



PUBLIC SECTOR EQUALITY DUTY (PSED)

GUIDANCE AT A GLANCE

Promoting equality and inclusion is a core function of schools and colleges. This guidance summarises the legal duties on leaders to tackle inequality in their institutions.

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1 OVERVIEW

The public sector equality duty (PSED), known as the 'equality duty', was introduced by the Equality Act 2010 (the Act). The Act brought previous equalities law under one umbrella, replaced existing race, disability and gender equality duties and extended protection to further 'protected characteristics'.

The equality duty applies to all types of schools and colleges across all phases and places duties on leaders, trustees and governors.

The equality duty should be integrated into the way that the school or college carries out all of its functions.

The duty provides a framework to help focus attention on the impact of decisions and policies on particular groups, to identify priorities and strategies to tackle them.

The equality duty has two main parts: a 'general' equality duty and 'specific duties'.

2 GENERAL EQUALITY DUTY: OVERVIEW

The equality duty requires schools and colleges to think about the interests of and effects on all students, staff and the whole community in everything that it does, including decision making and all policies. It must act in a way which is fair, non-discriminatory, and does not put individuals or groups at a disadvantage. It must develop strategies to rectify situations where particular groups are at a disadvantage in order to meet the different needs of all learners.

The duty makes clear that this will not always be about treating all people exactly the same. Schools and colleges must consider where there is a need to overcome existing inequalities.

In most instances schools and colleges will already collect sufficient information to fulfil their equality duty. Discretion lies with the leader to decide if they have enough information about students with different protected characteristics to meet their equality duty.

The equality duty has three main elements which schools and colleges must give 'due regard' to in carrying out their functions as public bodies. Across all the protected characteristics they must:

- 1 eliminate discrimination, harassment and victimisation or any other unlawful conduct in the Equality Act 2010
- 2 advance equality of opportunity
- 3 foster good relations

The equalities impact in respect of each of these elements should be recorded, monitored and kept under constant review.

3 SPECIFIC DUTIES: OVERVIEW

The specific duties require public bodies including schools and colleges to publish relevant, proportionate information demonstrating their compliance with the equality duty, and to specific, measurable equality objectives. Schools and colleges must:

- publish information on how they are complying with the equality duty
- devise and publish their own equality objectives

It is up to individual institutions to determine how to comply with the specific duties, including how they balance competing priorities and set priorities. Compliance will look different depending on the context and size of the school or college.

There are further specific duties for employers in schools and colleges with over 150 employees. Public bodies with over 150 employees must consider how their activities as employers affect people who share different protected characteristics and publish information to show that they did this (see Section 11).

4 PROTECTED CHARACTERISTICS

The Equality Act extended previous race, gender and disability equalities legislation to cover the wider 'protected characteristics' listed:

- sex
- age*
- race
- disability
- religion or belief
- sexual orientation
- gender reassignment**
- pregnancy or maternity

*age: a relevant characteristic considering a school or college's duties as an employer but not in relation to students.

** gender reassignment: there has been some confusion about the application of the duty for children identifying as trans, particularly in single sex schools. The Equality Human Rights Commission (EHRC) is soon to publish guidance for schools on how to apply the law.

5 DUE REGARD

Schools and colleges must integrate the equality duty into the way it carries out all of its functions. 'Due regard' means giving 'relevant and proportionate consideration to the duty' and actively consider the equality implications for students and staff with protected characteristics in all aspects of its policy development and decision making.

Schools and colleges must separately consider each of the three elements of the duty (eg eliminating discrimination must be considered separately from fostering good relations).

Schools and colleges should record the steps they have taken to show 'due regard'.

6 THE DUTY TO HAVE DUE REGARD TO THE NEED TO ELIMINATE DISCRIMINATION, HARASSMENT AND VICTIMISATION OR ANY OTHER UNLAWFUL CONDUCT IN THE EQUALITY ACT 2010

Discrimination can be direct and indirect. Direct discrimination is when someone is treated less favourably than someone else because of their protected characteristic(s). Indirect discrimination is when a provision that applies to everyone particularly disadvantages particular groups.

Harassment is unwanted conduct with the purpose or effect of violating a person's dignity or which creates an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation is when a person is subjected to a detriment because they have carried out a 'protected act' such as:

- complaining about harassment
- bringing a claim under the Act
- getting involved in another person's complaint

7 THE DUTY TO ADVANCE EQUALITY OF OPPORTUNITY

This extends to advancing equality of opportunity between people who share a protected characteristic and people who do not share it. It requires schools and colleges to remove or minimise disadvantages for persons with protected characteristic(s), take steps to meet the different needs of different groups, and encourage participation for particular groups when it is disproportionately low.

Schools and colleges should identify issues, shape policies and make decisions around the needs of all learners and staff. They should ask whether and how a policy/decision impacts on people with particular protected characteristic(s), whether they need to adopt different approaches for particular groups, and how they can encourage those with protected characteristics who are underrepresented to become more involved in the opportunities available to them.

8 THE DUTY TO FOSTER GOOD RELATIONS

Schools and colleges should consider whether a policy or decision promotes understanding between groups of students, parents and staff with particular protected characteristics and applies to relations between those who share a protected characteristic and those who do not.

The duty encourages close working between schools/colleges, parents/carers and local communities, including looking at how to improve education and opportunities.

9 POSITIVE ACTION

In some circumstances, schools/colleges will decide that meeting the needs of students to ensure that they receive the same standard of education and opportunities as everyone else requires different approaches for different groups. The Act permits this proportionate approach in order to help overcome disadvantages connected to protected characteristics. To be lawful, actions must be based on need, disadvantage or low participation and must not be excessive.

10 SPECIFIC DUTIES TO PUBLISH INFORMATION AND PREPARE AND PUBLISH EQUALITY OBJECTIVES

Specific duties require schools and colleges to publish information on how they are complying with the equality duty and to set out and publish their equality objectives.

Publish equalities information that demonstrates how the school or college is complying with the equality duty. Published information must be updated at least annually.

Prepare and publish equality objectives. These should be clearly defined, measurable commitments, agreed with the governing body. They should be kept under review and must be updated at least once every four years.

Published information and objectives can help schools and colleges:

- 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
- be used a resource for decision making within the school/college

It is up to individual institutions to decide how they publish the required equality information. The approach should be proportionate and will not be the same for a small primary school as for a large secondary school. The information must be accessible to those in the school community and the public. For most schools and colleges, the simplest approach may be to set up an equalities page on their website where all this information is present or links to it are available.

There is no requirement for schools or colleges to publish a set number of equality objectives. DfE advises setting as many objectives as it believes are appropriate to its size and circumstances; the objectives should fit the institution's needs and be achievable.

Schools and colleges may find it useful to consider why objectives have been chosen, including any relevant consultation and engagement, a short description of what their plans to achieve each objective and how it will demonstrate success.

Developing an action plan can help map activities to achieve each objective but there is no requirement to do so. It is good practice to publish information on progress towards meeting each equality objective.

11 SPECIFIC DUTIES AS AN EMPLOYER WITH OVER 150 EMPLOYEES

Public bodies with over 150 employees must also consider how their activities as employers affect staff in respect of protected characteristics. They must publish information to show that they did this. Schools and colleges should consider:

- make-up of the overall workforce including the roles and seniority of staff and progression rates
- pay equality issues, including the gender pay gap
- recruitment and retention rates for staff in respect of protected characteristics
- applications for flexible working and outcomes for staff in respect of protected characteristics
- applications for promotion and outcomes for staff in respect of protected characteristics
- CPD and other learning opportunities for staff in respect of protected characteristics
- grievances and disciplinary issues for staff in respect of protected characteristics

The school or college must not discriminate against potential employees or existing employees in respect of benefits, facilities and services it offers, including training opportunities, promotion or dismissal. There are specific exceptions to the religion or belief provisions of the Act for schools designated as having a religious character.

Employers are not required to hold information about all of the protected characteristics of staff to fulfil this duty. Indeed, any data about a staff member's race, ethnicity, religion, health or sexual orientation is defined as 'sensitive' data and requires permission of the staff member to be stored by the school or college. Data pertaining to sex and age is not deemed to be sensitive and can be held without consent.

Individual school and colleges should decide what information is necessary to demonstrate their compliance with the duty.

Published information may also include details of policies, training and programmes designed to address equality within the workforce alongside any other information, such as staff surveys.

12 HOW OFSTED MAKES JUDGEMENTS ON EQUALITIES

Ofsted's **Education Inspection Framework 2019** is clear that it expects all learners to 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 Act including the PSED. Parts of the framework particularly relevant to equalities are reproduced as follows:

Quality of education

- Leaders take on or construct a curriculum that is ambitious and designed to give all learners, particularly the most disadvantaged and those with special educational needs and/or disabilities (SEND) or high needs, the knowledge and cultural capital they need to succeed in life.
- The provider has the same academic, technical or vocational ambitions for almost all learners. Where this is not practical – for example, for some learners with high levels of SEND – its curriculum is designed to be ambitious and to meet their needs.

Behaviour and attitudes

- Relationships among learners and staff reflect a positive and respectful culture. Leaders, teachers and learners create an environment where bullying, peer-on-peer abuse or discrimination are not tolerated. If they do occur, staff deal with issues quickly and effectively, and do not allow them to spread.

Personal development

- The provider prepares learners for life in modern Britain by: – equipping them to be responsible, respectful, active citizens who contribute positively to society – developing their understanding of fundamental British values – developing their understanding and appreciation of diversity – celebrating what we have in common and promoting respect for the different protected characteristics as defined in law.

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 aim to ensure that all learners complete their programmes of study. They provide the support for staff to make this possible and do not allow gaming or off-rolling.
- Leaders engage effectively with learners and others in their community, including – where relevant – parents, carers, employers and local services.
- Those with responsibility for governance ensure that the provider fulfils its statutory duties, for example under the Equality Act 2010, and other duties, for example in relation to the ‘Prevent’ strategy and safeguarding and promoting the welfare of learners.

13 SOME EXPLORATORY QUESTIONS TO HELP PROMOTE BEST PRACTICE

- Are we confident that we are actively promoting equalities?
- Have we published information on how we are complying with the equality duty, and set and published our equalities objective/s? How are we doing against our objective/s? How do we evidence this?
- Are we regularly considering and recording the assessment we have made about the equalities impact of our key decisions and policies? Do we need to assess any recent decisions against the equalities duty?
- How do we deal with incidences of bullying, peer-on-peer abuse or discrimination and what processes do we have to learn from these experiences and to monitor the impact in respect of protected characteristics?
- Have we considered the equalities impact of our curriculum and the activities we offer?
- Are we monitoring the way that exclusions and behaviour sanctions impact on learners with respect to protected characteristics?
- Do we have any concerns that in our commitment to be sensitive to the community we serve, we may be breaching curriculum breadth and/or compromising our equality duty?
- If/where we have chosen to segregate lessons, assemblies or other activities on the basis of, for example, gender, can we justify this on secure educational grounds? Do students understand the educational reasons for any segregation?
- Is our uniform policy (including policies on hair) sensitive to the needs of all students and do we act reasonably to accommodate these needs, without compromising important policies, such as safety or discipline?
- Are we confident that our religious education curriculum is appropriate, complies with the local SACRE (for non-faith schools), and prepares students for life in a diverse world?
- Do we prepare students for life in modern Britain? Do we develop their understanding of fundamental British values? Do we develop their understanding and appreciation of diversity? Do we celebrate what we have in common and promote respect for the different protected characteristics?

See also Ofsted’s **Character Education Framework**.

14 FURTHER INFORMATION

ASCL Equality, diversity and inclusion online

www.ascl.org.uk/Our-view/Campaigns/Equality,-diversity-and-inclusion

The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities 2014

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf

The Equality and Human Rights Commission (EHRC) published guidance in 2014 on the PSED for schools. The guidance has useful case studies of how to apply the duties

www.equalityhumanrights.com/sites/default/files/psed_guide_for_schools_in_england.pdf

Technical guidance for education providers and employers

www.equalityhumanrights.com/legal-and-policy/equality-act-guidance-codes-practice-and-technical-guidance

Equality Act 2010

www.legislation.gov.uk/ukpga/2010/15/part/11/chapter/1

Personal data an employer can keep about an employee

www.gov.uk/personal-data-my-employer-can-keep-about-me

DfE Guidance on developing a school uniform policy

www.gov.uk/government/publications/school-uniform

Ofsted Education Inspection Framework

www.gov.uk/government/publications/education-inspection-framework

Ofsted 2019 Character Education Framework

www.gov.uk/government/publications/character-education-framework

Visible Minorities, Invisible Teachers

www.nasuwt.org.uk/uploads/assets/uploaded/6576a736-87d3-4a21-837fd1a1ea4aa2c5.pdf

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