the college either permanently or temporarily. This covers policies on discipline and removal or withdrawal, or suspension during an investigation, and procedures and practices, even if these are not codified in policies.

Colleges use a range of language about exclusion and the process is not as tightly regulated as it is in schools. However, the duty also covers *any other detriment*. *Detriment* means some form of disadvantage that a student might consider altered their position for the worse, for example the denial of an opportunity or a reduction in the choices available to them.

Colleges should consider whether any policies might adversely affect disabled students, whether there are *reasonable adjustments* that must be made and whether applying the policies as they stand would be a *proportionate means of achieving a legitimate aim*, see section 8.

²¹ Student engagement section of DfE (updated 2024) FE and sixth-form college corporations: governance guide

²² Student engagement section of DfE (updated 2024) FE and sixth-form college corporations: governance guide

Checkpoint: review before exclusion or removal

Colleges are expected to keep under review *reasonable adjustments* for disabled students, and *special educational provision* for those with SEN²³. Where a college is considering removing a student with an EHCP, schools are advised to *consider requesting an early annual review prior to making the decision to suspend or permanently exclude*²⁴. This would be good practice for colleges too in similar circumstances.

Conferring qualifications

The majority of qualifications obtained by students are awarded by *qualifications bodies*, usually referred to as awarding organisations. Where colleges themselves confer qualifications, including certificates, they must not discriminate against disabled students in the way that they confer these.

Awarding organisations offering general or vocational and technical qualifications also have responsibilities under the Equality Act. These are referred to in more detail in section 10.

Competence standards

Competence standards are excluded from the definition of a *provision, criterion or practice* and therefore, in conferring qualifications, colleges, and the awarding organisations, are not required to make *reasonable adjustments* to *competence standards*, see section 10. Equally, the application of a *competence standard* to a disabled person is not disability discrimination unless it constitutes *indirect discrimination*.

²³ DfE and DH (2015) *Special educational needs and disability code of practice: 0-25 years*

²⁴ DfE (2024) *Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*

Checkpoint: competence standards

The Equality Act defines a competence standard as: *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*²⁵.

For many courses, colleges also set entry requirements that students have to meet in order to be accepted onto that course. These often require students to be able to demonstrate a level of competence or ability relevant to the course they have applied for. As in the context of qualifications, *competence standards* that are objectively justifiable are not subject to the *reasonable adjustments* duty.

Content of the curriculum

The duties do not apply to the content of the curriculum, or anything done in connection with the content of the curriculum. This means that colleges can cover a wide range of content, thoughts and ideas, however controversial. This freedom applies even if the content of the curriculum is offensive to students who share particular *protected characteristics*. It will not be unlawful unless it is delivered in a way that results in *harassment* or subjects students to discrimination or other *detriment*.

²⁵ Equality Act 2010 Schedule 13 paragraph 4(3)

6. What is prohibited conduct?

The Equality Act sets out the four main forms of *prohibited conduct* that apply to all students who share *protected characteristics*. These are:

- *direct discrimination*
- *indirect discrimination*
- *harassment*
- *victimisation*.

In addition, the following forms of *prohibited conduct* apply to disabled students:

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

Other forms of *prohibited conduct* include helping someone else to *discriminate* against, *harass* or *victimise* a disabled student. A person helping or supporting someone else in this way is treated as having done the unlawful act themselves.

The different forms of *prohibited conduct* are described in more detail in the following sections. They are described with respect to the *protected characteristic* of disability.

7. Direct discrimination

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

Example 3: A student with learning difficulties is not permitted to go on a trip linked to their course of study. Staff decide that because of their learning difficulty the student will not be able to benefit from the activities arranged for the visit.

In this example, it is because of the student's disability that the staff decide not to take the student on the trip. This is likely to be *direct discrimination*. It is irrelevant whether 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 student who is not disabled is treated less favourably because they are:

- associated with a person who is disabled
- wrongly thought to be disabled
- treated as if they were disabled.

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

Colleges can and, in some circumstances must, treat disabled students *more favourably* than students who are not disabled. It is never unlawful discrimination to treat disabled people *more favourably* than non-disabled people because of or in connection with their disability, and it is not *direct discrimination* against a non-disabled student to treat a disabled student *more favourably*.

Example 4: A further education introductory course in painting and decorating is advertised as being open to disabled applicants only. The college aims to encourage more people with a disability onto their

courses

in manual trades. This would not be unlawful discrimination.

Example 5: A college does not apply the standard disciplinary sanction and adopts different strategies to support a disabled student in managing behaviour that arises from their disability. This would not be unlawful discrimination.

8. Indirect discrimination

Indirect discrimination is applying a *provision, criterion or practice* that puts a disabled student at a disadvantage compared with someone else who is not disabled and in a way that cannot be justified.

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

Example 6: A college does not allow students to use lifts to the upper floors. Students with mobility impairments are unable to reach the science laboratories on the second floor.

In this example, the policy was applied in the same way to all students; only the students with mobility impairments were placed at a disadvantage. This is likely to be *indirect discrimination*.

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 college 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. Guidance from the Equality and Human Rights Commission (EHRC) indicates that these terms may be taken to have the following meaning²⁶:

- A *legitimate aim* may include such aims as ensuring the wellbeing and dignity of students, the fair exercise of power, and the maintenance of academic and behavioural standards.

²⁶ EHRC (2014) *Technical guidance on further and higher education*

- *Proportionate* means *appropriate and necessary*. It would need to be shown that the same *legitimate aim* could not be achieved by a less discriminatory means.

However, colleges must also think ahead when they are planning their policies and must plan and make *reasonable adjustments* to these policies for disabled students. This does not mean that they have to change their policies for students who are not disabled. However, in many cases, that may offer a simpler solution.

9. Discrimination arising from disability

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

Example 7: A college Fitness to Study policy says that where two concerns are escalated to the senior managers in one term, the student will be suspended. A student with ADHD disrupts a number of teaching sessions by getting up, moving around, distracting other students and refusing to sit down when told to by the teacher. The teacher refers the student to senior managers twice in two weeks. The student is temporarily suspended.

In this case, the behaviour that led to the suspension arose in consequence of the student's disability.

Example 8: An autistic student stays away from college when high levels of anxiety affect their mental health. The college takes disciplinary action when the student exceeds the permitted number of days of absence during one term.

In this case, the reasons for the absences were related to the student's disability.

Example 9: A student with dwarfism is told he cannot take up his place on a hospitality and catering course because he would constitute a health and safety risk.

In this case, the refusal was related to his stature, an intrinsic part of his disability.

In the three examples, the colleges may have been able to justify their actions if they had been able to show that their actions were a *proportionate means of achieving a legitimate aim*, for example, that the disciplinary actions (examples 7 and 8) were a *proportionate means of*

maintaining academic or behavioural standards at the college, or that the refusal to admit to the course (example 9) was a *proportionate means* of ensuring the health and safety of everyone on the course, see section 8.

The colleges would also need to be able to show that there were no *reasonable adjustments* that they could have made to their policies and practices to prevent the disadvantage.

EHRC guidance says: *...if the education provider has not complied with its duty to make relevant reasonable adjustments, it will be difficult for the education provider to show that the treatment was proportionate*²⁷.

Colleges can often prevent unfavourable treatment that amounts to *discrimination arising from disability* by making *reasonable adjustments*. In the examples, there may have been *reasonable adjustments* that the colleges could have made.

²⁷ EHRC (2014) *Technical guidance on further and higher education*

10. What are reasonable adjustments?

Where a *provision, criterion or practice* at a college might put a disabled student at a *substantial disadvantage* compared with other students who are not disabled, colleges must take *reasonable steps* to avoid that disadvantage. This is usually referred to as the *reasonable adjustments* duty.

The duty is anticipatory in that it requires colleges to think ahead and make *reasonable adjustments* to prevent disabled students being placed at that disadvantage. Colleges can often avoid *indirect discrimination* and *discrimination arising in consequence of a disability* by thinking ahead and planning and making *reasonable adjustments*.

Example 10: The timetable is adjusted to provide time for the reinforcement of new skills for a student with learning difficulties.

Example 11: A student with vision impairment sits at the back of the class to accommodate their field of vision.

Example 12: Students with dyslexia are given a green card to indicate to teachers that they may need extra time to complete written tasks.

Example 13: Teachers are trained to use Widget symbols alongside text, to support communication and learning for students with communication impairments.

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

In the example of the autistic student who was disciplined for high levels of absence, see example 8 in section 9, *reasonable adjustments* might have included:

- adjustments to reduce levels of anxiety, for example, providing a visual timetable or 'Now and Next' cards;

- planned meetings with a tutor at the beginning of each day to check the timetable for the day; and
- adjustments to the absence policy generally to record disability-related absence separately from absences unrelated to disability.

Any of the above might have reduced the student's anxiety levels and improved attendance.

It is good practice to involve students themselves in planning *reasonable adjustments*. Students are often best placed to help colleges think about what disadvantage might arise in college 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-making²⁸. These principles should encourage and support colleges in securing the effective participation of disabled students in planning and implementing *reasonable adjustments*. This is likely to be supported by the college's own evidence of the beneficial impact when they do.

The *SEN and disability code of practice*²⁹ encourages a consideration of *special educational provision* and *reasonable adjustments* alongside each other.

Sometimes colleges 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 to make and are relatively easy to implement once teachers recognise the need for adjustments and see the benefits for disabled students. The essence of *reasonable adjustments* is that they must be made in

²⁸ The principles in the CFA s19 apply directly to LAs. By extension they also apply to colleges who are required to co-operate with the LA in meeting its CFA duties to young people with SEN and disabilities.

²⁹ DfE and DH (2015) *Special educational needs and disability code of practice: 0-25 years*

anticipation of where disadvantage may arise and they must be put in place to prevent or limit that happening.

The *reasonable adjustments* duty includes three key requirements that apply to colleges, to:

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

A bit more about each of these requirements in turn:

Adjustments to any provision, criterion or practice

The first requirement, to make adjustments to any *provision, criterion or practice*, relates to the way colleges organise themselves, deploy resources, and the day-to-day practices that they follow, including one-off actions, and regardless of whether these are articulated in a written policy.

Example 14: A college provides lift passes to allow students with a physical impairment to use lifts.

Example 15: A college allows additional lesson breaks, bean bags, and walking breaks to help disabled students with a short concentration span to restore focus.

The reasonable adjustments duty includes ensuring that information for disabled students is provided in an accessible format. This may mean making information available in an accessible electronic format for students using screen reading software; providing printed materials in large font; providing audio versions of instructions; reducing the reading age of curriculum materials; or making materials available in simplified language or Easy Read.

Example 16: As well as making *reasonable adjustments* to the disciplinary policy itself, a college makes adjustments to how it

communicates the policy to students. It provides the policy in a range of different formats and checks students' understanding of the policy.

Competence standards are specifically excluded from the requirement to make *reasonable adjustments* to a provision, criterion or practice.

Competence standards must constitute a *proportionate means* to a *legitimate aim*, so must be objectively justifiable and relevant to the particular course.

The exemption from the *reasonable adjustments* duty relates to the student's ability to reach the level or standard required; it does not relate to the way in which *competence standards* are assessed. Colleges must make adjustments to tests and assessments so that disabled students 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 college for that particular student.

Example 17: An autistic student may be granted additional time to complete an assessment unless the competence being tested is the ability to do something within a limited time.

Example 18: A dyslexic student may be granted the use of a laptop to complete an assessment (with the spelling and grammar check switched off, where the candidate's spelling, punctuation and grammar are part of the assessment).

Example 19: A student with high levels of anxiety associated with their disability may be granted a supervised rest break during an assessment.

Occasionally the ability to take a particular test may itself amount to a *competence standard*.

Example 20: Part of the assessment for a course in car maintenance includes a practical assessment. The purpose of the test is to ascertain

whether someone can complete car repairs. The ability to complete this practical assessment is likely to amount to a *competence standard*.

Awarding organisations are also under duties to make *reasonable adjustments*. 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 SENCo³⁰ (as defined for these purposes by the JCQ) and, where relevant, the SEN Governor³¹. 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.

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

³⁰ The JCQ guidance uses 'the SENCo' to refer to the person appointed by the head of centre to coordinate the access arrangements process within the centre.

³¹ Often referred to as the SEND link governor.

of the assessment is maintained, whilst at the same time providing access to assessments for a disabled candidate³².

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 assessment³³.

Alterations to physical features

The second requirement is to make alterations to physical features where a physical feature puts a disabled student at a substantial disadvantage in comparison with others who are not disabled. The duty includes removing or altering a physical feature or providing a way of avoiding it.

Any new build elements should be universally accessible from day one to obviate the need for *reasonable adjustments*. This may be achieved by conforming to the DfE FE college design and construction guidance³⁴ and guidance on universally accessible physical environments³⁵.

Physical features include features of entrances and exits such as steps, surfaces, doors and gates, signage and wayfinding; internal facilities such as toilet and washing facilities, lifts, stairways and floor coverings; acoustics and noise management; light, lighting and reflection; provision of safety, recovery and quiet spaces; furniture, including fixed or moveable objects; and access to external spaces and facilities³⁶.

³² JCQ (2024) *Adjustments for candidates with disabilities and learning difficulties: Access Arrangements and Reasonable Adjustments*, paragraph 4.2.1
To note: JCQ updates its guidance annually.

³³ JCQ (2023) *Case studies of disabled candidates with significant difficulties to assist SENCos and senior leaders*

³⁴ DfE (updated 2022) *School and Further Education College Design and Construction*

³⁵ BSI (2018) BS 8300, *Design of an accessible and inclusive built environment*

³⁶ PAS 6463:2022 *Design for the Mind: Neurodiversity and the Built Environment Guide*

Example 21: The kitchen used for practical sessions on a catering course is fitted with an adjustable-height kitchen work bench for a student with dwarfism.

Example 22: A college makes a welfare room available to a student with diabetes.

Example 23: A college installs learning pods at different points across their site for students with high levels of anxiety or sensory processing issues arising from their disability. These provide quiet places to enable students to continue to study independently.

Provision of auxiliary aids

The third requirement is to provide *auxiliary aids*; this covers the provision of auxiliary aids and services. This may include equipment, the provision of specialist advice to the college, or direct teaching or support to the disabled student.

Example 24: Visual timetables and visual lesson plans for students with cognitive impairments.

Example 25: Equipment and staff training to support students with communication impairments through augmentative and alternative communication.

Example 26: When an autistic student becomes anxious about being able to keep up in lectures, the teacher provides a printout of slide presentations prior to lectures and organises one-to-one time with the student afterwards to discuss its content.

Example 27: 'Now and Next' cards for students with autism.

Example 28: Staff training in the use of Makaton for students with a range of learning and communication needs.

For young people up to the age of 25: It is likely that much of what colleges 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, colleges can take this into account in deciding what *reasonable adjustments* to make, see Checkpoint.

The SEN Framework requires LAs to set out what educational and training provision colleges and other settings are expected to provide for those with SEN from their delegated resources and to publish this as part of the *SEN and disability local offer*³⁷. This is often referred to as the 'normally available' or 'ordinarily available' provision. This requirement helps to clarify the respective responsibilities of colleges, LAs and other agencies.

Checkpoint: 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 reasonable³⁸.

This includes:

- what special educational provision may be being made for a student
- who is disabled;
- the cost of a particular adjustment and the resources available to the college;
- the likelihood that a particular adjustment would be effective;
- the practicability of a particular adjustment;
- health and safety requirements;

³⁷ The Special Educational Needs and Disability Regulations 2014 (S.I. 2014/1530) regulation 53 and Schedule 2

³⁸ EHRC (2014) *Technical guidance on further and higher education*

- the need to maintain academic, musical, sporting and other standards; and
- the interests of other students and prospective students.

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

In practice, making *reasonable adjustments* prevents disadvantage and recognises that to treat disabled students equally, it may be necessary to do things differently for them. Colleges 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*.
- Colleges, along with other service providers, are not permitted to charge for making a *reasonable adjustment*.

Students may ask for the fact that they have a disability, or the nature of their disability, to be treated as confidential. Colleges need to be aware that some *reasonable adjustments* may draw attention to a student's disability in a way that is not consistent with their request for confidentiality. This may mean providing a *reasonable adjustment* that is not as effective as one that is more evident to others.

Where the college ethos accepts and celebrates difference, students are more likely to accept different treatment. This may reduce the reluctance of disabled students to accept, or even propose, adjustments that identify them as having a disability.

To make sure that disabled students are not at a disadvantage, colleges should ensure that disabled students play as full a part as possible in college life. *Reasonable adjustments* are an important element in achieving their inclusion.

There are many creative and inspiring examples of *reasonable adjustments* being made by colleges across the country. Often colleges 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 students can join in all the benefits of the college with their peers. This approach, well embedded in the college's ethos, means the college is much less likely to discriminate against a disabled student.

11. Harassment and victimisation

Harassment is behaviour which violates the dignity of a disabled student, 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 student.

Disabled students may be reluctant to challenge their college, not least because they worry that it will in some way affect how the college treats them. However, where a disabled student makes a complaint or alleges discrimination by a college and the college treats the student unfairly because of their action, this is unlawful *victimisation*.

The Equality Act also protects other students, or others who are not students, whether or not they are disabled, where they report an incident, provide support to the disabled student, or provide evidence of what happened. These are all *protected acts* under the Equality Act.

Protection against *victimisation* applies even where the initial complaint is not ultimately upheld.

12. What happens if a college does discriminate?

Where a disabled student considers that the college has acted unlawfully, the student, acting with the support of a family member if needed, can make a claim to the county court. A claim must be made within six months of the alleged *discrimination, harassment or victimisation*, though the courts have some discretion to hear the claim beyond that period if they think it is just and equitable to do so³⁹.

It is in the interests of the college to make sure that there are systems in place so that they become aware of, and are able to resolve, any complaint before a claim is made to the courts.

At the earliest stage, and before any complaint arises, it is advisable to keep *reasonable adjustments* under review with the student to make sure they are working and preventing the disadvantage that might otherwise arise.

Staff should be aware of the advice and support available within the college for disabled students and encourage students to use those services. Staff themselves may also seek advice from learning support services where it has been difficult to resolve disability-related issues with a student directly. Learning support services may also facilitate the resolution of informal complaints.

Where resolution has not been possible through informal mechanisms, a well-advertised formal complaints system can be effective in resolving issues and averting the need for claims of discrimination to go to court.

Impartial SEN and disability information, advice and support (SENDIAS) services can support disabled students and their parents in seeking the

³⁹ Colleges, parents and young people themselves may have experience of the First-tier Tribunal (SEN and Disability). This Tribunal hears: appeals, by parents or young people themselves, against the decisions of the LA under the CFA; and claims, by parents or young people themselves, of disability discrimination against disabled pupils in school. In contrast, any claim of disability discrimination by a student against a college is heard in the county court.

resolution of any complaint, see section 17. Colleges can facilitate the use of SENDIAS services by providing information about the local service.

The Equality Advisory and Support Service gives free advice, information and guidance on equality, discrimination and human rights issues. Whilst it does not provide legal advice, it can provide support to individuals to decide on the best course of action to secure the resolution of issues.

Where a disabled student is not satisfied with the college's complaints procedure, they can complain to the DfE⁴⁰ about how their complaint was handled. However, whilst the DfE may be able to facilitate the resolution of the complaint, it cannot determine the underlying question of any alleged discrimination. That is for the courts to determine, if a claim of discrimination is made.

Where a court finds that a college has been acting unlawfully, they can order compensation for financial costs and injury to feelings or an injunction to prevent

further discriminatory practices by the college.

⁴⁰ Until March 31st 2025, complaints were made to the ESFA. Since then, complaints are made to the DfE.

13. Colleges' wider responsibilities under the Equality Act

In addition to their responsibilities to individual disabled students, colleges have duties to disabled students collectively, to other disabled people using the college and to people who share other *protected characteristics*.

Under the *public sector equality duty*, colleges must have due regard to the need to improve equality of opportunity for disabled people, see section 14.

Colleges must not discriminate against:

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

Colleges can:

- take positive action to address the impact of discrimination for particular groups of people who share certain *protected characteristics*, see section 15.

To note: this is in addition to being able to, and sometimes having to, treat disabled students more favourably, see section 7.

14. What is the Public Sector Equality Duty?

The Public Sector Equality Duty (PSED) requires a wide range of *public bodies* to have *due regard* to certain needs. In relation specifically to disabled students, this means having due regard to the need to:

- eliminate discrimination, harassment, victimisation and other prohibited conduct toward them;
- advance equality of opportunity between them and students who are not disabled; and
- foster good relations between disabled students and students who are not disabled.

This duty, referred to as *the general duty*, includes those colleges covered by this guide.

To note: the PSED applies to all *protected characteristics* and all public bodies and those carrying out public functions; our focus here is on disability and students in colleges.

Having *due regard* to the need to improve equality of opportunity involves having *due regard* to the need to remove or minimise disadvantage, to meet the needs of students who share *protected characteristics* and to encourage their participation in public life and in the life of the college. 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* colleges will need to have considered how their policies and practices affect disabled students before they implement them, rather than wait until they can see the actual impact. If challenged, colleges will need to be able to demonstrate how they had *due regard* to the requirements of the PSED.

Sitting under these general requirements, there are specific duties. These duties require colleges⁴¹ to:

- publish equality information, no more than a year after the last information was published; and
- prepare and publish equality objectives, no more than four years after the last equality objectives were published.

Equality information is information that shows how the college has had *due regard* in making decisions, including any analysis undertaken and the evidence used⁴². This information can help colleges to understand the impact of their policies, practices and decisions on different groups of students, identify areas of inequality that may need to be addressed, and plan more effectively.

The published information must be sufficient to demonstrate the college'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.

The focus of the specific duty is on measurable outcomes that will eliminate discrimination, improve equality of opportunity and foster good relations. The college's *equality objectives* must be designed to achieve these outcomes. The objectives must be specific and measurable and colleges need to consider how progress towards the objectives will be measured.

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

⁴¹ Specific duties apply to the governing body of an institution in England within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992) and to 16 to 19 Academies.

⁴² EHRC (2023) *Technical guidance on the Public Sector Equality Duty: England*

Example 29: Information gathered by the college shows that disabled students are under-represented in the college's leisure and recreational activities. The college sets an objective of doubling the number of disabled students participating in these activities.

Example 30: An analysis of attendance data shows that disabled students have higher rates of absence. The college sets an objective to halve absence rates amongst disabled students over four years.

Colleges are expected, and it is certainly good practice, to involve disabled students in considering what information should be gathered and what objectives should be set. Involving disabled students, parents, staff and others in the development of equality objectives can help colleges to understand the impact of their policies and practices and to identify effective improvements.

The information and the objectives required under the specific duties can be published as part of another document, for example: as part of an equality policy or a longer-term strategy. Colleges that have an equality policy need to check that they have published information and have set objectives as required under the PSED. The information and objectives must be published somewhere that is accessible to the public; most colleges use their website.

15. The Equality Act and positive discrimination

In general, the Equality Act makes *positive discrimination* unlawful. However, there are some specific exceptions as outlined in this section.

The Equality Act allows for the more favourable treatment of disabled people, including disabled students in colleges. More favourable treatment does not amount to discrimination against those who are not disabled, see section 7. These provisions relate both to the treatment of an individual student and to groups of disabled students. It would be lawful, for example, to give priority in admissions to a disabled student applying to a particular course, or to design a course specifically for disabled students.

The Equality Act also allows colleges to take *positive action* to address any disadvantage arising from the under-representation of students who share a *protected characteristic*, for example, on a particular course or in a particular activity. *Positive action* can overcome barriers for groups of students, improve education and ultimately outcomes. It is focused on groups of students rather than individual students and might involve designing provision, changing the way provision is made, its timing or location to increase take-up by particular groups of students; special arrangements to increase the participation of groups of students in college events or activities such as trips related to course work; improving careers advice or providing mentoring for particular groups of students.

The Equality Act limits *positive action* in that it must be a proportionate means of achieving one or more of three aims⁴³. However, because the more favourable treatment of disabled students is allowed under other

⁴³ *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 students who share a *protected characteristic*; or facilitate participation in activities where participation of those sharing a particular *protected characteristic* is disproportionately low.

parts of the Equality Act, positive action is not constrained by the need to achieve one or more of the three aims that limit positive action in respect of students who share other protected characteristics.

16. Wider responsibilities in the Children and Families Act 2014

Under the CFA, there are significant strategic duties on LAs towards young people under 25 in the local area who have SEN and disabilities. These include requirements on the LA to:

- have regard to the importance of the key principles, in section 19 of the CFA, in exercising its SEN and disability functions: 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 and 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 *special educational needs and disability (SEND) Local Offer* of services, see section 17;
- provide information and advice, see section 17;
- keep educational, training and social care provision under review and consider whether it is sufficient to meet local need; and
- both co-operate with, and seek the co-operation of, local partners.

These duties apply directly to LAs but, as local partners, colleges are under the duty to co-operate with the LA in the exercise of its duties under the CFA. In fulfilling these duties, colleges should anticipate working with the LA to: identify disabled young people; ensure that disabled young people and their parents know about the information and

support and the range of services available locally; meet high standards of participation; respect the views, wishes and feelings of children and their parents, and young people; and secure the best possible educational and other outcomes.

17. Information, advice and support for disabled young people and their parents

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. This includes much that is relevant to disabled young people in colleges, for example, information about:

- the education and training provision the LA expects to be available in colleges in its area for young people who have SEND;
- apprenticeships, traineeships and supported internships; and
- information about provision to assist in preparing children and young people for adulthood and independent living⁴⁴.

LAs must keep their *Local Offer* under review, must gather comments on it and may from time to time revise it.

Careers guidance

Colleges are required, through their funding agreements, to provide independent careers guidance to all students up to and including those aged 18 and, for young people with an EHC plan, up to the age of 25. Over the short-, medium- and longer-term, outcomes remain poorer for young disabled people than their non-disabled peers⁴⁵.

⁴⁴ For more detail, see DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*, Chapter 4

⁴⁵ DfE (2021) *Post 16 education and labour market activities, pathways and outcomes (LEO)*

Reports from Ofsted⁴⁶, the House of Commons Education Committee⁴⁷ and a team of researchers at the Centre for Longitudinal Studies⁴⁸ highlight evidence of a lack of ambition for young people with SEN and disabilities. Ambition may be compromised at a very young age, can affect career choices in the teen years and *cast a long shadow over the opportunities and experiences that present over a lifetime*⁴⁹.

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"⁵⁰.

This makes it all the more important that careers guidance is informed by a good understanding of the positive impact on outcomes for disabled

⁴⁶ Ofsted (2021) *SEND: old issues, new issues, next steps*

⁴⁷ House of Commons Education Committee (2019) *Special educational needs and disabilities*

⁴⁸ Parsons, S and Platt, L (2018) *SEN, school life and future aspirations* Centre for Longitudinal Studies, UCL Institute of Education

⁴⁹ Parsons, S and Platt, L (2018) *SEN, school life and future aspirations* Centre for Longitudinal Studies, UCL Institute of Education

⁵⁰ House of Lords Public Services Committee (2024) *Think Work First: The transition from education to work for young disabled people*

students of: raising career aspirations and broadening employment horizons; obtaining qualifications; progress to higher levels of study; and meaningful work experience as well as non-qualification activity.

The guidance for colleges⁵¹ 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^{52,53}.

Colleges are expected to use a wide range of imaginative approaches, such as taster opportunities, work experience, mentoring, exploring entrepreneurial options, role models and inspiring speakers.

Work-based learning is one of the most effective ways of preparing young people for employment and advice for young people should be informed by a thorough understanding of the range of apprenticeships, traineeships and supported internships available, and the potential for any of these options to be tailored for individual students. Careers leaders should work closely with the relevant teachers and professionals in their college and

⁵¹ 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*

⁵² Gatsby Benchmarks (updated 2024) *SEND perspectives: For those working with young people with Special Educational Needs & Disabilities (SEND)*

⁵³ See also Gatsby Benchmarks (updated 2024) *Benchmark 3: Addressing the needs of each pupil*

with local partners to identify the guidance needs of all students and put in place personalised support and transition plans.

For students who are not taking qualifications, their study programme should focus on high quality work experience, and on non-qualification activity which prepares them well for employment, independent living, being healthy adults and participating in society. A range of advice and guidance is available to support colleges and careers advisers⁵⁴.

The SEND 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 ambitions⁵⁵.

SEN and disability information, advice and support services

Duties in the CFA also 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 SENDIAS service.

⁵⁴ For example, DfE (2022) *Supported internships*; National Development Team for Inclusion

⁵⁵ DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*, Chapter 8

Colleges will want to make sure that disabled students and their parents know about these services and have access to the information, advice and support that they provide.

Disabled students may also find it useful to speak to the Disabled Students Helpline, run by Disability Rights UK⁵⁶. They can give specialist support, information and advice by phone or email.

⁵⁶ Disabled Students Helpline: [Disabled Students Helpline](#)

18. Wider considerations: embedding the duties

This guide summarises the Equality Act duties of colleges to disabled students and refers across to related duties to disabled young people in the CFA. The duties are designed to eliminate discrimination and improve equality of opportunity for disabled students, and others protected by the Equality Act.

An effective set of PSED equality objectives makes a difference and is an efficient way of removing barriers for disabled students. It can also reduce the extent to which colleges need to make individual adjustments for individual students. Building equalities considerations in from the start, 'inclusion by design' can reduce the work of making subsequent adjustments in order to comply with the duties.

The values, policies and practices adopted by colleges affect how readily colleges can meet the requirements of the Equality Act. EHRC proposes some practical steps that can support colleges in meeting the duties, preventing discrimination and becoming more inclusive:

Checkpoint: EHRC and meeting the Equality Act duties in FE

Further [...] education institutions are more likely to be able to comply with their duties under the Act, including the Public Sector Equality Duty, and to prevent their employees from discriminating against students if they take the following steps:

- *Establish a policy to ensure equality in access to and enjoyment of education, services, facilities and by potential students from all groups in society.*
- *Communicate the policy to all staff, ensuring that they know that it is unlawful to discriminate when they are providing education or access to any benefit, facility or service.*

- *Train all staff, including those not directly involved in the provision of further [...] education, to understand the policy, the meaning of equality in this context and their legal obligations.*
- *Monitor the implementation and effectiveness of the policy.*
- *Address acts of discrimination by staff as part of disciplinary rules and procedures.*
- *Ensure that performance management systems address equality and non-discrimination.*
- *Maintain an easy to use, well-publicised complaints procedure.*
- *Review practices to ensure that they do not unjustifiably disadvantage particular groups.*
- *Consult students, staff and organisations representing groups who share protected characteristics about the quality and equality of the education, benefits, facilities and service and how they could be made more inclusive⁵⁷.*

Ofsted also expects to see values, policies and practices embedded across the life of the college and inspects the leadership and management of the college for this framing of the quality of the education at the college:

Leaders have a clear and ambitious vision for providing high-quality, inclusive education and training to all. This is realised through strong, shared values, policies and practice⁵⁸.

Beyond the classroom, Ofsted expects learners to *have access to a wide, rich set of experiences and high-quality opportunities for learners to develop their talents and interests*. And they expect that the impact on the personal development of students is that:

⁵⁷ EHRC (2014) *Technical guidance on further and higher education*, page 169

⁵⁸ Ofsted (2024) *Further education and skills inspection handbook*

...all learners can thrive together, understanding that difference is a positive, not a negative, and that individual characteristics make people unique⁵⁹.

In general, the same values, policies and practices that improve the experiences of disabled students have the effect of improving the experiences of other students and staff as well.

⁵⁹ Ofsted (2024) *Further education and skills inspection handbook*

References, resources and links

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Department for Education (updated 2022) *School and Further Education College Design and Construction*

Department for Education (2022) *Supported internships: [Supported internships - GOV.UK](#)*

Department for Education (2024) *Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*

Disabled Students Helpline: [Disabled Students Helpline](#), run by Disability Rights UK.

The Equality Act 2010 (Disability) Regulations 2010 (S.I. 2010/2128)

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Joint Council for Qualifications (2023) *Case studies of disabled candidates with significant difficulties to assist SENCos and senior leaders*

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Rose, C (2006) *Do You Have a Disability-Yes or No? Or Is There a Better Way of Asking? Guidance on Disability Disclosure and Respecting Confidentiality*

Special Educational Needs and Disability Information Advice and Support (SENDIAS) services: [The Information, Advice and Support Services Network](#)

The Special Educational Needs and Disability Regulations 2014 (S.I. 2014/1530)

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