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# **Equality Act 2010 and disabled students: A guide for FE governors and trustees**

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## Introduction

Across their lives disabled people experience poorer outcomes than non-disabled people.

### Office for National Statistics

*[Our] 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.<sup>1</sup>*

In education, the Office for National Statistics (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 abuse<sup>2</sup>.

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 main focus of this guide is on the responsibilities of colleges as providers of education to disabled students.

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. Many colleges offer a fresh start to young people who have not flourished in secondary school or who have been out of school for some or all of Key Stage 4<sup>3</sup>.

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, governors, trustees, support staff, young

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<sup>1</sup> Josephine Foubert, Census and disability analysis team, ONS, speaking about the ONS research programme, *Improving disability data in the UK*, 18 February 2021

<sup>2</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>3</sup> Perry, R (2019) *Meeting the needs of students aged 16-19 who were not in school for part or all of Key Stage 4: The contribution of general FE colleges* Association of Colleges

people themselves, their families, the community, local employers and partner organisations.

The values, policies and practices adopted by colleges affect how readily they can meet the requirements of the Equality Act. Building equalities considerations in from the start, 'inclusion by design' can reduce the work of making individual adjustments in order to comply with the duties.

The Equality and Human Rights Commission (EHRC) proposes some practical steps that can support colleges in meeting the duties, preventing discrimination and becoming more inclusive:

### **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; and*
- *consult students, staff and organisations representing groups who share protected characteristics<sup>4</sup> about the quality and equality of the education, benefits, facilities and service and how they could be made more inclusive<sup>5</sup>.*

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<sup>4</sup> Protected characteristics are explained in section 1, *About this guide*, page 5.

<sup>5</sup> EHRC (2014) *Technical guidance on further and higher education*

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 practice<sup>6</sup>.*

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:

*...all learners can thrive together, understanding that difference is a positive, not a negative, and that individual characteristics make people unique<sup>7</sup>.*

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.

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<sup>6</sup> Ofsted (2024) *Further education and skills inspection handbook*

<sup>7</sup> Ofsted (2024) *Further education and skills inspection handbook*

## 1. About this guide

This guide summarises the Equality Act duties of colleges to disabled students and sets these within wider governance responsibilities and the expectations of Ofsted and the EHRC.

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

- *protected characteristics*
- *prohibited conduct*<sup>8</sup>.

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 and prospective students, though it does apply to colleges' employment duties and wider duties under the Equality Act.

*Prohibited conduct* is the general term applied to discriminatory behaviour that is unlawful under the Equality Act. The different forms of *prohibited conduct* are summarised and explained in section 2.3, *A summary of the duties*, page 17, below.

The focus of this guide is on the *protected characteristic* of *disability*. Many of the duties are the same for all *protected characteristics* but there are ways in which the disability duties differ from those owed 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*;

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<sup>8</sup> Throughout this guide, we use italics to indicate that a term or expression has a particular meaning which is defined in legislation or explained in guidance. Many of these terms or expressions are explained in this guide.

- some forms of discrimination, such as failure to comply with the *reasonable adjustments* duty, only apply to disabled people; and
- 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).

Different parts of the Equality Act cover different responsibilities. Colleges have responsibilities as:

- employers under Part 5 of the Equality Act;
- providers of services and public functions to parents, carers, visitors and other users of the college under Part 3; and
- providers of education to students under Part 6.

While the focus of this guide is on disabled students, the *Checkpoints*, in Appendix 1, remind governors and trustees about their duties to other disabled members of the college community, employees and others using the college.

The Equality Act applies to England, Scotland and Wales but the duties apply differently in the context of different policies on education in the three nations. This guide applies to colleges in England.

## 1.1. Who is this guide for?

This guide is for governors of further education corporations, sixth-form college corporations and designated institutions<sup>9</sup>; the trustees of 16 to 19 Academies; governance professionals working with governors and trustees; principals and executive leaders; and others with responsibility for the duties in the Equality Act.

It will also be of interest to providers of specialist further education who 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. Throughout this guide we use the term *colleges* to refer to the education providers described above.

This guide is designed to support you, as governors and trustees, in understanding your duties to disabled students in the Equality Act, how well your college is meeting the duties, avoiding discrimination, and playing its part in addressing inequalities. It also supports your conversations as governors with

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<sup>9</sup> Institutions designated under section 28 of the Further and Higher Education Act 1992

executive leaders about the evidence that the *responsible body*<sup>10</sup> needs in order to understand how well the duties are being met and how well disabled students are participating and achieving in your college. The *Checkpoints* in Appendix 1, and dotted throughout the text, are designed to aid and contribute to this conversation and to provide prompts to consider the particular issues covered in that section of the guide.

Governing bodies and boards of trustees have the legal responsibilities for the Equality Act duties, see section 2.1, *Who has responsibility for the Equality Act duties in colleges?* page 10, below, 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 you, as governors and trustees, in meeting these responsibilities.

**Checkpoint:** How confident are you that everyone working in your college understands how the disability duties apply to everyday decision-making in the college?

## 1.2. What's in this guide?

In this section, we explain what's in this guide.

In section 2, *What are the duties and responsibilities?* we explain who has the responsibility for the duties; how the *protected characteristic* of disability is defined in the Equality Act and what the duties to disabled students are. We also explain how, in respect of students aged up to 25, the disability duties in the Equality Act and the SEN duties in the CFA sit together; and we summarise some of the important related requirements on the provision of information, advice and support for disabled young people and their parents. 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.

In section 3, *How do you know how well your college is meeting the duties?* we help you to think about how the disability duties sit with your wider responsibilities as a governor or trustee; the data and other evidence you may need to draw on to understand how well your college is including disabled students and securing good outcomes for them; and section 3.3, *How can you*

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<sup>10</sup> We define *responsible bodies* in section 2.1, *Who has responsibility for the Equality Act duties in colleges?* Page 10.

*use the checkpoints in your college?* will help you to consider how you might use the *Checkpoints* in Appendix 1.

Appendix 1: the *Checkpoints* in Appendix 1 and dotted throughout the guide are intended to:

- support you in identifying whether and how well you are meeting the duties to disabled students;
- provide a framework for reviewing the information you have from your college; and
- support you in identifying any priorities you may need to address.

Appendix 2 includes a few key excerpts from Ofsted's FE Inspection Handbook that highlight what Ofsted will be looking for in your provision for disabled students.

Appendix 3, *What the national picture tells us*, is a briefing on the information we have from data, research and other sources about outcomes for disabled students. This briefing may help you to review your own data, consider them in the context of national patterns and help you to reflect on how well your college is improving progress and outcomes for disabled students.

### Using the guide

We do not assume that you will read through the guide from beginning to end, though, as governors and trustees, you need to have a good working knowledge of the duties covered in this guide.

We hope that the way the guide is organised will enable you to find what you need; to dip in to particular sections where you want to know more; to consider whether, as governors or trustees, you need training on the disability duties in the Equality Act and, if so, on what aspects. Alternatively, you may want to go straight to Appendix 1 and use the checkpoints to review how well your college is meeting the disability duties, referring back to other sections of the guide, as necessary.

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. However, this guide does not provide a full account of the duties and should therefore be read in the context of other guidance that sets out the Equality Act duties in more detail, such as:

- EHRC (2014) *Technical guidance on further and higher education*
- A Council for Disabled Children companion guide, *Disabled students and the Equality Act 2010: What colleges need to know and do*, that has more detail on the duties and how they work in practice. It is focused on the executive and those with operational duties but may be a useful reference for governors and trustees wanting to know more about the duties or wanting examples to illustrate how the duties work.

This guide should also be read in the context of guidance on wider governor and trustee responsibilities<sup>11,12</sup> and good practice guides from the professional associations.

This guide should not be used as a guide to any individual situation or as a substitute for legal advice.

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<sup>11</sup> DfE (2024) *Academy trust governance guide*

<sup>12</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*

## 2. What are the duties and responsibilities?

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

#### The responsible body

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<sup>13</sup>, it is the *governing body*, usually referred to as the board of governors; and
- for 16 to 19 Academies, it is the *proprietor*, that is the Academy Trust's board of trustees and members.

Throughout this guide we use the term *colleges* to refer to the education providers, see box above. Across the different providers, we refer to the *governing board* to include boards of trustees and governing bodies.

Under the employment sections of the Equality Act, the *governing board* 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*.

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, such as a work placement, where there was discrimination, or other *prohibited conduct*, it could be found to be legally responsible<sup>14</sup>.

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<sup>13</sup> Institutions designated under section 28 of the Further and Higher Education Act 1992

<sup>14</sup> EHRC (2014) *Technical guidance on further and higher education*

This guide, and the more detailed companion guide, *Disabled students and the Equality Act 2010: What colleges need to know and do*, is intended to support governors and trustees in meeting the responsibility of ensuring that everyone working in the college understands how the disability duties in the Equality Act affect day-to-day decision-making.

A governing board can delegate aspects of decision-making to a committee. In whatever way committees are structured, and whatever functions are delegated to them, the legal responsibility sits with the *governing body*, as the *responsible body*.

For a 16 to 19 academy that is part of a multi-academy trust, the trustees can delegate some of the functions of the board of trustees to a 'local governing body'. However, the board of trustees cannot delegate the legal responsibility and retains overall control. Boards can decide whether governors or trustees, or a committee, focus on certain areas of responsibility.

### Delegation and responsibility

The Department for Education (DfE) expects governing boards to have a governor, trustee or sub-committee that takes a strategic lead for SEN and, similarly, for disability, *a governor who takes a particular strategic interest in support for disabled students*<sup>15</sup>. In practice disability is often overseen by the lead on SEN but, whilst there is an overlap between SEN and disability, which we discuss below<sup>16</sup>, 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 college'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.

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<sup>15</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*

<sup>16</sup> See section 2.2, *How is disability defined in the Equality Act?* page 12.

In whatever way the disability functions are delegated, the legal responsibility sits with the *responsible body*, that is, the *governing body* for further education corporations, sixth-form college corporations and designated institutions, and the *proprietor*, that is the academy trust for a 16 to 19 academy.

**Checkpoint:** How confident are you that, as governors and trustees, you understand your responsibilities for the disability duties in the Equality Act? What training or preparation have you undertaken?

## 2.2. How is disability defined in the Equality Act?

### 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. The terms are defined as follows:

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

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

In combination, the terms *substantial* and *long-term* set a relatively low threshold. They rule out conditions such as broken limbs, which normally heal in much less than a year, but cover more people than many imagine.

**Specific 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;
- requires severe disfigurements to be treated as having an adverse effect on a person's ability to carry out normal day-to-day activities;
- includes progressive conditions, that is, conditions that get worse over time, before the effect is substantial; and
- requires people who are certified<sup>17</sup> as blind or partially sighted to be considered to be disabled.

The Government Equalities Office (GEO) and the Women and Equalities Unit (WEU) updated guidance, in 2013, on a range of issues to be taken into account when deciding who may be covered by the definition<sup>18</sup>.

**Specific exclusions from the definition:** Some conditions are specifically excluded from counting as an impairment under the Equality Act<sup>19</sup>:

- addiction to alcohol, nicotine or any other substance;
- a tendency to set fires;
- a tendency to steal;
- a tendency to physical or sexual abuse of other persons<sup>20</sup>;
- exhibitionism; and
- voyeurism.

**Disability data**<sup>21</sup>: 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 disabled<sup>22</sup>.

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 disabled<sup>23</sup>.

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<sup>17</sup> A person who is 'certified' as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist, can be 'registered' with their local social services team.

<sup>18</sup> 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*

<sup>19</sup> The Equality Act 2010 (Disability) Regulations 2010 (S.I. 2010/2128)

<sup>20</sup> For further information on this point, see *Case law on children in education and a tendency to physical abuse*, below.

<sup>21</sup> Data for England.

<sup>22</sup> 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.

<sup>23</sup> ONS (2023) *Disability by age, sex and deprivation, England and Wales: Census 2021*

**Disability, SEN, medical conditions and young people:** Though the definitions of disability and SEN (for those up to the age of 25) are covered by different legislation, in practice there is a significant overlap.

Disabled young people are covered by the SEN framework<sup>24</sup> where their learning difficulty or disability calls for *special educational provision*, that is, something additional to or different from provision made generally for others of the same age in mainstream education settings. The definition of disability used in the SEN framework is that used in the Equality Act.

Young people who have a range of medical conditions, such as epilepsy, diabetes or more severe forms of asthma and eczema, are likely to be covered by the definition of disability but may not be identified as having SEN.

**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'. Where aggressive behaviour arises from an underlying impairment, for example, because of heightened anxiety for an autistic student arising from changes to their regular timetable, 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.

**Case law on *children in education* and a *tendency to physical abuse*:**

We said, above, that difficult or challenging behaviour may be an indication of an underlying impairment. It may be helpful for colleges to know of case law arising in the context of disabled pupils in schools<sup>25</sup>.

Regulations made under the Equality Act exclude a *tendency to physical abuse* from counting as an impairment for the purposes of the definition of disability, see above. 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 provides<sup>26</sup>.

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<sup>24</sup> The SEN framework is set out in the CFA, associated regulations and the *SEN and disability code of practice: 0 to 25 years* (DfE and DH, 2015).

<sup>25</sup> 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.

<sup>26</sup> Upper Tribunal decision in the case of Child L, August 2018

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.

**Reasonably expected to know:** Under the Equality Act, a claim of discrimination against a college goes to the county court, see section 2.5, *What happens if a college does discriminate?* page 24, below. 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.

A college may be deemed to know, where there is evidence from, for example:

- a student sharing information about an impairment or condition with a member of staff including, for example, a receptionist;
- careful observation of a student's progress and behaviour; or
- for a student aged up to 25, a recognised SEN.

**Knowing who your disabled students are:** For the purpose of avoiding discrimination, anticipating and making *reasonable adjustments*, and meeting wider responsibilities, colleges need to know who their disabled students are.

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 DfE<sup>27</sup>. However, the way in which questions are asked can influence the answers<sup>28</sup>. 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.

Equally, parents and young people themselves may not think of themselves as being disabled 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

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<sup>27</sup> Until March 31st 2025, returns were made to the ESFA. Since then, returns are sent to the DfE.

<sup>28</sup> 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*

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.

### 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<sup>29</sup>.*

Decision-making under the CFA passes to young people themselves after compulsory school age. However, the SEN and disability code of practice envisages that 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.

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. Equally importantly, an individual impairment may not change but the nature of the *reasonable adjustments* required to prevent disadvantage may.

Where a disabled student has an education, health and care (EHC) plan under the CFA, the annual review provides an opportunity to review adjustments. 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, as well as making the options for student to disclose at any stage as easy and confidential as possible.

**For adult students**, many of the same considerations apply in respect of:

- 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;

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<sup>29</sup> DfE and DH (2015) *SEN and disability code of practice: 0 to 25 years*, paragraph 8.13

- 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.

**Checkpoint:** Are you confident that your college understands the profile of your disabled students? Is this information shared with you as governors and trustees? How often?

**Disabled students no longer 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.

## 2.3. A summary of the duties

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

The different forms of *prohibited conduct* are summarised here. They are described in more detail, with illustrative examples, in the companion to this guide, *Disabled students and the Equality Act 2010: What colleges need to know and do*. This may be a useful reference for governors and trustees wanting to know more about the duties.

**Prohibited conduct** is the term used for unlawful behaviour under the Equality Act. 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*; and
- *victimisation*.

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

- *discrimination arising from a disability*; and
- 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.

**Direct discrimination** is treating a disabled student *less favourably* because they are disabled, for example staff deciding not to take a student on a trip because they believe the student will not benefit from the trip because of their learning difficulty.

There is no *justification* for *direct discrimination*, but 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*.

**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.

**Discrimination arising from disability** is treating a disabled student unfavourably because of something arising in consequence of their disability, for example, a student with dwarfism is told they cannot take up a place on a hospitality and catering course because they would constitute a health and safety risk. In this case, the refusal was related to their stature, an intrinsic part of their disability and it is likely to amount to *discrimination arising from disability*.

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

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*; and
- provide *auxiliary aids* and services.

**Reasonable adjustments to any provision, criterion or practice:** The first requirement is to make adjustments to any *provision, criterion or practice*. This 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.

The *reasonable adjustments* duty includes ensuring that information for disabled students is provided in an accessible format.

*Competence standards* are specifically excluded from the requirement to make *reasonable adjustments* to a *provision, criterion or practice*, see *Exemptions*, page 23, below.

**Reasonable adjustments: 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.

*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 facilities<sup>30</sup>.

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 guidance<sup>31</sup> and guidance on universally accessible physical environments<sup>32</sup>.

**Reasonable adjustments: provision of auxiliary aids:** The third requirement is to provide *auxiliary aids*; this covers the provision of *auxiliary aids* and

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<sup>30</sup> BSI (2022) PAS 6463:2022 *Design for the Mind: Neurodiversity and the Built Environment Guide*

<sup>31</sup> DfE (updated 2022) *School and Further Education College Design and Construction*

<sup>32</sup> BSI (2018) BS 8300, *Design of an accessible and inclusive built environment*

services. This may include equipment, the provision of specialist advice to the college, or direct teaching or support to the disabled student.

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 *What is reasonable?* below.

**What is reasonable?** The EHRC makes it clear that it is not possible to say what will or will not be reasonable in any particular situation but provides guidance on factors that may be taken into account when deciding what is reasonable<sup>33</sup>. This may include, for example, whether a particular step would be effective for the student and practicable; the cost of a particular step and the resources of the college; the type of education or other benefit being provided; the effect of the disability on the student; health and safety requirements; the interests of other people including other students; and the availability of other ways in which aids and services might be provided to disabled students, such as *special educational provision* made under the CFA for a disabled student.

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*; and
- colleges, along with other service providers, are not permitted to charge for making a *reasonable adjustment*.

### Making reasonable adjustments

**Thinking ahead:** The essence of *reasonable adjustments* is that they must be made in anticipation of where disadvantage may arise and they must be put in place to prevent or limit that happening.

**Ask students themselves:** Students themselves are often best placed to help colleges think about what disadvantage might arise in college and what *reasonable adjustments* may work best. The effective participation of disabled students in planning and implementing *reasonable*

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<sup>33</sup> EHRC (2014) *Technical guidance on further and higher education*

*adjustments* is likely to be supported by the college's own evidence of the beneficial impact when they do.

**Checkpoint:** Do you know whether staff routinely seek the views of students themselves on the *reasonable adjustments* that work for them?

**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.

**Victimisation:** 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.

**Justification:** Under the Equality Act there may be justification for actions that may otherwise amount to *indirect discrimination* or to *discrimination arising from a disability*, see page 18 above. The actions may be justified if what a college did was a *proportionate means of achieving a legitimate aim*<sup>34</sup>.

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:** ...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*<sup>35</sup>.

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<sup>34</sup> EHRC (2014) *Technical guidance on further and higher education*

<sup>35</sup> EHRC (2014) *Technical guidance on further and higher education*

## 2.4. What do the duties apply to?

### Colleges must not discriminate in relation to:

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

**Admissions:** this 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; and
- the refusal to admit someone who has applied to be a student at the college.

When a college becomes aware that a disabled young person may be applying to the college, it is important to plan as smooth a transition as possible to college and to anticipate what *reasonable adjustments* would have to be made. *Reasonable adjustments*, that the college must make, can take into account *special educational provision* that is made under the CFA, see *What is reasonable*, in section 2.3, *A summary of the duties*, page 17, above.

**Checkpoint:** Do you know what arrangements are in place to ensure smooth transitions for disabled students coming to your college?

**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.

**Checkpoint:** Do you know how well disabled students participate in the wide range of activities available across the life of the college?

**Exclusion and other detriment:** Colleges must not discriminate:

- by excluding a disabled student, that is removing them or withdrawing them from a course, or from the college either permanently or temporarily; or
- by subjecting the student to any other *detriment*, that is, 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.

Schools are advised to *consider requesting an early annual review prior to making the decision to suspend or permanently exclude*<sup>36</sup> a pupil with an EHC plan. 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.

## Exemptions

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

The exemption 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 and awarding organisations must make adjustments to tests and assessments so that disabled students are not disadvantaged in demonstrating their competence by the assessment method.

### The Joint Council for Qualifications<sup>37</sup>

*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*

<sup>36</sup> DfE (2024) *Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*

<sup>37</sup> 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.

*disadvantage due to persistent and significant difficulties. The integrity of the assessment is maintained, whilst at the same time providing access to assessments for a disabled candidate<sup>38</sup>.*

**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 be lawful unless it is delivered in a way that results in *harassment* or subjects students to discrimination or other detriment.

## 2.5. 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 so<sup>39</sup>.

Where a court finds that a college has acted unlawfully, they can order compensation for financial costs and injury to feelings or an injunction to prevent further discriminatory practices by the college.

### Avoiding any disadvantage that might lead to a claim

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 disabled students to make sure they are working and preventing the disadvantage that might otherwise arise.

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<sup>38</sup> 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.

<sup>39</sup> 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 local authority 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.

You will want to be confident that staff are 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.

**Checkpoint:** What information do you receive about the resolution of disability-related issues at the early stages? How often is this information provided?

### Formal 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.

**Checkpoint:** What changes have been made to policies and practices following any disability-related complaints? How are you informed about these changes?

### Support in resolving complaints without a claim

**SENDIAS services:** Impartial SEN and disability information, advice and support (SENDIAS) services can support disabled students aged up to 25 and their parents in seeking the resolution of any complaint, see section 2.8, *Information, advice, guidance and support for disabled young people and their parents*, page 30, below. 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.

**Disabled Students Helpline:** Disabled students may also find it useful to speak to the Disabled Students Helpline, run by Disability Rights UK<sup>40</sup>. They can give specialist support, information and advice by phone or email.

**Complaints procedures:** Where a disabled student is not satisfied with the college's complaints procedure, they can complain to the DfE<sup>41</sup> 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.

**Checkpoint:** Are you confident that all staff are aware of and promote the ways in which complaints can be resolved?

## 2.6. Wider responsibilities under the Equality Act

The duties we've considered so far relate to protection from discrimination for individual students. Wider duties address the need for a more strategic approach.

### The Public Sector Equality Duty

The Public Sector Equality Duty (PSED) requires a wide range of public bodies to *have regard* to the need to:

- eliminate discrimination, *harassment*, *victimisation* and other *prohibited conduct*;
- advance equality of opportunity between disabled students and those who are not disabled; and
- foster good relations between different groups of people: those who share a *protected characteristic* such as disability and those who do not.

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.

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<sup>40</sup> Disabled Students Helpline: [Disabled Students Helpline](#)

<sup>41</sup> Until March 31st 2025, complaints were made to the ESFA. Since then, complaints are made to the DfE.

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.

**Specific duties under the PSED:** Sitting under these general requirements, there are specific duties. These duties require colleges<sup>42</sup> to:

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

**Equality information** is information that shows how the college has had *due regard* in making decisions, including any analysis undertaken and the evidence used<sup>43</sup>. The EHRC suggests the evidence might include performance data, a development plan with equality milestones, curriculum materials, minutes of the governing board, equality training materials, and student satisfaction surveys.

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.

**Equality objectives:** 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, with new objectives being set not more than four years after the previous objectives were set. Colleges need to consider how progress towards the objectives will be measured.

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.

The *equality information* and *equality objectives* can be published as part of another document, for example as part of an equality policy or improvement plan. They must be published somewhere that is accessible to the public; most colleges use their website.

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<sup>42</sup> 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.

<sup>43</sup> EHRC (2023) *Technical guidance on the Public Sector Equality Duty: England*

An effective set of *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.

**Checkpoint:** How were disabled students involved in the latest disability equality objectives that you set? What is their role in reviewing them?

## 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 2.3, *A summary of the duties*, page 17, above. 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 aims<sup>44</sup>. However, because the more favourable treatment of disabled students is allowed under other parts of the

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<sup>44</sup> *Positive action* must be a proportionate means of achieving one or more of the following aims: address the impact of a disadvantage that is current or that has happened in the past to those who share a particular *protected characteristic*; meet the particular needs of students who share a *protected characteristic*; or facilitate participation in activities where participation of those sharing a particular *protected characteristic* is disproportionately low.

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*.

## 2.7. SEN and disability responsibilities to young people up to the age of 25

The Equality Act and the CFA set out different duties to disabled young people and those with SEN aged up to 25 but there are significant overlaps in both the definitions and the duties. In practice the two sets of duties are usually seamlessly integrated in everyday situations. The SEN and disability code of practice<sup>45</sup> encourages a consideration of *special educational provision* and *reasonable adjustments* alongside each other.

### The SEN and disability code of practice

*In practical situations in everyday settings, the best early years settings, schools and colleges do what is necessary to enable children and young people to develop, learn, participate and achieve the best possible outcomes irrespective of whether that is through reasonable adjustments for a disabled child or young person or special educational provision for a child or young person with SEN<sup>46</sup>.*

**Definitions:** Disabled young people are covered by the SEN framework<sup>47</sup> where their learning difficulty or disability calls for *special educational provision*, that is, something additional to or different from provision made generally for others of the same age in mainstream education settings. The definition of disability used in the SEN framework is that used in the Equality Act.

**Best endeavours duty:** Mainstream colleges must use their *best endeavours* to secure that the *special educational provision* called for by the student's SEN is made. The duty applies for students with SEN whether or not they have EHC plans. This duty applies in respect of students with SEN up to age 25 in further education, including those aged between 14 and 16.

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<sup>45</sup> DfE and DH (2015) *SEN and disability code of practice: 0 to 25 years*

<sup>46</sup> DfE and DH (2015) *SEN and disability code of practice: 0 to 25 years*, paragraph 1.34

<sup>47</sup> The SEN framework is set out in the CFA, associated regulations and the *SEN and disability code of practice: 0 to 25 years* (DfE and DH, 2015)

**The duty to have regard to the code of practice:** Colleges must *have regard* to the SEN and disability code of practice<sup>48</sup> when exercising their CFA functions towards children and young people with SEN or disabilities; they cannot ignore it; and they must be able to demonstrate that they have acted in the light of its guidance.

**The duty to admit:** Colleges must admit a young person if the college is named in an EHC plan. Young people have the right to request that a particular institution is named in their EHC plan, and (depending on the type of institution) local authorities (LAs) have a duty to name that institution in the EHC plan subject to certain conditions being met.

**The duty to co-operate:** Colleges have a duty to co-operate with LAs in the exercise of their duties under the CFA. This is a reciprocal duty and applies to LAs and a range of local partners, including colleges.

Colleges should anticipate co-operating with LAs in their duties to:

- identify disabled young people and those who have or may have SEN;
- ensure that disabled young people and their parents know about the information and support services such as SENDIAS, see next section, below;
- publish a *Special Educational Needs and Disability (SEND) Local Offer* of services, see next section, below;
- keep educational, training and social care provision under review and consider whether it is sufficient to meet local need<sup>49</sup>; and
- 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.

## 2.8. Information, advice, guidance and support for disabled young people and their parents

A number of duties require the provision of information, advice, guidance and support to disabled students. Some of these duties fall directly on colleges, some on others. To ensure that disabled students and their families receive all the information that they need, colleges can expect to co-operate in contributing to and disseminating information that others provide.

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<sup>48</sup> DfE and DH (2015) *SEN and disability code of practice: 0 to 25 years*

<sup>49</sup> CFA s27: Duty to keep education and care provision under review

## 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 aged up to 25 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 SEN and disabilities;
- apprenticeships, traineeships and supported internships; and
- provision to assist in preparing children and young people for adulthood and independent living<sup>50</sup>.

LAs must keep their Local Offer under review, must gather comments on it and may from time to time revise it. Colleges can expect to co-operate with LAs in the development, review and dissemination of the information in their *SEND Local Offers*.

## 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 services.

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 UK<sup>51</sup>. They can give specialist support, information and advice by phone or email.

## Careers advice and 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.

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<sup>50</sup> For more detail, see DfE and DH (2015) *SEN and disability code of practice: 0 to 25 years*, Chapter 4

<sup>51</sup> Disabled Students Helpline: [Disabled Students Helpline](#)

The guidance for colleges<sup>52</sup> is structured around the eight Gatsby Benchmarks which provide an inclusive framework for developing careers programmes.

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

A range of advice and guidance is available to support colleges and careers advisers<sup>53</sup>.

Students can also use the National Careers Service<sup>54</sup>. It provides free, up to date, impartial information, advice and guidance on careers, skills and the labour market in England.

We say a bit more about careers advice and guidance in section 3.1, *How do the Equality Act duties sit within your governance responsibilities?* in the context of the need for high expectations for students.

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<sup>52</sup> DfE (updated 2025) *Careers guidance and access for education and training providers: Statutory guidance*

<sup>53</sup> For example, DfE (2022) *Supported internships* National Development Team for Inclusion

<sup>54</sup> National Careers Service: [Careers advice - job profiles, information and resources | National Careers Service](#)

### 3. How do you know how well your college is meeting the disability duties in the Equality Act?

The Equality Act duties are an intrinsic part of your governance responsibilities for:

- compliance with statutory duties;
- the leadership and oversight of your college;
- the experience of all of your students; and
- the educational outcomes of your students.

Section 3.1 brings together key aspects of your governance responsibilities with the Equality Act duties, the expectations of Ofsted and guidance from the EHRC to support you in considering how well your college is meeting the duties.

Section 3.2 is designed to support you in considering what data you already have, whether you need further information and if so, what, in order to understand how well your college is preventing discrimination and promoting equality of opportunity.

The *Checkpoints* in Appendix 1 and the checkpoints dotted throughout the guide are intended to support you in identifying whether and how well you are meeting the different duties in the Equality Act. Section 3.3 will help you to consider a range of ways in which you might use the *Checkpoints* to review this.

#### 3.1. How do the Equality Act duties sit within your governance responsibilities?

##### Department for Education governance guidance

*Your board should:*

- *ensure there is a clear vision that describes the educational outcomes your college is working towards and how your college will meet local skills needs*
- *ensure there is a strategic framework for achieving this*
- *foster a common culture, shared values and ethos across the organisation, with high expectations for the success of students*
- *hold the principal to account for the effective operation of your college, including educational, financial and staff performance*
- *support and advise the principal*

- *play a strategic role and only intervene in the day to day running of your college if there has been a serious failure on the part of the principal or senior executive team*<sup>55</sup>

This section brings together key aspects of your governance responsibilities with the Equality Act duties, the expectations of Ofsted and guidance from the EHRC to support you in considering how well your college is meeting the duties.

Key considerations for you are:

- how well your college is meeting these responsibilities in respect of disabled students;
- how you know; and
- the level of assurance you have.

Embedding your responsibilities to disabled students in your framework for all students is the most efficient way of meeting the duties. However, as set out in the briefing in Appendix 3, *What the national picture tells us*, page 60, the very reason there are specific duties towards disabled students is because they do not fare as well in education as their non-disabled peers. It is therefore important to have a particular eye on areas of college life where there is evidence indicating disabled students are not participating or achieving well. In considering this, you may want to have an eye on patterns at a national level.

## A clear vision

**DfE governance guidance** says that you should have a *clear vision that describes the educational outcomes your college is working towards and how your college will meet local skills needs and a strategic framework for achieving this*<sup>56</sup>.

**Ofsted** expects you to 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*<sup>57</sup>.

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<sup>55</sup> DfE (Updated 2025) *FE and sixth-form college corporations: governance guide*

<sup>56</sup> DfE (Updated 2025) *FE and sixth-form college corporations: governance guide*

<sup>57</sup> Ofsted (2024) *Further education and skills inspection handbook*

**EHRC** says you are *more likely to be able to comply with [your] duties under the Act, including the Public Sector Equality Duty, and to prevent [your] employees from discriminating against students if [you] establish a policy to ensure equality in access to and enjoyment of education, services, facilities and by potential students from all groups in society*<sup>58</sup>.

Some of the different elements in these points are picked up in this section but your vision should be *ambitious*, should be about *high-quality inclusive education and training*, focused on *outcomes and meeting local skills needs*. The EHRC focuses on preventing discrimination and the need to *ensure that disabled students can fully participate in the education and enjoy the other benefits, facilities and services which education providers provide for students*.

Your *strategic framework for achieving your vision*<sup>59</sup> should set out practical proposals for:

- turning your vision into the policies and practices that will make a difference;
- the evidence you expect to see of the success of your strategy;
- *reviewing practices to ensure that they do not unjustifiably disadvantage particular groups; and*
- *monitoring the implementation and effectiveness of the policy*<sup>60</sup>.

Building equalities considerations in from the start, *inclusion by design*, can reduce the work of making individual adjustments in order to comply with the duties. It's important that your strategy picks up and addresses questions about the extent to which disabled students are participating and achieving, not just in the education and training at the college, but also in the wider life of the college.

**Checkpoint:** What are the key elements in your strategy that will:

- build on successful inclusion?
- address inequalities?
- monitor progress?

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<sup>58</sup> EHRC (2014) *Technical guidance on further and higher education*

<sup>59</sup> DfE (Updated 2025) *FE and sixth-form college corporations: governance guide*

<sup>60</sup> EHRC (2014) *Technical guidance on further and higher education*

## High expectations for students

**DfE:** ...foster a common culture, shared values and ethos across the organisation, with high expectations for the success of students.

**Ofsted, Quality of Education:** The curriculum ensures that all learners benefit from high academic, technical and vocational ambitions. This means that the curriculum should be ambitious for disadvantaged learners or those with SEN and disabilities, including those who have high needs, and should meet those needs<sup>61</sup>.

**Ofsted:** ...ambitious vision for providing high-quality, inclusive education and training to all.

**EHRC:** ...the quality and equality of the education, benefits, facilities and service and how they could be made more inclusive<sup>62</sup>.

Nationally, the research and data provide significant evidence of compromised ambition and poor outcomes for young people with SEN and disabilities:

### Compromised ambition and achievement

Over the short-, medium- and longer-term, outcomes remain poorer for young disabled people than their non-disabled peers<sup>63</sup>.

Nationally, a number of reports, including Ofsted<sup>64</sup>, the House of Commons Education Committee<sup>65</sup> and the House of Lords Public Services Committee<sup>66</sup>, have identified a lack of ambition for children with SEN and disabilities.

*Far too often, these young people can be held back by negative stereotypes and assumptions about their limitations<sup>67,68</sup>.*

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<sup>61</sup> Ofsted (2024) *Further education and skills inspection handbook*

<sup>62</sup> EHRC (2014) *Technical guidance on further and higher education*

<sup>63</sup> DfE (2021) *Post 16 education and labour market activities, pathways and outcomes (LEO)*

<sup>64</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>65</sup> House of Commons Education Committee (2019) *Special educational needs and disabilities*

<sup>66</sup> House of Lords Public Services Committee (2024) *Think Work First: The transition from education to work for young disabled people*

<sup>67</sup> Gatsby Benchmarks (updated 2024) *SEND perspectives: For those working with young people with Special Educational Needs & Disabilities (SEND)*

<sup>68</sup> See also Gatsby Benchmarks (updated 2024) *Benchmark 3: Addressing the needs of each pupil*

There is a particular challenge for colleges in addressing this lack of ambition for disabled students. Much of the evidence points to that lack of ambition starting in the early years and then continuing in school so that, by the teen years, it may be internalised, translating into low expectations by disabled young people of themselves<sup>69</sup>.

Ofsted expects the curriculum to be a key vehicle for raising *academic, technical and vocational ambitions* and specifically includes students with *SEN and disabilities, including those who have high needs* in this expectation, see above.

**Young disabled students:** 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. The government's vision for careers guidance is to improve careers advice in schools and colleges and to guarantee two weeks' worth of work experience for every young person<sup>70</sup>.

### **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<sup>71</sup>.*

The education inspection framework includes careers guidance as part of personal development. In an inspection report, Ofsted is legally required to comment on the careers guidance provided at colleges to students up to the age of 19 and up to 25 for students with an EHC plan.

High quality career guidance is crucial but so is a wide range of personally tailored support to enable disabled students to progress successfully into employment.

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<sup>69</sup> Parsons, S and Platt, L (2018) *SEN, school life and future aspirations* Centre for Longitudinal Studies, UCL Institute of Education

<sup>70</sup> DfE (updated 2025) *Careers guidance and access for education and training providers: Statutory guidance*

<sup>71</sup> Gatsby Benchmarks (updated 2024) *SEND perspectives: For those working with young people with Special Educational Needs & Disabilities (SEND)*

### **Gatsby Benchmarks: SEND perspectives, Derwentside college**

*...as a college we have found that the combination of extra time spent with learners with SEND, investing in staff with extensive SEND experience and adapting and creating careers resources specifically for learners with SEND has helped us to meet the needs of all of our learners in the college as they progress into the world of work<sup>72</sup>.*

Statutory careers guidance is based around the eight Gatsby Benchmarks that define high quality inclusive careers provision. The Gatsby Benchmarks provide a clear framework for organising the careers provision at your college, for the quality assurance of careers leadership and for strategic alignment with college improvement.

**Checkpoint:** How do you know how effective your curriculum, careers and employability provision are in supporting disabled young people into higher levels of education, into training and work? What are your measures of effectiveness and how often are they reviewed?

## **Local needs**

### **Department for Education governance guidance**

*Colleges have an important role in tailoring education to meet local needs. Your board should:*

- *oversee the shaping of the curriculum to meet students' needs in the context of local and national skills priorities<sup>73</sup>;*
- *understand the student profile, such as protected characteristics, prior attainment and disadvantaged backgrounds<sup>74</sup>;*

<sup>72</sup> Gatsby Benchmarks (updated 2024) *SEND perspectives: For those working with young people with Special Educational Needs & Disabilities (SEND)*

<sup>73</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*, Education quality section

<sup>74</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*, Student engagement section

- *understand student expectations and needs relating to progression to training, apprenticeships, employment, more advanced qualifications or higher education*<sup>75</sup>.

For a good understanding of the local labour market, your careers leaders need strong relationships with local employers. Information and advice for students 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.

### **Gatsby Benchmark 2**

*All learners, parents and carers, teachers and staff who support learners should have access to good-quality, up-to-date information about future pathways, study options and labour market opportunities. Young people with SEND and their parents and carers may require different or additional information. All learners will need the support of an informed adviser to make the best use of available information.*

Careers leaders should work closely with the relevant teachers and professionals in their college and with local partners to identify the guidance needs of all students and put in place personalised support and transition plans.

### **Good Career Guidance: The Next 10 Years**

Information, opportunities and support need to be tailored and sequenced to meet the needs of each young person with SEND and their families<sup>76</sup>.

**Checkpoint:** How effective are relationships with local employers and how do these relationships contribute to the design of learning journeys for disabled students?

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<sup>75</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*, Student engagement section

<sup>76</sup> The Gatsby Charitable Foundation (2024) *Good Career Guidance: The Next 10 Years* London: The Gatsby Charitable Foundation

## Embedding your values throughout the college

The framing of colleges' commitment to equalities comes from the ethos and values set by your governing body or board of 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, governors, trustees, support staff, young people themselves, their families, the community, local employers and partner organisations.

Embedding the values depends significantly on how your ethos and values are communicated.

### **EHRC: communication**

The EHRC says that *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 steps, including the following:*

- *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;*
- *address acts of discrimination by staff as part of disciplinary rules and procedures;*
- *ensure that performance management systems address equality and non-discrimination;...*<sup>77</sup>

Some of these steps involve training or direct communication with all staff and, notably, include addressing *acts of discrimination by staff as part of disciplinary rules and procedures*. This is because, as governing bodies and boards of trustees, you are the *responsible body* for the Equality Act duties. As such, you are responsible for ensuring that everyone working in your college understands the duties and is working within them.

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<sup>77</sup> EHRC (2014) *Technical guidance on further and higher education*

A reminder: as the *responsible body* you are responsible for the actions of those working for you, as employees or as your *agents*. This means that you are responsible for any unlawful acts by employees, unless you can show that you took *all reasonable steps* to prevent the *prohibited conduct*, that is, the discrimination, *harassment* or *victimisation*, from taking place. In order to demonstrate that you took all *reasonable steps* you may need to address acts of *discrimination by staff as part of disciplinary rules and procedures*.

Communication goes well beyond training and guidance and includes the messages colleges send by, for example:

- the way staff model respectful relationships;
- the welcome all students and their families receive;
- the range of ways in which the achievement of all students is celebrated;
- the positive disabled role models available to students; and
- so much more.

**Checkpoint:** What mechanisms are in place for the effective communication of the Equality Act duties? How confident are you that all your staff understand what they need to do to *eliminate discrimination, advance equality of opportunity* and *foster good relations* between disabled students and those who are not disabled?

## Student engagement

### Department for Education governance guidance

*Students are your corporation's primary beneficiaries. It's important that your board listens to students, understands the student experience and takes their views into account in decision-making. Your board should:*

- *understand the student profile, such as protected characteristics, prior attainment and disadvantaged backgrounds*
- *understand student expectations and needs relating to progression to training, apprenticeships, employment, more advanced qualifications or higher education*
- *monitor and review:*
  - *the student experience and student satisfaction*
  - *education progress and outcomes, including destinations*

- *ensure that action is taken to address any gaps for particular groups, such as students with disabilities or from ethnic minority backgrounds*
- *ensure there are opportunities for board dialogue with students beyond board meetings and for student engagement with college life*<sup>78</sup>

In listening to students, understanding their experiences and taking their views into account in decision-making, DfE guidance particularly references the need to *take action to address any gaps for particular groups, such as students with disabilities or from ethnic minority backgrounds*. To ensure that disabled students can contribute their views, it will be necessary to identify ways of engaging students that are accessible to them.

### **EHRC guidance: student engagement**

EHRC guidance includes encouragement to:

- *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 inclusive*<sup>79</sup>; and
- *maintain an easy to use, well-publicised complaints procedure.*

In information about student views, it will be important to understand: firstly, how well the views of disabled students are represented in the overall views; and secondly, what those views tell you about levels of satisfaction with different aspects of your college's provision, policies and practices.

It's important that complaints procedures are well advertised, well-known and well-used so that any issues can be resolved within your college, or with help and support from beyond the college, rather than by recourse to the courts, which is the route for disabled students with a claim of discrimination. An easy to use and well-publicised complaints procedure might seem counter-intuitive but, where earlier ways have failed, it may be key to resolving problems without recourse to the courts. Ways of resolving complaints without recourse to the courts are discussed in section 2.5, *What happens if a college does discriminate?* page 24, above.

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<sup>78</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*

<sup>79</sup> EHRC (2014) *Technical guidance on further and higher education*

Equally important, is the ability to learn from any complaints so, as part of the information that you receive from your college, it is important to have an analysis of what action might be needed to address any complaints.

## Supporting and advising the principal

### Department for Education governance guidance

Includes guidance to:

- *hold the principal to account for the effective operation of your college, including educational, financial and staff performance*
- *support and advise the principal*
- *play a strategic role and only intervene in the day to day running of your college if there has been a serious failure on the part of the principal or senior executive team*<sup>80</sup>

This guide is designed to support you in holding your principal to account, in particular for the Equality Act duties to disabled students in your college. The Equality Act duties are set out in section 2, *What are the duties and responsibilities?* above; the *Checkpoints* in Appendix 1 are designed to support a discussion with the principal and senior leaders about how well the Equality Act duties are being met in your college.

This section brings the Equality Act duties alongside other duties and responsibilities, guidance from the DfE and the expectations of Ofsted and the EHRC. The next section reviews the information and data you might use as evidence to inform the discussion with the principal and senior leaders of your college about how well your college is meeting the Equality Act duties.

## 3.2. What data and other evidence should we be using?

In the introduction, this guide provided you with a brief glimpse into some of the ways in which disabled people experience poorer outcomes than their non-disabled peers. In Appendix 3, *What the national picture tells us*, we look in more detail at these disability inequalities and at some of the features associated with them. We use national data and research, drawn from a range of different sources, to highlight patterns that you need to be aware of when

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<sup>80</sup> DfE (updated 2025) *FE and sixth-form college corporations: governance guide*

you are reviewing your own data<sup>81</sup>. These patterns can form a useful backdrop for considering how your own college is doing.

This section will support you in considering what data you already have, whether you need further data or information and if so, what, in order to understand how well your college is meeting the disability duties in the Equality Act, preventing discrimination and promoting equality of opportunity for disabled students. This, in turn will provide pointers as to where you may need to take action to address disadvantage and inequality.

Colleges routinely collect information and data on a wide range of aspects of college life, much of it analysed by student characteristics. Typically, this ranges from student numbers on different courses at different levels, attendance, progress, attainment, experience of work, destinations, sustained destinations, suspensions, through to safeguarding, wellbeing and financial management.

Where your agreed strategic goals include goals relating to equalities, progress is likely to be measured against agreed success criteria and you will be monitoring and reviewing progress against these goals as part of the review of your wider strategy. There are likely to be some efficiencies where equality considerations are embedded in the core college responsibilities in this way.

Disability data and analysis may be relevant to reviews of staff performance, measures of student satisfaction or other measures but will always be required for *equality information* and *equality objectives* as part of the PSED.

In providing advice to schools about equality information for the PSED, the EHRC indicates:

### **EHRC guidance**

*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*

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<sup>81</sup> To note: the national data gathered from schools are based on SEN as schools do not submit, and are not asked for, disability data. Other sources including, for example, most data from the ONS, use disability data based on the definition of disability. You gather information from a number of sources, including self-declaration, to understand the disabled student population of your college. You need to bear these data differences in mind when you make comparisons with data from your college.

*leader should decide if the school has enough information about pupils with different protected characteristics to enable it to meet the PSED<sup>82</sup>.*

Where possible you should draw on existing data from your college 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 groups of students who share different *protected characteristics* are performing in these different areas. Whether you require new data will depend to some extent on your college's existing approach to data collection and analysis.

In a guidance paper on *equality information* and *equality objectives* for the PSED, the Association of School and College Leaders (ASCL) suggests it may be helpful to a college to:

- *focus on what their current issues are, becoming more attuned to the needs of different groups;*
- *determine and demonstrate what it is already doing and what it is planning to do;*
- *promote transparency and increase accountability; and*
- *be used as a resource for decision making within the school/college<sup>83</sup>.*

The national picture, see Appendix 3 for more detail, provides pointers for where you may need to focus your college level analysis. For example, nationally, disabled young people and young people with SEN are more likely to be absent than others; less likely to engage in the wide range of activities available beyond the classroom; and staff, both teaching and non-teaching, may be less confident in working with disabled students.

Some sub-analysis may be needed, for example, given the wide variety of students identified as having a learning difficulty, disability or a health condition (LDD) it may be helpful to understand what the data tells you about how groups of students with different types of impairment are participating and achieving at the college.

Equally, all students share more than one *protected characteristic* and you may need some analysis of particular intersectionalities that are relevant to the student population of your college and that affect student experience and performance.

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<sup>82</sup> EHRC (2022) *Public Sector Equality Duty: Guidance for Schools*

<sup>83</sup> Cole, A (2020) *Public Sector Equality Duty: Guidance paper* Association of School and College Leaders

Where sub-groups are small, you need to be cautious about reading too much into the analysis and you may need wider information to help with the overall picture, for example: looking at data over a longer time period; supplementing data with information from student surveys; taking into account other existing evidence such as staff training records or information from beyond the college; and working with specialist services and local partners. Equally, it may be helpful to supplement data with illustrative examples, case studies, or examples of how difficult issues were resolved, or how staff worked with an individual student and their family.

An analysis of complaints can also inform your understanding of how well your college is removing barriers for disabled students and can point to areas for improvement. Careful consideration should be given to whether a particular complaint may be individual or may be indicative of a wider issue.

Governor and trustee visits to the college can also inform aspects of the college's performance, for example, noticing the extent to which all students feel welcome, or the breadth of achievement that is valued and celebrated by the college.

Different analyses of the data are likely to be triggered by an observation or question from a governor or trustee or by the professional curiosity of staff or governors. The *Checkpoints* in Appendix 1 are designed to generate conversations that can be informed by the data and to trigger new questions of the data.

The National Governance Association (NGA) provides helpful advice on effective monitoring, including<sup>84</sup>:

- using information gained from data and 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 ASCL, the National Association of Head Teachers (NAHT) and others to develop guidance for maintained and academy schools. The guidance is focused primarily on schools but we refer to it here as the content is also relevant to the colleges for whom this guide is designed.

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<sup>84</sup> [www.nga.org.uk](http://www.nga.org.uk)

### National Governance Association and others

*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>85,86</sup>.*

The governance professional, with their role in supporting the governing board and liaising with the principal or CEO is well placed to broker this agreement.

As a governor or trustee, you receive a wide range of evidence from your college. 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 college's successes and challenges. There is a reminder, in the *Checkpoints* to consider any training needs you and your fellow governors and trustees may have.

### National Governance Association and others

*The governing board collectively is expected to gain the knowledge it needs to use data in a meaningful way<sup>87</sup>.*

**Checkpoint:** What does your data tell you about your successes and challenges in addressing inequality and disadvantage?

## 3.3. How can you use the checkpoints in your college?

Appendix 1 to 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 in your college;
- inform a discussion between the governing board and executive leaders; and
- support you in identifying areas where you need to take action.

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<sup>85</sup> NGA, ASCL, NAHT et al (2022) *What multi academy trust boards and CEOs should expect from each other*

<sup>86</sup> NGA, ASCL, NAHT et al (2022) *What governing boards and headteachers should expect from each other*

<sup>87</sup> NGA, ASCL, NAHT et al (2022) *What governing boards and headteachers should expect from each other*

The checkpoints 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 college;
- 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 college 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 college 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 principal, SENCO or inclusion or equalities lead. This discussion could then be reported back to the board with advice about how to proceed.

**Any immediate priority:** The governing board may prefer to use the checkpoints to generate an initial discussion with executive leaders about any action that may need to be taken, for example to ensure the college 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 your college is meeting its duties in some areas. 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.

**Action planning:** The checkpoints, completed or not, 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 your college to meet the duties to disabled students; and
- the information and objectives published to meet the PSED.

**Regular review:** The use of the checkpoints may lead to the identification of priorities and associated action plans. These are best incorporated into wider 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 students; or to consider the key set of data and other evidence that is incorporated into more regular review processes.

**Improving the conversation:** Trials of the use of similar checkpoints with schools have led to 'improved conversations' and 'better informed conversations' between governors and trustees and the executive.

Key to improving the conversation is both an increased understanding of the duties to disabled students and an understanding that the duties apply to every area of college life so are everyone's responsibility.

Your governance professional is key to both supporting the governing board, liaising with the principal or chief executive and facilitating such conversations.

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[Further Education Code of Good Governance | Association of Colleges](#)

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## Appendix 1: 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 college?
- 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 college</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                    |
| <p>We have an ambitious vision for high-quality, inclusive education for all</p> <p>Our vision promotes an understanding and appreciation of diversity at the same time as recognising what we have in common</p> <p>Our students, staff and parents and carers understand the need for different treatment whilst avoiding stigmatising any student</p> <p>Our college community celebrates the full range of achievement across the educational and wider life of the college</p> <p>In promoting a listening culture, we take care to hear the voice of disabled students</p> |                    |

| <b>2: We know and understand our disabled population</b>                                                                                                                                                                                                                                                                                                                                                                                    |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p><b>We understand our disabled students:</b></p> <p>We understand the breadth of the definition of disability in the Equality Act 2010, see section 2.2, <i>How is disability defined in the Equality Act?</i></p> <p>We gather and evaluate data to inform our understanding of our disabled student population</p> <p>Our students and their parents and carers feel they are listened to and feel able to speak about any concerns</p> |  |
| <p><b>We recognise our duties to other disabled members of our college community, to:</b></p> <p>Disabled staff</p> <p>Disabled parents, carers and other users of the college</p>                                                                                                                                                                                                                                                          |  |

### 3: We make reasonable adjustments to ensure we do not discriminate against disabled students

We make *reasonable adjustments* to ensure that disabled students participate as fully as possible in all aspects of the life of the college

We make *reasonable adjustments* to our policies and practices, to our physical environment, and by the provision of *auxiliary aids* and services for our disabled students

Our college anticipates the need for *reasonable adjustments* and puts them in place before disabled students are placed at a disadvantage

Our staff, teaching and non-teaching, are skilled in drawing on the insights of students and (where appropriate) their parents to make effective *reasonable adjustments*

Our college makes individual adjustments but gathers information and data to anticipate other adjustments that may be needed

Our college gathers feedback and keeps adjustments under review to make sure they continue to work

Our college communicates adjustments that need to be made to those who need to know

#### 4: We meet our strategic duties under the Equality Act 2010

##### Our data informs our strategic duties

Our data is analysed to inform our understanding of how disabled students are:

- *Present* in college
- *Participating* in activities across the life of the college
- *Experiencing* college life and how satisfied they are with it
- *Achieving* in terms of their progress and achievements
- *Progressing* into sustainable work, further and higher education and apprenticeships (destinations)

Our analysis of data and wider information informs our published *equality objectives* and our wider improvement responsibilities

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p><b>Public sector equality duty:</b></p> <p>We have due regard to the need to:</p> <ul style="list-style-type: none"> <li>• reduce and eliminate discrimination</li> <li>• improve equality of opportunity for disabled students</li> <li>• improve relations between disabled students and those who are not disabled</li> </ul> <p>We gather and publish information on equalities annually</p> <p>Every four years, we set <i>equality objectives</i> and agree actions to achieve them; these include some stretching but realistic objectives over disability</p> |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p><b>Responsibilities:</b></p> <p>Staff, managers, leaders and governors or trustees are clear about their respective responsibilities</p> <p>There is agreement about what is reported to the governing board, when and how it is kept under review</p> <p>Key priorities are incorporated into our overall improvement plan</p> <p>We understand how the deployment of expertise and resources develops the overall quality of our provision</p> <p>As governors or trustees, we have the skills and knowledge to understand how well we are meeting the Equality Act duties to disabled students and other relevant duties</p> |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

## Appendix 2: Ofsted, FE inspection and disabled students<sup>88</sup>

Excerpts from the *Education Inspection Framework* and the *Further education and skills inspection handbook*

The Equality Act 2010<sup>89</sup>

- The framework is intended to be a force for improvement for all learners. The framework and 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 legal duties as set out in the Equality Act including, where relevant, the *Public Sector Equality Duty* and the Human Rights Act 1998.

Quality of Education<sup>90</sup>

- The curriculum ensures that all learners benefit from high academic, technical and vocational ambitions. This means that the curriculum should be ambitious for disadvantaged learners or those with SEN and disabilities, including those who have high needs, and should meet those needs.

Behaviour and attitudes

- Relationships among learners and staff reflect a positive and respectful culture where the principles of equality and diversity are nurtured. Learners feel safe and rarely experience bullying, harassment or discrimination. If incidents occur, learners feel safe and confident to report them, knowing that staff will take swift and appropriate action.

Leadership and management

- 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.
- Leaders ensure that all learners, including those with SEN and disabilities and high needs, and disadvantaged learners, get the information, advice, guidance and support to achieve their next steps and progress to positive destinations. Leaders provide the support for staff to make this possible.
- Those responsible for governance ensure that the provider fulfils its legal duties and responsibilities. These include, for example, those under the Equality Act 2010, and those in relation to the 'Prevent' strategy and safeguarding.

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<sup>88</sup> To note: Ofsted does not inspect higher education provision

<sup>89</sup> Ofsted (2023) *The Education Inspection Framework*

<sup>90</sup> Ofsted (2024) *Further education and skills inspection handbook*

## Appendix 3: What the national picture tells us

Appendix 3 considers the evidence from research and evaluation on some of the ways in which disabled people experience poorer outcomes than their non-disabled peers. National data and research, drawn from a range of different sources, is used to highlight patterns that colleges need to be aware of when they are reviewing their own data<sup>91</sup>.

**To note:** some of the data and research we draw on relates specifically to young disabled people, many of whom also have SEN. However, the findings are relevant across the student population; the research itself tells us that early experiences *cast a long shadow over the opportunities and experiences that present over a lifetime*<sup>92</sup>.

The disadvantages that disabled people experience have been well documented, for example in reports from Ofsted<sup>93</sup>, the ONS<sup>94</sup>, the National Audit Office<sup>95</sup> and the House of Commons Education Select Committee<sup>96</sup>.

### Educational progress and outcomes

In 2019, the National Audit Office brought together data from the DfE illustrating progress and achievement at different key stages<sup>97</sup>:

#### National Audit Office

Data published in May 2019, based on 2017/18 outcomes showed that:

- At Key Stage 2 (the end of year 6), 21% of pupils with SEND achieved the expected level in reading, writing and maths, compared with 74% of those with no SEND.

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<sup>91</sup> To note: the national data gathered from schools are based on SEN as schools do not submit, and are not asked for, disability data. Other sources including, for example, most data from the ONS, use disability data based on the definition of disability. You gather information from a number of sources, including self-declaration, to understand the disabled student population of your college. You need to bear these data differences in mind when you make comparisons with data from your college.

<sup>92</sup> Parsons, S and Platt, L (2018) *SEN, school life and future aspirations* Centre for Longitudinal Studies, UCL Institute of Education

<sup>93</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>94</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>95</sup> National Audit Office (2019) *Support for pupils with special educational needs and disabilities in England*

<sup>96</sup> House of Commons Education Committee (2019) *Special educational needs and disabilities*

<sup>97</sup> National Audit Office (2019) *Support for pupils with special educational needs and disabilities in England*

- At Key Stage 4 (the end of year 11), the progress of pupils with SEND has consistently been lower than that of pupils without SEND and with the same starting points. In 2017/18, the average 'Progress 8' score for pupils with SEND was -0.61 compared with 0.08 for those with no SEND<sup>98</sup>.
- by age 19, 31% of pupils identified with SEND in year 11 achieved level 2 (equivalent to five or more A\*–C at GCSE) including English and maths.

When they leave school, disabled young people and those with SEN are less likely:

- to remain in education or training at age 16-17; and
- to be in any sustained destination - education, employment or apprenticeship<sup>99</sup>.

Across all age groups (21 to 64 years), disabled people are:

- less likely to have obtained a degree;
- more likely to have GCSEs as their highest form of qualification; and
- more likely to have no qualifications than non-disabled people<sup>100</sup>.

## Experience of education

Disabled students and those with SEN leaving school at the end of Key Stage 4 and starting at college bring with them different experiences of school from their non-disabled peers. Ofsted has identified:

*children with SEND being excluded, absent or missing from school much more frequently than other pupils nationally, and unofficial exclusions being used<sup>101</sup>.*

They are also more likely to have experienced bullying, more likely to be unhappy at school and feel less happy with the quality of their schoolwork<sup>102</sup>. A report from the ONS highlights the impact of these experiences on children and young people<sup>103</sup>.

<sup>98</sup> The score of -0.61 indicates that pupils with SEND achieved, on average, more than half a grade lower per subject than other pupils with similar prior attainment nationally.

<sup>99</sup> DfE (2024) *Special educational needs and disability: an analysis and summary of data sources*

<sup>100</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>101</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>102</sup> Parsons, S and Platt, L (2018) *SEN, school life and future aspirations* Centre for Longitudinal Studies, UCL Institute of Education

<sup>103</sup> ONS (2022) *Educational experiences of young people with special educational needs and disabilities in England: February to May 2022*

### Office for National Statistics

*Instances of perceived bullying, meanness, gossiping, exclusion and judgement were recounted as having a profoundly negative effect on young people's learning and well-being.*

*I just hated the place. Not because I just hated school, but it's because the whole experience. So, this is what most of my anxiety comes from, primary school, unfortunately. I was bullied from reception all the way to year six, physically and mentally. And I tried to move school, nowhere would take me, everywhere was full.*

Buttons, a teenager with SEN in a mainstream school

In Key Stage 4, the progress of pupils with SEN is consistently lower than that of pupils without SEN and with the same starting points<sup>104</sup>. In school, pupils with SEN may spend a disproportionate amount of time with staff who are not qualified teachers and this may contribute to poorer progress<sup>105</sup>. They are also more likely to miss out the wider opportunities of school life such as school trips and after school clubs<sup>106</sup>.

Some students come to college with experience of being out of school for some or all of Key Stage 4. Research in four colleges for the Association of Colleges indicated that not all of these students had SEN, though several colleges identified previously undiagnosed needs:

### Association of Colleges

*Several colleges referred to identifying previously undiagnosed needs such as attention deficit hyperactivity disorder (ADHD) or dyslexia amongst these students; one interviewee expressed disbelief that the school had not picked these up earlier, given the overt nature of the signs and symptoms. The colleges were also keen to stress, however, that SEN was not the*

<sup>104</sup> National Audit Office (2019) *Support for pupils with special educational needs and disabilities in England*

<sup>105</sup> Webster, R (2022) *The Inclusion Illusion: how children with special educational needs experience mainstream schools*

<sup>106</sup> David Robinson (2024) *Access to extra-curricular provision and association with outcomes*. Education Policy Institute

*cause of low-level attainment for many of these students, and that they had the potential to achieve in the right circumstances<sup>107</sup>.*

## Lack of ambition

A number of reports, including from Ofsted<sup>108</sup> and the House of Commons Education Committee<sup>109</sup>, have identified a lack of ambition for children with SEN and disabilities. In a separate report, from the House of Lords Public Services Committee, reviewing *The transition from education to work for young disabled people*, there is evidence that ambition can be compromised at an early stage:

### House of Lords Public Services Committee

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

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

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

*When Ms Davis asked the nursery staff why they had not asked this child, their response had been that they did not want to "raise their ambition"<sup>110</sup>.*

Compromised ambition is evident in disabled young people themselves in their teen years, when, taking into account their 'cognitive ability', they are less likely to want to stay on at school, less likely to expect to go to university compared to teenagers without SEN, more likely to aspire to occupations that command lower wages and less likely to want to be in a professional or managerial occupation. The researchers conclude:

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<sup>107</sup> Ruth Perry (2019) *Meeting the needs of students aged 16-19 who were not in school for part or all of Key Stage 4: The contribution of general FE colleges* Association of Colleges

<sup>108</sup> Ofsted (2021) *SEND: old issues, new issues, next steps*

<sup>109</sup> House of Commons Education Committee (2019) *Special educational needs and disabilities*

<sup>110</sup> House of Lords Public Services Committee (2024) *Think Work First: The transition from education to work for young disabled people*

### Centre for Longitudinal Studies, UCL Institute of Education

*These results clearly highlight the lower academic and occupational aspirations held by children and teenagers who were identified as having SEN in both primary and secondary school, compared to other children with similar academic ability but not identified as having SEN. Some differences are substantial and have the potential to cast a long shadow over the opportunities and experiences that present over a lifetime<sup>111</sup>.*

### Raising aspirations

Over the short-, medium- and longer-term, outcomes remain poorer for disabled young people than their non-disabled peers<sup>112</sup> so colleges have a crucial role in: raising career aspirations and broadening employment horizons; supporting disabled students in obtaining qualifications; enabling them to progress to higher levels of study; securing meaningful work experience; and providing a positive experience of participation in the wider life of the college.

### Gatsby Benchmarks, SEND Perspectives

*Good career guidance ensures that all young people, whatever their needs, background or ambitions, know the options open to them and can make the informed choices needed to fulfil their potential. This is particularly important for the more than one million young people in England recognised as having SEND. Far too often, these young people can be held back by negative stereotypes and assumptions about their limitations<sup>113, 114</sup>.*

Staff skill, expertise and confidence are key to countering *negative stereotypes and assumptions*, raising ambition and securing good progress.

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<sup>111</sup> Parsons, S and Platt, L (2018) *SEN, school life and future aspirations* Centre for Longitudinal Studies, UCL Institute of Education

<sup>112</sup> DfE (2021) *Post 16 education and labour market activities, pathways and outcomes (LEO)*

<sup>113</sup> Gatsby Benchmarks (updated 2024) *SEND perspectives: For those working with young people with Special Educational Needs & Disabilities (SEND)*

<sup>114</sup> See also Gatsby Benchmarks (updated 2024) *Benchmark 3: Addressing the needs of each pupil*

### The SEN and disability code of practice

*Being supported towards greater independence and employability can be life transforming for children and young people with SEN. This support needs to start early, and should centre around the child or young person's own aspirations, interests and needs. All professionals working with them should share high aspirations and have a good understanding of what support is effective in enabling children and young people to achieve their ambitions<sup>115</sup>.*

Staff expertise is important, whether on academic or vocational courses, whether on degree courses or courses preparing young people for independent living. Alongside that, so is an understanding of how a particular disability affects a particular student; and the importance of engaging disabled students themselves in determining what *reasonable adjustments* are needed to enable them to access learning and the wider opportunities available at the college.

That engagement requires particular skill for students who are non-verbal and Mencap and the Challenging Behaviour Foundation provide this challenge:

### Mencap and the Challenging Behaviour Foundation

*Sometimes engagement processes which rely on speech-based group sessions do not capture the views of young people with severe learning disabilities, profound and multiple learning disabilities or young people who display behaviours described as challenging. Does your engagement process capture the experiences and views of these young people or do you need to do more?<sup>116</sup>*

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<sup>115</sup> DfE and DH (2015) *SEN and disability code of practice: 0 to 25 years*, Chapter 8, *Preparing for adulthood from the earliest years*

<sup>116</sup> Mencap and the Challenging Behaviour Foundation (2017) *Valuing the views of children with a learning disability Engaging with children and young people with severe or profound and multiple learning disabilities*

## Experience of adulthood

Into adulthood, poorer educational outcomes are linked to poorer life outcomes for disabled people. On the wellbeing measures in the ONS survey, disabled people reported poorer experiences than non-disabled people:

*On average, disabled people aged 16 to 64 years had poorer ratings than non-disabled people on all four personal well-being measures<sup>117</sup>, with the greatest disparity in average anxiety levels<sup>118</sup>.*

On a separate measure of loneliness, the proportion of disabled people aged 16 years and over in England who reported feeling lonely 'often or always' was over four times that of non-disabled people<sup>119</sup>. In a different study, researchers found clear indications that the social isolation experienced by disabled adults was not solely linked to their employment status or their adult disability but was also linked to disability identified in childhood and the social isolation associated with that<sup>120</sup>.

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<sup>117</sup> Four measures surveyed: 'life satisfaction', 'feeling that the things done in life are worthwhile', 'happiness yesterday', and 'anxiety yesterday'.

<sup>118</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>119</sup> ONS (2021) *Outcomes for disabled people in the UK: 2021*

<sup>120</sup> Parsons, S and Platt, L (2019) *Growing up lonely? Exploring the social outcomes of three generations identified with special educational needs or disabilities in childhood* LSE Department of Social Policy, Working paper 08-19