



# Equality Act 2010 and disabled pupils: A guide for governors and trustees

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## Contents

Section	Page
1. Who is this guide for? .....	2
2. What's in this guide? .....	4
3. What are the governor and trustee responsibilities? .....	5
4. What are the Equality Act 2010 duties to disabled pupils?.....	7
5. How is disability defined in the Equality Act 2010? .....	9
6. What should I look out for? .....	10
7. How do the disability and SEN responsibilities overlap?.....	13
8. What about the overlap with responsibilities to pupils with medical needs? .....	14
9. What about Ofsted, school inspection and disabled pupils?.....	15
10. What is the problem we need to address? .....	16
11. What data and other evidence should I be using? .....	18
12. How can I use the checkpoints in my school? .....	21
13. How does this fit into a vision for the future? .....	23
14. Checkpoints.....	24
References and Resources .....	30
Appendix A: Excerpts from Ofsted's 2024 School Inspection Handbook .....	32
Appendix B: Excerpts from the Equality and Human Rights Commission's guidance for schools on publishing equality information .....	34

## 1. Who is this guide for?

This guide is for school governors, academy trustees and others with responsibility for schools' duties in the Equality Act 2010<sup>1</sup>. It is designed to support you in understanding how well your school is meeting the duties to disabled pupils in the Equality Act 2010 (the Equality Act). It also supports a conversation with executive leaders about the evidence that the *responsible body*<sup>2</sup> needs in order to understand how well the duties are being met.

Governing boards set the vision and ethos for their school. This framing has a significant impact on the practical implementation of the duties. 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;
- ensure staff have the training and skills they need to include disabled pupils and can access 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.

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<sup>1</sup> See section 3 of this guide for who holds the responsibility for a range of different provision covered by this guide.

<sup>2</sup> Some of the terms in italics have a particular meaning in the Equality Act. Many of these terms are explained in this guide. For more detail and for the explanation of more terms, refer to the Council for Disabled Children (CDC) booklet mentioned below.

A whole school approach is one that embeds equality considerations in the culture and ethos of the school, in policies and in everyday decisions. Where schools adopt a whole school approach they:

- are more likely to be able to demonstrate that they are taking effective action in respect of the relevant Ofsted evaluation descriptors<sup>3</sup>;
- less likely to face a claim of disability discrimination at the Tribunal<sup>4</sup>; and
- will find it easier to improve equality of opportunity ... *so that all pupils can thrive together, understanding that difference is a positive, not a negative, and the individual characteristics make people unique* (Ofsted)<sup>5</sup>.

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<sup>3</sup> A selection of relevant excerpts from Ofsted's Inspection Framework is included in Appendix A to this guide.

<sup>4</sup> The First-tier Tribunal (Special Educational Needs and Disability) hears claims of disability discrimination against schools.

<sup>5</sup> Ofsted (2024) *School Inspection Handbook*

## 2. What's in this guide?

Section 3 of this guide sets the Equality Act duties in the context of the overall responsibilities of governing boards.

Sections 4 and 5 provide a short summary of schools' duties towards disabled pupils; section 6 reflects on some of the issues that schools find more challenging to implement; sections 7-9 consider areas of overlap with other duties. You can use these parts of the guide to check your understanding of the disability duties in the Equality Act. If you are confident about the duties, go straight to the later parts of the guide.

Section 10 of this guide provides an outline of some of the disability inequalities that exist at the national level. This is a useful backdrop for considering how your own school is doing. Sections 11 and 12 help you to think about the range of evidence you may need to draw on and how you might use the checkpoints to identify any priorities the school may need to address. Section 13 sets the purposes of this guide in the context of a more inclusive vision for the future.

The checkpoints, in section 14, provide a framework for bringing together all the information from your school, coming to a view about how well your school is meeting the duties to disabled pupils and considering whether you may need to plan improvements.

Throughout the guide there are references to other responsibilities you have as a governor or trustee and to some of the key interactions between these and the Equality Act duties. Therefore:

This guide needs to be read in the context of other guidance, in particular:

- guidance that sets out the Equality Act duties in more detail, such as Equality and Human Rights Commission (EHRC) technical guidance<sup>6, 7</sup> or a shorter Council for Disabled Children (CDC) booklet<sup>8</sup>; and
- guidance on wider governor and trustee responsibilities<sup>9, 10, 11</sup>.

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<sup>6</sup> EHRC (2023) *Technical Guidance for Schools*

<sup>7</sup> EHRC (2022) *Public Sector Equality Duty: guidance for schools*

<sup>8</sup> A CDC booklet, *Disabled Children and the Equality Act 2010: What teachers need to know and what schools need to do*, includes more detailed explanations of the duties in the Equality Act.

<sup>9</sup> DfE (2024) *Maintained school governance guide*

<sup>10</sup> DfE (2024) *Academy trust governance guide*

<sup>11</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*

### 3. What are the governor and trustee responsibilities?

The purpose of governance is to provide strategic leadership, accountability and assurance, and strategic engagement. We know, from surveys carried out by the National Governance Association (NGA), that support for pupils with special educational needs (SEN) and disabilities is both a growing challenge for governing boards, with a significant rise (from 25% in 2022 to 37% in 2024) in the number of governors reporting this, and among their top strategic priorities<sup>12</sup>.

Under the Equality Act, the *responsible body* of the school is responsible for meeting the duties to disabled pupils. For a maintained school the *responsible body* is the governing body<sup>13</sup>; for an academy it is the academy trust; for an independent school, the proprietor; for a pupil referral unit, the local authority (LA).

#### Delegation and responsibility

A board can delegate aspects of decision-making to a committee of the board (including, in multi-academy trusts, the local governing board); but it cannot delegate responsibility and retains overall control. Boards can decide whether governors or trustees focus on certain areas.

The DfE expects governing boards to have a governor, trustee or sub-committee that takes a strategic lead on SEN. Disability is often overseen by the lead on SEN but, whilst there is an overlap between SEN and disability, which we discuss below, the disability duties are of a different nature and are not necessarily linked strategically.

Where functions are delegated to a committee, disability may be grouped with SEN or with equality, diversity and inclusion or other functions. Where functions are delegated to a range of committees, it is likely that equality considerations sit in many such committees, for example, a curriculum committee will address the school's disability responsibilities in delivering the curriculum, and a finance and resources committee needs to ensure that resources are allocated for the effective delivery of policies, plans and practices to meet the disability duties. These overlapping responsibilities need to be taken into account in the committee structure and the functions delegated to them.

In whatever way the disability functions are delegated, the legal responsibility sits with the *responsible body*, that is, the academy trust, the maintained school governing body, the proprietor or the LA.

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<sup>12</sup> NGA (2022) *The priorities and challenges facing our schools: School and trust governance in 2022* and NGA (2024) *Annual school and trust governance survey*

<sup>13</sup> For some functions in relation to maintained schools, the LA is the *responsible body* so, for example, where the LA is responsible for admissions, the LA is the *responsible body* for Equality Act duties in relation to that function.

Whilst the focus of this guide is on disabled pupils, there are wider responsibilities to other disabled people: to disabled staff, to disabled parents<sup>14</sup> and other disabled users of the school. These duties are covered by different parts of the Equality Act and are not covered in this guide, though there is a prompt, in the checkpoints, to remind responsible bodies of these duties to others.

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<sup>14</sup> Throughout this guide we use the term *parents* to include parents, carers and those with parental responsibility.

## 4. What are the Equality Act 2010 duties to disabled pupils?

The Equality Act sets out the duties of *responsible bodies* towards people with *protected characteristics*. The focus of this guide is on pupils and the *protected characteristic* of *disability*.

*Prohibited conduct* is the term used for unlawful behaviour under the Equality Act. *Prohibited conduct* includes discrimination, harassment and victimisation. Discrimination includes:

- direct discrimination;
- indirect discrimination;
- discrimination arising from a disability; and
- the failure to make a *reasonable adjustment*.

The duties cover admissions, the provision of education, access to *any benefit, facility or service*, and *exclusion or other forms of detriment*. This includes teaching and learning in classrooms, learning beyond the classroom, recreational times, mealtimes, school clubs and trips, in effect, the whole life of the school.

Where a school may have discriminated against a disabled pupil, the parent, or the young person themselves, can make a claim of disability discrimination to the Tribunal.

In addition to the duties to individual disabled pupils, schools have wider duties to disabled pupils collectively. All schools must have an *accessibility plan* and state-funded schools<sup>15</sup> are subject to the *Public Sector Equality Duty*.

*Accessibility plans*: schools put in writing an accessibility plan that shows how the school is going to:

- increase the participation of disabled pupils in the curriculum;
- improve the physical environment to increase disabled pupils' access to education and the benefits, facilities and services provided or offered by the school; and
- make information more accessible to disabled pupils.

Schools must recognise the need to resource the plan adequately. A plan is for a three-year period. During that time, schools must keep their plan under review and revise if needed. Schools must publish information about their accessibility plan in their *SEN Information Report*.

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<sup>15</sup> Maintained schools, PRUs and academies



*The Public Sector Equality Duty (PSED)*<sup>16,17</sup>: requires a wide range of *public bodies*, including state-funded schools<sup>18</sup>, to have *due regard* to certain needs. In relation specifically to disabled pupils, 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 pupils who are not disabled; and
- foster good relations between disabled pupils and pupils who are not disabled.

To note: the PSED applies to all *protected characteristics* and all public bodies; our focus here is on disability and pupils in schools.

Having *due regard* means that schools need to have considered the impact of school policies and practices on disabled pupils before implementing them. In order to be able to demonstrate how they had *due regard*, schools need to be able to refer to evidence, including the evidence used to inform a particular decision: for example, the evidence used by the governing board in directing a pupil off-site and when reviewing that direction, or when considering the reinstatement of an excluded pupil. Keeping the minutes of meetings where such decisions are made<sup>19</sup> enables the governing board to demonstrate how they had *due regard*.

The general duties in the PSED, above, apply to all public bodies. Maintained schools, academies and pupil referral units must, in addition, publish:

- *equality information* gathered and analysed to show they are complying with the PSED; and
- *equality objectives* to meet measurable outcomes.

These more strategic duties can be an efficient way of removing barriers for disabled pupils as action is likely to improve outcomes for more than the individual pupil. An effective *accessibility plan* or set of *equality objectives* can reduce the extent to which schools need to make individual adjustments for individual pupils.

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<sup>16</sup> Equality and Human Rights Commission (2022) *Public Sector Equality Duty: guidance for schools*

<sup>17</sup> Section 149 of the Equality Act sets out the duty for all public bodies and in relation to all protected characteristics and therefore refers to equality of opportunity and fostering good relations between *persons who share a relevant protected characteristic and persons who do not share it*.

<sup>18</sup> Section 150 of and Schedule 19 to the Equality Act set out the persons subject to the PSED.

<sup>19</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*

## 5. How is disability defined in the Equality Act 2010?

The definition of disability in the Equality Act is a broad one.

The definition covers any mental or physical impairment that has a *long-term* and *substantial* adverse effect on the person's ability to carry out normal day-to-day activities.

*Long-term* is defined as having lasted or being likely to last for at least 12 months, and *substantial* as *more than minor or trivial*. These thresholds are quite low and, therefore, the definition includes more people than many assume. Some estimates suggest that 11% of children may count as disabled<sup>20</sup>.

To note: the focus is on the effect of the impairment and there is no requirement for a diagnosis.

Specific named conditions, such as HIV, cancer and multiple sclerosis are included. Progressive conditions, that is conditions that get worse over time, are included and are covered before the effect of the condition is *substantial*.

We consider some of the implications of the definition in the next section.

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<sup>20</sup> See, for example, Department for Work and Pensions (2024) *Family Resources Survey: financial year 2022-2023*

## 6. What should I look out for?

There are some areas of school life that can be more challenging for schools to manage. A few examples here illustrate ways in which schools may need to give particular consideration to specific aspects of the duties.

As a governor or trustee, you need to be alert to these issues as it is these that may give rise to discrimination. You may become aware of issues such as these in your interactions with the school, for example on governor or trustee visits, in reviewing complaints that are escalated to the governing board, or in considering the reinstatement of an excluded pupil. In all such circumstances, governors or trustees need to ask themselves: is my school meeting its duties to disabled pupils under the Equality Act?

### How does my school know who counts as disabled?

For the purpose of avoiding discrimination, anticipating and making reasonable adjustments, and meeting wider responsibilities, your school needs to have an understanding of who their disabled pupils are. Your school may be told about a pupil's impairment or condition by a previous school; they may be told by parents; or they may identify, through observation, an impairment or learning difficulty that is affecting a child's progress and behaviour. With information such as this, your school should consider that the child may be disabled and act in the light of this.

In order to avoid discrimination, your school may do well to overestimate, rather than underestimate, the number of pupils to whom they owe duties.

Your school needs to be aware that:

- parents may not know that their child's condition amounts to a disability;
- there is no duty on parents, or children and young people themselves, to disclose a disability; and
- some parents may be reluctant to share information if they think that this might be used against their child, for example, to keep their child out of your school rather than to include and support them<sup>21</sup>.

Where schools have a narrow view of the definition of disability they may, unintentionally, discriminate against a disabled pupil.

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<sup>21</sup> Office of the Children's Commissioner (2014) *'It might be better if you looked elsewhere': An investigation into the schools admission process*

**Example 1:** A pupil with ADHD who has a short attention span gets up and moves around the classroom and this disrupts other pupils. A teacher may sanction the pupil, not understanding that, because his behaviour arises from his disability, the school must make adjustments that are reasonable for them to make.

If the pupil were sanctioned and reasonable adjustments had not been made this might amount to disability discrimination unless the school did not know that he was disabled and could not reasonably have been expected to know that he was disabled. His behaviour provides a good reason for the school to consider whether he may have a disability.

More generally, the *reasonable adjustments* duty is anticipatory. This means that schools must think ahead, consider how a disabled pupil's impairment may interact with the day-to-day activities of the school and plan adjustments so that a disabled pupil is not placed at a disadvantage compared with their peers.

It is the responsibility of the school, ultimately of governors or trustees, to ensure that:

- reasonable adjustments are made, for example, for the pupil in example 1, it might be planned movement breaks; and
- the need for this adjustment, for this pupil, is communicated to the staff who need to know.

**Example 2:** Shortly after a child started in the reception class of a primary school, staff are at the end of their tether because the child is having sudden outbursts and screaming loudly. Before the child was admitted, parents had given no indication that their child had any difficulty, and the school had no information from any early years setting.

Through the work of the school and support services, it emerges that the child has a significant communication difficulty, that the parents were struggling to manage the child's behaviour at home and that the child had not attended any early years setting.

We could speculate about why the parents said nothing to this school, but it highlights the importance of having open and sensitive conversations with parents that encourage them to trust the school with information which, for whatever reason, they might otherwise withhold. Without the information the school is at greater risk of discriminating against the child, for example by suspending or permanently excluding the child on the basis of the outbursts. As with Example 1, above, the child's behaviour is a good reason for the school to consider whether the child may be disabled.

## Making reasonable adjustments to school policies

**Example 3:** A school has a behaviour policy that sets a two-day suspension as the sanction for a pupil who swears at a teacher. A pupil with a communication impairment misunderstands an instruction from the teacher, he responds inappropriately, the teacher interprets his response as insolence, the incident escalates to the point where the pupil swears at the teacher and the head teacher suspends the pupil.

In this case, the behaviour that led to the suspension arose from the nature of the child's impairment. Reasonable adjustments were not made to accommodate the pupil's communication impairment, nor were they made to the exclusion section of the school's behaviour policy, so it is likely to amount to discrimination.

The anticipatory nature of the *reasonable adjustments* duty means that adjustments must be planned and made before a pupil is placed at a disadvantage. The application of a 'blanket policy', to all pupils in the same way, and without reasonable adjustments, may amount to discrimination<sup>22</sup>. In the words of a judge in a case that went to the Tribunal:

*"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."*

DfE provides clear guidance for schools in relation to this:

Schools must also ensure that any provision, criterion, or practice does not discriminate against pupils by unfairly increasing their risk of exclusion. For example, if reasonable adjustments have not been made for a pupil with a disability that can manifest itself in breaches of school rules if needs are not met, a decision to exclude may be discriminatory<sup>23</sup>.

In addition to requiring reasonable adjustments to address any potential disadvantage, the Equality Act allows for the more favourable treatment of disabled pupils in order to address the impact of disadvantage experienced by disabled pupils currently, or in the past. More favourable treatment does not amount to discrimination against pupils who are not disabled.

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<sup>22</sup> In any situation where it appears that there may be justification for making an exception to a policy, failure to consider making an exception is also likely to be a breach of general public law principles.

<sup>23</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*

## 7. How do the disability and SEN responsibilities overlap?

The Children and Families Act 2014 (CFA) sets out the SEN responsibilities of schools, LAs and other agencies. These SEN duties include disability duties, for example, the CFA requires schools to publish, on their website, an SEN Information Report. This report must include information as to:

- 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, required under the Equality Act.

Section 19 of the CFA sets out key principles that govern how LAs work with disabled pupils and their parents and those with SEN. These principles include the importance of:

- 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
- support to achieve the best possible educational and other outcomes.

These duties apply to LAs but, because schools are local partners and must co-operate with the LA in the fulfilment of these duties, schools should apply the same principles to their responsibilities.

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 plan under the CFA, are more likely to be covered by the definition of disability in the Equality Act; and
- disabled children and young people are included in the definition of SEN where their disability prevents or hinders them from making use of facilities that are generally provided for others of the same age in mainstream schools (or mainstream post-16 institutions).

## 8. What about the overlap with responsibilities to pupils with medical needs?

Children and young people with a range of medical conditions are likely to be covered by the definition of disability, though they may not be identified as having SEN. In addition to responsibilities under the Equality Act, schools must make arrangements to support pupils with medical conditions and, in doing so, must have regard to statutory guidance. The guidance echoes the responsibilities schools have towards disabled pupils under the Equality Act and 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>24</sup>.*

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<sup>24</sup> DfE (2015) *Supporting pupils at school with medical conditions: Statutory guidance for governing bodies of maintained schools and proprietors of academies in England*

## 9. What about Ofsted, school inspection and disabled pupils?

As part of school inspection, Ofsted seeks evidence of the impact of the governing board and of how well governors and trustees carry out their functions.

For example, the clarity of the school's vision, ethos and strategic direction will have a significant impact on the decisions that leaders make about the curriculum. Inspectors will consider whether the work of the board of governors or the board of trustees in this respect is supporting the school to provide a high-quality education for its pupils<sup>25</sup>.

In all four areas of Ofsted judgements, the Inspection Framework sets out criteria that are directly relevant to how well schools are meeting the needs and ambitions of disabled pupils.

The Ofsted criteria for leadership and management include: 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 practice.

Governing boards are responsible for ensuring that their statutory duties are met in their school, so as part of the judgement on leadership and management, Ofsted assesses:

... the extent to which the provider complies with the relevant legal duties including, where relevant, the Public Sector Equality Duty and the Human Rights Act 1998.

A wide range of evidence brought together for the governing board, whether using the checkpoints in this guide or otherwise, is likely to be useful in demonstrating to Ofsted the extent to which you are meeting the Equality Act duties.

The *Education Inspection Framework*<sup>26</sup> and the *School Inspection Handbook*<sup>27</sup> provide essential information about what Ofsted evaluates in respect of SEN and disability. Some of the criteria that are particularly relevant to disabled pupils, drawn from each of the four areas of Ofsted judgements, are brought together in Appendix A to this guide.

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<sup>25</sup> Ofsted (2024) *School Inspection Handbook*

<sup>26</sup> Ofsted (2023) *The Education Inspection Framework*

<sup>27</sup> Ofsted (2024) *School Inspection Handbook*



## 10. What is the problem we need to address?

Whilst there is a wealth of good practice in schools across the country, outcomes for disabled children and young people and those with SEN are poor. The disadvantages that they experience have been well documented, for example in reports from Ofsted<sup>28</sup>, the National Audit Office<sup>29</sup> and the House of Commons Education Select Committee<sup>30</sup>.

Ofsted<sup>31</sup> has identified:

- a lack of ambition for children with SEND
- children with SEND being excluded, absent or missing from school much more frequently than other pupils nationally, and unofficial exclusions being used

Other recent data has highlighted a number of ways in which children and young people with SEND are at a disadvantage, in school and beyond:

Progress from the same starting points:

- between the ages of 5 and 7 and again between the ages of 7 and 11, children with SEN fall behind their peers with the same starting points<sup>32</sup>
- at Key Stage 4, the progress of pupils with SEN has consistently been lower than that of pupils without SEN and with the same starting points<sup>33</sup>
- Outcomes<sup>34</sup>, disabled young people are:
  - more likely to have GCSEs as their highest form of qualification
  - more likely to have no qualifications at all
  - and, into adulthood, poorer educational outcomes are linked to poorer life outcomes
- Destinations<sup>35</sup>, disabled young people and those with SEN are:
  - less likely to remain in education or training at age 16-17
  - less likely to be in any sustained destination - education, employment or apprenticeship

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<sup>28</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>29</sup> National Audit Office (2019) *Support for pupils with special educational needs and disabilities in England*

<sup>30</sup> House of Commons Education Committee (2019) *Special educational needs and disabilities*

<sup>31</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>32</sup> Parsons S. and Platt L. (2017) *The early academic progress of children with special educational needs*. British Educational Research Journal. 43, 3

<sup>33</sup> National Audit Office (2019) *Support for pupils with special educational needs and disabilities in England*

<sup>34</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>35</sup> DfE (2024) *Special educational needs and disability: an analysis and summary of data sources*

This national information forms a backdrop against which you can consider how well your own school is meeting the disability duties in the Equality Act.

**To note:** the national data gathered from schools are based on SEN as schools do not submit, and are not asked for, disability data. You need to bear this in mind when you make comparisons with data from your own school.

Research can also pinpoint areas of school life where you may need to examine your own school's policies and practices.

We know, for example, that:

- parents of disabled children may, on a preliminary visit to a school, be encouraged by school staff to visit a different school, which parents are encouraged to believe may have better SEN and disability provision for their child<sup>36</sup>;
- children with SEN may spend a disproportionate amount of time with staff who are not qualified teachers and that this may contribute to poorer progress<sup>37</sup>; and
- disabled pupils are more likely to miss out on particular areas of school life such as school trips, after school clubs<sup>38</sup> and being invited or elected to positions of responsibility, such as becoming a representative on a school council.

These patterns highlight areas of risk that may warrant more detailed consideration. Do you have evidence from your school on these patterns?

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<sup>36</sup> Office of the Children's Commissioner (2014) *'It might be better if you looked elsewhere': An investigation into the schools admission process*

<sup>37</sup> Webster, R. (2022) *The Inclusion Illusion: how children with special educational needs experience mainstream schools*

<sup>38</sup> David Robinson (2024) *Access to extra-curricular provision and association with outcomes*. Education Policy Institute

## 11. What data and other evidence should I be using?

The responsibilities of the governing board include<sup>39,40</sup>:

- ensuring compliance with statutory duties, including the Equality Act; and
- monitoring and reviewing your school's progress against agreed strategic goals.

The DfE governance guides, for maintained schools and for academy trusts, include clear reminders to all education providers of their duties under the Equality Act to pupils and those who have applied for admission. The guides include specific reference to the PSED requirements to publish information and objectives, see section 4, above.

Schools routinely collect information and data on a wide range of aspects of school life, much of it analysed by pupil characteristics. Typically, this ranges from pupil numbers, attendance, progress and attainment, suspensions, exclusions, through to safeguarding, wellbeing and financial management. Wherever possible, you should draw on existing data rather than asking for more and new data. However, some of the data you already have may require a different analysis, for example, for the purposes of the equality analysis required by the PSED, it is important to consider how sub-groups of pupils are performing in these different areas.

The national picture can provide pointers for where you may need to focus your school level analysis. Where sub-groups are small, you need to be cautious about reading too much into the analysis and you may need wider information to inform the overall picture, for example, nationally, disabled pupils and pupils with SEN are more likely to be excluded or absent from school than others. You may need to look at the data and pupil characteristics for exclusions and attendance over a longer time scale; consider how disabled pupils and pupils with SEN are represented in other relevant data, such as use of restraint, removal from the classroom, the use of off-site direction, and managed moves; or take into account other existing evidence such as staff training records or evidence from parent surveys and pupil views.

Information from parent surveys and pupil views can supplement an understanding of the data; governor or trustee visits to the school can also inform aspects of the school's performance, for example, at an awards ceremony, was there a celebration of the *full range of achievement across the school*? See checkpoints below.

This wider range of information combined with an understanding of the patterns of increased risk in school life, as indicated by the national data, can help you to understand patterns in your own school. These patterns are picked up in the checkpoints as the *presence, participation and achievement of disabled pupils*.

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<sup>39</sup> DfE (2024) *Maintained schools governance guide*

<sup>40</sup> DfE (2024) *Academy trust governance guide*

The EHRC provides the following advice:

*Schools should publish information (data) that demonstrates how they have met the Public Sector Equality Duty (PSED) each year by 30 March.*

*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.*

*Where there are gaps, schools may decide to fill them by getting the views of parents and pupils with particular protected characteristics. The school leader should decide if the school has enough information about pupils with different protected characteristics to enable it to meet the PSED<sup>41</sup>.*

Importantly, all such information should inform the setting of equality objectives by state-funded schools as required under the PSED. When these objectives are set, decisions made by the governing board should be recorded in order to be able to demonstrate *due regard*, see PSED, section 4 of this guide, above.

The NGA provides helpful advice on effective monitoring, including<sup>42</sup>:

- using information gained from data and school visits;
- evaluating what the information is saying about the level of progress; and
- asking the right questions and always driving for improvement.

The NGA has worked with the Association of School and College Leaders (ASCL), the National Association of Head Teachers (NAHT) and others to develop guidance for Maintained School Governing Bodies and Academy Trusts and their respective school leaders:

*The governing board and headteacher/trust board and CEO are expected to agree on what data is required by the board and how it is presented in a meaningful way, which allows the board to evaluate progress, identify risk and inform support and challenge, at the same time as avoiding placing an unreasonable burden on the headteacher<sup>43,44</sup>.*

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<sup>41</sup> EHRC (2022) *Public Sector Equality Duty: Guidance for Schools*

<sup>42</sup> [www.nga.org.uk](http://www.nga.org.uk)

<sup>43</sup> NGA, ASCL, NAHT and others (2022) *What multi academy trust boards and CEOs should expect from each other*

<sup>44</sup> NGA, ASCL, NAHT and others (2022) *What governing boards and headteachers should expect from each other*

As a governor or trustee, you receive a wide range of evidence from your school. Data plays a key part in your ability to hold your executive leaders to account and, crucially, you need to be confident in understanding and analysing the data to identify what underlies your school's successes and challenges. This analysis helps to build an evidence base to inform planning for the future to secure the best possible outcomes.

Using data: *The governing board collectively is expected to gain the knowledge it needs to use data in a meaningful way. For example, by understanding how its school(s) assess attainment and track progress between external assessment points*<sup>45</sup>

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<sup>45</sup> NGA, ASCL, NAHT and others (2022) *What governing boards and headteachers should expect from each other*

## 12. How can I use the checkpoints in my school?

Section 14 of this guide sets out a number of checkpoints which have been designed to:

- help you to understand how well the disability duties in the Equality Act are being implemented at your school; and
- inform a discussion between the governing board and executive leaders.

They should be used in the light of these purposes; they are not intended to be used as a checklist or a form filling exercise.

The checkpoints consist of a number of statements. You are encouraged to consider:

- each statement in turn and whether it applies to your school;
- the evidence the governing board has to support its view;
- where the governing board needs more evidence; and
- where the governing board believes there may be a priority for action to improve the way the school meets its duties.

You can use the checkpoints in a number of ways:

**Initial discussion:** it may be helpful for the board to have an initial discussion to establish where the school has evidence and data to support the statements. This discussion might initially be between the governor or trustee with relevant responsibilities and the executive, whether the head teacher, SENCO or inclusion or equalities lead. This discussion could then be reported back to the board with advice about how to proceed.

The governing board may prefer to use the checkpoints to generate an initial discussion with executive leaders about any urgent action that may need to be taken, for example to ensure the school is complying with statutory responsibilities, before evidence is reviewed in a more systematic way.

**Evidence, data gathering and analysis:** as far as possible existing data and other evidence should be used. However, existing evidence may require further analysis to show how well the school is meeting its duties, for example a parent or pupil survey may need sub-group analysis. Where there are gaps in evidence and data, you may want to supplement these with illustrative examples, until more systematic evidence can be brought together. Where additional evidence needs to be gathered, it should be proportionate and targeted to the particular issue it is intended to inform.

**Priorities for action:** the completed checkpoints, in draft or final form, might then be brought back to the governing board with proposals for an action plan to address any emerging priorities based on existing evidence. Where further evidence needs to be gathered, this needs to be planned to dovetail with other data and information requirements, using existing mechanisms wherever possible.

The evidence and data should be used to inform:

- priorities for the development of policy and practice in the school to meet the duties to disabled pupils;
- the information and objectives published to meet the PSED; and
- the school's accessibility plan.

**Regular review:** the use of the checkpoints may lead to the identification of priorities and associated action plans. These are best incorporated into wider school improvement plans where they are subject to regular review by the governing board through an existing pattern of meetings.

You may want to use the checkpoints on an occasional basis, for example in reviewing the PSED information (required annually) and objectives (every four years); to identify any new or emerging issues affecting the progress and achievements of disabled pupils; or to consider the key set of data and other evidence that is incorporated into more regular review processes.

### **13. How does this fit into a vision for the future?**

The duties in the Equality Act have been in place since 2010, yet a number of recent reports have identified continuing poor outcomes for disabled pupils and those with SEN. The same reports promote a vision of the future that is more inclusive, that anticipates the presence, participation and achievement of disabled pupils in all areas of school life and, beyond that, into adulthood.

This guide and the checkpoints are designed to support schools in meeting their duties to disabled pupils under the Equality Act and contributing to making this vision a reality.



## 14. Checkpoints

The checkpoints provide a set of statements and a space for you to make notes and comments alongside these statements. You might consider the following questions in relation to the statements:

- Does this statement apply to our school?
- What evidence do we have to support this statement?
- Are there areas where we need further information?
- Is there an issue that might be a priority for action?

Statements	Notes and Comments
<b>1: We provide a clear framework of values for equalities work in our school</b>	
<ul style="list-style-type: none"><li>• We have an ambitious vision for high-quality, inclusive education for all.</li><li>• Our vision promotes an understanding and appreciation of diversity at the same time as recognising what we have in common.</li><li>• Our pupils, staff and parents and carers understand the need for different treatment whilst avoiding stigmatising any pupil.</li><li>• Our school community celebrates the full range of achievement across the life of the school.</li></ul>	

## 2: Our school knows and understands our disabled population

### Our school understands our disabled pupils

- Our school understands the breadth of the definition of disability in the Equality Act 2010, see section 5, above, *How is disability defined in the Equality Act 2010?*
- Our school gathers and evaluates data to inform its understanding of our disabled pupil population.
- Our pupils and their parents and carers feel they are listened to and feel able to speak about any concerns.

### Our school understands other disabled members of our school community

- Disabled staff.
- Disabled parents, carers and other users of the school.

### 3: Our school makes reasonable adjustments to ensure it does not discriminate against disabled pupils

- Our school makes reasonable adjustments to ensure that disabled pupils participate as fully as possible in all aspects of school life with their peers.
- Our school makes reasonable adjustments to our policies and practices for our disabled pupils.
- Our school anticipates the need for reasonable adjustments and puts them in place before disabled pupils are placed at a disadvantage.
- Our staff are skilled in drawing on the insights of parents, carers and pupils themselves to make effective reasonable adjustments.
- Our school makes individual adjustments but gathers information and data to anticipate other adjustments that may be needed.
- Our school gathers feedback and keeps adjustments under review to make sure they continue to work.
- Our school communicates adjustments that need to be made to those who need to know.

#### **4: Our school meets its strategic duties under the Equality Act 2010**

##### **Our data informs our strategic duties**

- Our data is analysed to inform our understanding of how disabled pupils are:
  - Present in the school.
  - Participating in all the activities of the school.
  - Achieving in terms of academic progress and wider outcomes.
- Our analysis of data and wider information informs our accessibility plan, our published equality objectives and our wider school improvement responsibilities.

##### **Our school's accessibility plan**

- Our accessibility plan addresses the key issues of curriculum, physical environment and information for disabled pupils.
- We keep the plan under review and recognise the need to resource its implementation adequately.
- As part of keeping it under review, pupils, parents and carers contribute their views.
- Our accessibility plan runs for three years.
- We publish information about our plan in our *SEN Information Report*.

<p><b>Public sector equality duty</b></p> <ul style="list-style-type: none"> <li>• The school seeks to reduce and eliminate discrimination.</li> <li>• The school seeks to improve equality of opportunity for disabled pupils.</li> <li>• The school seeks to improve relations between disabled pupils and those who are not disabled.</li> <li>• The school gathers and publishes information on equalities annually.</li> <li>• Every four years, the school sets equality objectives and agrees actions to achieve them. These include some stretching but realistic objectives over disability.</li> </ul>	
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<p><b>Responsibilities</b></p> <ul style="list-style-type: none"> <li>• Staff, managers, leaders and governors or trustees are clear about their respective responsibilities.</li> <li>• There is agreement about what is reported to the governing board, when and how it is kept under review.</li> <li>• Key priorities are incorporated into our overall school development plan.</li> <li>• We understand how the deployment of expertise and resources develops the overall quality of our whole school provision.</li> <li>• As governors or trustees, we have the skills and knowledge to understand how well our school is meeting the Equality Act 2010 duties to disabled pupils and other duties that interact with the Equality Act duties.</li> </ul>	
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## References and Resources

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## Appendix A: Excerpts from Ofsted's 2024 School Inspection Handbook<sup>46</sup>

### Equality Act 2010:

- The framework is intended to be a force for improvement for all learners. The framework and the remit-specific criteria are clear that the expectation is that all learners will receive a high-quality, ambitious education.
- Inspectors will assess the extent to which the provider complies with the relevant duties as set out in the Equality Act 2010, including, where relevant, the Public Sector Equality Duty and the Human Rights Act 1998.

### Quality of education

- Leaders take on or construct a curriculum that is ambitious and designed to give all learners, particularly the most disadvantaged and those with special educational needs and/or disabilities (SEND) or high needs, the knowledge and cultural capital they need to succeed in life.

### Behaviour and attitudes

- Relationships among pupils and staff reflect a positive and respectful culture; pupils are safe and they feel safe.
- Leaders, staff and pupils create a positive environment in which bullying is not tolerated. If bullying, aggression, discrimination and derogatory language occur, they are dealt with quickly and effectively and are not allowed to spread.

### Personal development

- The school prepares pupils for life in modern Britain effectively, developing their understanding of the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

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<sup>46</sup> Ofsted (2024) School Inspection Handbook

## Leadership and management

- Leaders have a clear and ambitious vision for providing high-quality education to all pupils. This is realised through strong, shared values, policies and practice.
- Governors/trustees understand their role and carry this out effectively.  
Governors/trustees ensure that the school has a clear vision and strategy, that resources are managed well and that leaders are held to account for the quality of education.
- Governors or trustees ensure that the school fulfils its statutory duties, for example under the Equality Act 2010, and other duties, for example in relation to the 'Prevent' duty and safeguarding.

## **Appendix B: Excerpts from the Equality and Human Rights Commission's guidance for schools on publishing equality information<sup>47</sup>**

Schools should publish information (data) that demonstrates how they have met the Public Sector Equality Duty (PSED) each year by 30 March. Publishing non-confidential equality-related data, evidence and information about a school and its pupils will help governors, academy trustees and parents to understand why the school is making particular decisions.

### **What information should schools collect?**

This information may include:

- school performance data
- anti-bullying policies
- a school development plan and equality milestones
- curriculum materials
- governing body minutes
- equality training materials
- parent and pupil surveys.

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.

Where there are gaps, schools may decide to fill them by getting the views of parents and pupils with particular protected characteristics. The school leader should decide if the school has enough information about pupils with different protected characteristics to enable it to meet the PSED.

In governors' or trustees' meetings, when new policies are being approved, it is a good idea to record discussions about equality issues that arise, showing what evidence was used. This will help make it clear how the PSED has been met.

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<sup>47</sup> EHRC (2022) *Public Sector Equality Duty: Guidance for Schools*

**Good practice example: restraint<sup>48</sup>**

A school routinely collects information about which pupils with different protected characteristics are restrained on the school's premises. This helps the school to monitor and understand how using restraint affects the pupils involved. By doing this the school has met the first two aims of the general equality duty: to eliminate unlawful discrimination and advance equality of opportunity for all pupils.

Based on the data collected, the school found that disabled pupils with learning disabilities and autism were more likely than their non-disabled classmates to be isolated and physically restrained. This prompted the school to look more deeply into the causes of this. It identified various triggers, such as noisy corridors during lesson changeovers, which were often causing challenging behaviours. The school also discovered that some pupils with learning disabilities and autism were finding it difficult to adapt to school routines.

The school took action to reduce and remove these triggers. It reduced stress during changeovers by altering the timetable and introduced a buddy system to support pupils struggling to adapt to school routines. The school also introduced reasonable adjustments for pupils, based on their needs, and PSED training for school staff.

As a result, the disproportionate use of restraint on pupils with learning disabilities and autism was reduced over time.

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<sup>48</sup> For more information on restraint, see EHRC (2021) *Restraint in Schools inquiry: using meaningful data to protect children's rights*