**What is the Equality Act 2010?**

The Equality Act 2010 replaced nine major Acts of Parliament, as well as almost a hundred sets of regulations, dealing with equality and discrimination. The Act provides a single, consolidated source of discrimination law, covering all the types of discrimination that are unlawful.

In England and Wales the Act applies to all maintained and independent schools, as well as academies and free schools.

The Act covers all aspects of school life to do with how a school treats pupils and prospective pupils, parents and carers, employees, and members of the community. Everything a school does must be fair, non-discriminatory and not put individuals or groups of people at a disadvantage. In particular, a school must not discriminate, harass or victimise a pupil or potential pupil in relation to:

• Admissions.

• The way it provides education for pupils

• How it provides pupils access to any benefit, facility or service.

• Excluding a pupil or subjecting them to any other detriment.

**What actions and behaviours are unlawful under the Act?**

The Act defines a number of types of unlawful behaviour, including:

• Direct discrimination.

• Indirect discrimination.

• Failing to make reasonable adjustments for disabled pupils or staff.

• Discrimination arising from disability.

• Harassment related to a protected characteristic.

• Victimisation of someone because they have made, or helped with, a complaint about discrimination.

**Protected characteristics**

The Act uses the term “protected characteristics” to refer to aspects of a person’s identity. Treating a person less favourably because they have one or more of these characteristics would be unlawful. The protected characteristics are:

• Age.

• Disability.

• Gender reassignment

• Marriage and civil partnership.

• Pregnancy and maternity.

• Race.

• Religion or belief.

• Sex.

• Sexual orientation.

The protected characteristics of age and marriage and civil partnership apply to schools as employers, but not in relation to their provision for pupils.

**Public Sector Equality Duty**

Since April 2011, schools have also been bound by a part of the Equality Act 2010 called the Public Sector Equality Duty (also known as the PSED or simply the “Equality Duty”)

The Equality Duty replaces the previous three sets of duties on schools to promote disability, gender and race equality through having equality polices and action plans for these groups. Some schools chose to meet these previous duties by combining the three policies into a “single” equality policy.

There is now no requirement for schools to have equality policies, schemes and/or action plans.

The new Equality Duty has two parts: the “general” duty and “specific” duties. The general duty is the overarching legal requirement for schools and means they must consider how their policies, practices and day-to-day activities impact on pupils and staff. Schools are required to have “due regard” to the need to:

• Eliminate unlawful discrimination, harassment and victimisation

• Advance equality of opportunity.

• Foster good relations

The two specific duties for schools aim to assist them to meet the general duty. These are:

• To publish information to show how they are complying with the Equality Duty. This must be updated at least annually.

• To prepare and publish one or more specific and measurable equality objectives at least every four years.

Schools should have complied with these duties from April 6, 2012.

**What is meant by “due regard”?**

Having due regard means that schools must consciously think about the three aims of the Equality Duty as part of decision-making, developing and reviewing policies and how they deliver services.

According to advice for school leaders and governors from the DfE: “The duty to have ‘due regard’ to equality considerations means that whenever significant decisions are being made or policies developed, thought must be given to the equality implications.”

**Publishing equality information: what is required?**

As a minimum schools should publish information on:

• The diversity of the school population.

• How they are performing in relation to the three aims of the equality duty.

• The diversity of their workforce, although this only applies to schools with more than 150 employees.

**Developing and publishing measurable objectives**

Schools can set equality objectives to tackle any issues of discrimination, inequality and disadvantage.

Objectives might be linked to challenges the school is already responding to in the school improvement plan, or can address issues and concerns identified through consultation with pupils, staff and parents.

Some of the challenges that equality objectives can address include:

• Narrowing gaps in attainment between groups of pupils, for example girls and boys.

•Improving school attendance of pupils from particular groups.

• Increasing the participation of particular groups in school activities.

• Reducing prejudice-related bullying and the use of derogatory language.

• Improving knowledge, skills and attitudes to enable pupils to appreciate and value difference and diversity, for example increasing understanding between pupils from different faith communities.

• Improving the participation and engagement of different groups of parents and communities.

**Specific and measurable explained**

It is a statutory requirement that equality objectives are “specific and measurable”. This is to make sure that objectives are not vague or flimsy statements but reflect achievable and measurable improvements that the school wishes to make.

Objectives should be clearly focused and demonstrate measurable outcomes. Including a time framework, that indicates when an objective will have been in part or wholly achieved, will also enable success to be measurable.

Equality objectives should be clearly relevant to the groups with protected characteristics named in the Equality Act, but may refer also to groups disadvantaged by social and economic factors.

**How many equality objectives should a school publish?**

There is no requirement for schools to publish a set number of equality objectives. The approach should be proportionate, with larger schools likely to have more objectives than smaller ones. However, given the wide range of equality issues in schools, it is likely that many schools will wish to publish more than one objective. DfE advice for school leaders and governing bodies states that a school “should set as many objectives as it believes are appropriate to its size and circumstances; the objectives should fit the school’s needs and be achievable”.

How should schools publish equality information and objectives?

It is up to schools themselves to decide on the format they will adopt for publishing equality information and objectives. For most schools, setting up an equalities page on their website will be the best approach.

Schools may also find it useful to publish some information on the following with each objective

• Why objectives have been chosen, including any relevant consultation and engagement.

• A short description of what is going to be done to achieve each objective.

**The role of school governing bodies**

Governing bodies are the “responsible body” for ensuring that the school meets the requirements of equality legislation. Essentially this means that they should:

• Ensure the school takes all reasonable steps to ensure that its employees do not carry out unlawful discriminatory actions or behaviour.

• Support and guide the school to have “due regard” for equality in all its functions.

• Ensure the school complies with the Equality Duty and meets the two “specific duties” for schools.

**Considerations of Adaptations to School Policies in respect of the Equalities act**

**Example: school uniform policy**

A school’s uniform policy allowed pupils to wear only one pair of plain ear studs and a wristwatch. A Sikh pupil attended school wearing her Kara (a narrow steel bangle with great significance for Sikhs). A teacher asked the girl to remove it because it didn't comply with the school's uniform policy. The girl asked to be exempted from the policy but the school refused.

In this example there is no evidence that the teaching staff appreciated their obligations to fulfil the general equality duty. The school had breached the general duty by failing to:

• consider how it applied to its school uniform policy

• have due regard to the duty when making decisions in response to the girl's wish to wear the Kara once the issue arose.

• What schools need to do to meet the specific duties

**Exclusions and the Equality Act**

The Equality Act 2010 prohibits schools from discriminating against pupils during the exclusions process. Schools must consider the general equality duty when making decisions about discipline and exclusions. They should take care not to make assumptions that may lead to unlawful discrimination.

To eliminate discrimination, schools are encouraged to analyse, monitor, review and publish their non-confidential data about how they use temporary and permanent exclusions. This is to ensure pupils with specific protected characteristics are not being affected by exclusions disproportionately.

The Equality Act also says schools must make reasonable adjustments for disabled pupils when imposing discipline or exclusions. Disabled pupils should not be put at a substantial disadvantage to their non-disabled classmates by a school’s exclusion policy or disciplinary action. For example, you might need to adapt use of sanctions or use a different one.

Considering protected characteristics in exclusion policies

When drawing up behaviour and exclusion policies, schools should consider whether any proposed criteria might adversely impact on a student because of their protected characteristic and whether the application of them would be a proportionate means of achieving a legitimate aim. Those making decisions about discipline and exclusions should be aware of the institution’s obligations under the Equality Act and take care not to make assumptions that may lead to unlawful discrimination.

**For example:**

A student acquires a physical impairment during his further education course. The student is unable to attend some of his lessons, because the buildings are not accessible, and cannot hand in his assignments on time because he requires longer to complete them due to his disability. The college removes him from his course because of his poor attendance record and for not handing in assignments. This is likely to be unlawful discrimination arising from disability as the reason that he handed his assignments in late is connected to his disability so he is being punished for something arising from his disability.

You will need to consider whether reasonable adjustments should be made for disabled students.

**For example:**

A student with autism shouts at his tutor and uses inappropriate language. The college would usually consider exclusion as a sanction for such behaviour. However, the college takes into account that the tutor had missed a tutorial session and that this had distressed the student who finds it difficult both to cope with unexpected changes to routine and to express himself when he is upset. As a result, the college does not suspend the student but decides to deal with the student in a different way. This is likely to be a reasonable adjustment to make.