

Equality Act 2010

Governance Duties under the Act

Schools have specific duties under the Equality Act 2010.

Governors are responsible for ensuring that these duties are fulfilled and will delegate this to Headteachers or identified members of staff.

The legislation

The Equality Act 2010 replaced the Race Relations Act, Disability Discrimination Act and Sex Discrimination Act. **It protects everyone in England and Wales**, so it applies to all schools, regardless of type.

The Department for Education (DfE) has published [non-statutory advice](#) on how schools can fulfil their duties under the Equality Act 2010, which relates specifically to discrimination in an educational setting.

Protected characteristics

The Act covers the following protected characteristics:

- Sex
- Race
- Religion or belief
- Sexual orientation
- Gender reassignment
- Pregnancy and maternity
- Age
- Disability
- Marriage and civil partnership

Paragraph 1.15 of the DfE guidance notes that age is only a protected characteristic in schools in relation to employment and the provision of goods and services. It doesn't apply to pupils, even if they're over 18.

This is also true for protection based on marriage and civil partnership, which applies to employment but not to pupils.

Unlawful behaviour under the Act

Direct discrimination

This is intentionally treating someone less favourably due to a protected characteristic. For example, [refusing to make reasonable adjustments](#) for a pupil with special educational needs.

Indirect discrimination

This is where a policy or practice, though applied equally to all pupils, has a disproportionate impact on a group of pupils sharing a protected characteristic. For example, a court found that a school's uniform policy that banned long hair was [discriminatory against Rastafarian boys](#).

Harassment

The legal definition of harassment is:

Unwanted conduct, related to a relevant protected characteristic, which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

This could be as direct as bullying someone for the colour of their skin or doing or saying something that unintentionally offends someone on the basis of gender.

Under the legal definition, harassment only covers disability, race, sex or pregnancy and maternity, and **not** religion or belief, sexual orientation or gender reassignment. This does not mean that schools can harass pupils with these characteristics, only that doing so will be considered direct discrimination.

Victimisation

It is unlawful to retaliate against someone for taking action under the Act. The [Equality and Human Rights Commission \(EHRC\) defines 'protected acts'](#) as:

- Claiming or complaining of discrimination under the Act
- Giving evidence in someone else's claims under the Act
- Claiming someone has violated the Act
- Taking any other action under the Act.

The EHRC gives the example of a teacher shouting at a pupil because they believe the pupil will support another pupil's sexual harassment claim. This would amount to victimisation of the pupil.

Discrimination arising from disability

The overriding principle of the Equality Act is one of equal treatment. For example, schools cannot treat a Muslim pupil differently from a Christian one.

However, schools may, and often must, treat pupils with disabilities more favourably than those without disabilities, so that they can access and benefit from the service provided to the same extent as everyone else.

Schools cannot discriminate against someone because of something that arises from their disability, and schools may have to treat them differently - see the section on reasonable adjustments below.

A well-publicised case involved a court finding that [a school had acted discriminatorily](#) when it excluded a pupil with aggressive behaviour, where that behaviour was the result of the pupil's autism.

General exceptions for schools

The DfE guidance sets out some exceptions:

- **Single-sex schools** aren't discriminating by refusing to admit pupils of the opposite sex
- **Schools with a religious nature** aren't discriminating when they give preferential treatment to children of their own faith. This is true for admissions as well as for providing extracurricular services. The guidance gives the example of a Jewish school providing pastoral care from a rabbi but not from any other faiths
- As a rule, a school cannot have a rule or policy which applies to all pupils, but which is more likely to have an adverse effect on pupils with disabilities – for example, having a rule that all pupils must demonstrate physical fitness levels before being admitted to the school – unless the school can show that:
 - It's done for a legitimate reason, **and**
 - It's a proportionate way of achieving that legitimate aim
- **Positive action** means schools can take targeted action to address the disadvantages experienced by a specific group. For example, schools can have special catch-up tuition for children of migrant workers without having to provide the same service to pupils who do not fall into that group. Schools do have to show that this is a proportionate way to achieve a specific goal.

Governance duties under the Equality Act

To pupils

Schools cannot discriminate against, harass or victimise a pupil or potential pupil:

- In relation to admissions
- In the way they provide education for pupils
- In the way they provide pupils access to any benefit, facility or service
- By excluding a pupil or subjecting them to any other detriment

To staff

Schools cannot discriminate against school staff.

Unlike pupils, staff are protected under all the protected characteristics including age and marriage or civil partnership.

For more information, see [these guides published by Acas](#).

To parents

In some circumstances, a school is regarded as a 'service provider' under part 3 of the Act, so schools have a duty to make accommodations for the parents of pupils if those parents had a disability. For example, if a parent is deaf, the school would have a duty to provide a sign language interpreter for parents' evenings.

See point 1.34 of [EHRC's technical guidance](#).

To the public

Under part 3 of the Act, if schools open any facilities to the public, then they are a service provider and responsible for preventing discrimination against any person that uses those facilities.

Reasonable adjustments

The Act may require schools to make 'reasonable adjustments.' This duty only applies to **disabled** pupils.

Schools might have to change the way they do something or even make changes to the physical environment to make sure a person with a disability can benefit equally from services provided as someone without that disability.

Find out more about [reasonable adjustments in more depth](#) , or on the [EHRC's website](#).

Equality Act 2010: reasonable adjustments

Disability is a 'protected characteristic' under the [Equality Act 2010](#) and schools cannot legally discriminate against people with that characteristic.

As part of this, schools must make 'reasonable adjustments' to minimise disadvantages to disabled pupils, staff and parents. If an adjustment is reasonable, schools **must** make it.

Definition of disability

[Regulation 6 of the Equality Act 2010](#) says 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

The [Special Educational Needs and Disability \(SEND\) Code of Practice](#), which applies to maintained schools and academies, gives further guidance on this definition on page 16. It says that:

- 'Substantial' is defined as 'more than minor or trivial'
- 'Long-term' is defined as 'a year or more'

What are reasonable adjustments?

Under the [Equality Act 2010](#), schools must make 'reasonable adjustments' for:

Pupils

Schools have a duty to make 'reasonable adjustments' for pupils with disabilities. The DfE's [guidance on the Equality Act](#) summarises the duty as:

- Where something a school does places a pupil with disabilities at a disadvantage compared to other pupils, the school must take reasonable steps to try to avoid that disadvantage
- Schools will be expected to provide an auxiliary aid or service for a disabled pupil when it would be reasonable to do so, and if such an aid would alleviate any substantial disadvantage that the pupil faces in comparison with non-disabled pupils

Schools are **not** under a reasonable adjustment duty to make alterations to physical features, as this is already considered as part of their pre-existing planning duties.

Staff

Schools have a duty as an employer to make [reasonable adjustments for members of staff](#) with a health condition or disability that puts them at a disadvantage in the workplace.

This may include adjustments such as:

- Changing working hours
- Providing special pieces of equipment

Parents

At public events such as parents' evenings, school plays or award ceremonies, the school acts as a service provider for parents, according to the [Equality Advisory and Support Service \(EASS\)](#).

If there are barriers to disabled people in the way a school does things, schools must consider making adjustments, and then make them if they are reasonable. This is explained in guidance from the [Equality and Human Rights Commission \(EHRC\)](#) on [reasonable adjustments for disabled people when using a service](#).

For example, schools might decide it is reasonable to provide a sign language interpreter at a parents' evening attended by parents who are deaf. If this was decided, the school must organise and fund this.

This duty is **anticipatory**, which means schools must think in advance about what people with a range of impairments might reasonably need and make adjustments accordingly.

Deciding what's 'reasonable' for pupils

The EHRC has [technical guidance for schools](#) on their duty to make reasonable adjustments.

It suggests factors that should be taken into account when deciding what adjustments are reasonable for a school to make. For example, schools might consider:

- Resources and the availability of financial or other assistance
- The extent to which taking any particular step would be effective in overcoming the substantial disadvantage experienced by a disabled pupil
- The effect of the disability on the individual
- Health and safety requirements
- The interests of other pupils and prospective pupils

The document also includes case studies to show how the duty can be applied in context.

Adjustments that affect other pupils

Normally, schools should not worry about the interests of other pupils when considering reasonable adjustments.

However, there may be cases where an adjustment could negatively impact other pupils.

In these cases, schools should consider whether the adjustment is 'reasonable' by balancing the potential negative impact on other pupils with the disadvantage to the disabled pupil if the change is not made (EHRC guidance, page 14).

It's ultimately up to the school to decide whether an adjustment is reasonable for any given case ([DfE guidance](#), page 28, paragraph 4.26).

Schools are advised to seek HR or legal advice at each stage of the decision-making process.

Considering cost

Schools can and should consider the cost of an adjustment when deciding whether it is reasonable. Some adjustments are going to be more reasonable for schools with 'substantial financial resources' (DfE guidance, page 28, paragraph 4.24).

However, it is unlawful for schools to charge a pupil for a reasonable adjustment ([EHRC guidance](#), page 15).

Schools should consider using hardship funds, or carry out fundraising activities, if they need help to fund reasonable adjustments.

Deciding what is 'reasonable' for staff

Schools must do everything reasonable to allow their staff to do their jobs.

However, what constitutes a 'reasonable' adjustment will depend on the school and what the school is capable of providing, according to [ACAS](#).

Schools should involve the member of staff concerned in the process of working out reasonable adjustments, as they will know best about what support they need.

The EHRC gives examples of [reasonable adjustments in the workplace](#) in its guide to workplace adjustments.

Dismissing employees on grounds of capability

Employers should “consider as many ways as possible to help the employee back to work” before resorting to dismissal, according to [government guidance on dismissing employees due to illness](#).

Before terminating a member of staff's contract, schools should consider carefully whether:

- They can make reasonable adjustments that mean staff can carry on in their role
- There are other roles the member of staff could take in the school

Dismissing a member of staff who is disabled may still be fair **if** no reasonable adjustments can be made. However, if the employee feels that the school hasn't done enough to make reasonable adjustments and explore alternatives, they could take legal action.

Deciding what is 'reasonable' for parents

As with adjustments for pupils and staff, what is 'reasonable' will depend on the school context and what they are capable of providing.

The responsibility for making reasonable adjustments lies with the school, and not the local authority (LA).

Using and providing auxiliary aids and services

There is no clear definition of what an 'auxiliary aid or service' is, but they include:

- Hearing loops
- Adaptive keyboards
- Special software

Many children with disabilities have special educational needs (SEN), and may need auxiliary aids or services as part of their SEN provision.

This is covered in paragraphs 4.14 to 4.18, on pages 26 and 27 of the [DfE guidance](#).

Auxiliary aids as reasonable adjustments

Auxiliary aids may be included as part of an education, health and care (EHC) plan.

However, if a pupil does not have an EHC plan (or the plan does not mention auxiliary aids), schools will need to consider whether they should still use them as a reasonable adjustment.

Schools will need to consider each individual case, taking into account the various factors mentioned in the previous sections. What is considered reasonable for one school may not be reasonable for a school in different circumstances (DfE guidance, paragraph 4.17).

It is likely to be considered unreasonable for a school to provide an aid (e.g., hearing aid) that is needed for all aspects of a child's life, rather than just for their education or participation in school life (DfE guidance, paragraph 4.19).

Funding the provision of auxiliary aids

Schools should make this provision out of the school budget.

An assessment of reasonableness should include the cost of providing an auxiliary aid. For a small primary school with a small budget, it may not be reasonable to make expensive adjustments. However, it may be reasonable for a school with a larger budget.

Some LAs have agreements with schools about the provision of aids.

Reasonable adjustments at after-school clubs

Schools have a duty to make reasonable adjustments, and this includes all school activities, including:

- Extra-curricular and leisure activities
- After-school and homework clubs
- Clubs and activities run by third-party providers (see below)

This is covered in the scenario on pages 21 and 22 of the [guidance for schools from the EHRC](#).

Schools should make any reasonable adjustments to make sure all pupils can access such activities.

As above, reasonable adjustments apply on an individual basis, so schools will need to consider the specific needs of an individual pupil and what adjustments could be made, then consider whether it is reasonable to make each adjustment.

Work with providers to make reasonable adjustments

Schools are required to make sure reasonable adjustments are made for disabled pupils to take part in clubs and activities run by third-party providers.

Schools should work with providers to make sure they understand what is meant by a 'reasonable adjustment' and that they agree to make reasonable adjustments when appropriate.

For example, if a pupil with a particular disability would like to attend an after-school football club, schools should work with the provider to consider:

- Potential barriers or disadvantages the pupil might face as a result of their disability
- Adjustments the provider could make to enable the pupil to participate

Reasonable adjustments for school trips

All pupils should be able to attend trips linked to the school curriculum and not be disadvantaged because of their disability. Schools should at their offer of school trips to make sure all pupils are able to attend and make reasonable adjustments where necessary.

For example, if not all pupils are able to access a school trip to the theatre, schools could look at inviting a theatre company to perform in the school hall.

The EHRC guidance on making reasonable adjustments for pupils, linked to above, gives two examples of how to provide for students with disabilities on school trips (pages 14 and 15).

Factors to consider

Schools should consider how reasonable any adjustments would be to make on a case-by-case basis, taking into account factors such as:

- The cost of making the adjustment
- How effective the adjustment would be
- The effect on other pupils
- How practical the adjustment would be to make

What may be reasonable for one school to provide, may not be reasonable for another.

The cost of adjustments

Schools should not use cost as an excuse not to make a school trip accessible to all pupils. If reasonable adjustments for a school trip would cost too much, schools should look at alternative trips where it would be practical to make reasonable adjustments.

Reasonable adjustments and accessibility planning

Schools have to create, publish and implement an accessibility plan that sets out how they will improve accessibility for pupils with disabilities (DfE guidance, page 29, paragraph 4.28).

Paragraph 4.29 says schools must implement accessibility plans aimed at:

- Increasing the extent to which pupils with disabilities can participate in the curriculum
- Improving the school's physical environment to enable disabled pupils to take better advantage of the education, benefits, facilities and services provided
- Improving the availability of accessible information to disabled pupils

The guidance adds that schools need to make sure they have the resources to implement their plan and must review it regularly.

The Public Sector Equality Duty

The Equality Act introduced the Public Sector Equality Duty (PSED) sometimes known as the 'general duty'.

Under it, schools are required to 'have due regard to the need to':

- Eliminate discrimination and other conduct that is prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it
- Foster good relations across all characteristics, between people who share a protected characteristic and people who do not share it

This means that whenever schools are making a significant decision, or developing a policy, they must give thought to the implications it will have on equality.

The actual duty itself requires schools to:

1. Publish information to demonstrate how the school is complying with the PSED; and
2. Prepare and publish equality objectives

What is the Public Sector Equality Duty (PSED)?

The PSED was introduced by the [Equality Act 2010](#) and applies to all state-funded schools, including maintained schools, academies, maintained nursery schools, and maintained special schools. This is because they are public bodies delivering a public service.

There are 3 main elements under the PSED

Schools are 'required to have due regard to the need to':

- **Eliminate discrimination** and other prohibited conduct
- **Advance equality of opportunity** between people who share a protected characteristic and those who don't
- **Foster good relations** between people who share a protected characteristic and those who don't

This is explained in chapter 5 of the [DfE's advice for schools](#).

Having 'due regard' means something specific in legal terms

In practice, it means:

- **Demonstrating awareness of duties** under the Act by assessing the impact any decision or action will have on people with protected characteristics
- **Considering any equality implications** when developing and approving policies and reviewing them regularly with equality in mind
- **Carrying out these analyses seriously, rigorously and with an open mind.** It must be more than a box-ticking exercise
- **Doing this as a school** - Schools cannot delegate the responsibility to anyone else

How do schools demonstrate compliance with the PSED?

Schools must publish information to demonstrate how they are complying.

Below, are set out the DfE's recommendations on what schools could publish to demonstrate their compliance.

Cover the 3 elements of the PSED

These recommendations come from pages 33 to 35 of the DfE's guidance.

- Eliminating discrimination
- Advancing equality of opportunity
- Fostering good relations

Engagement

When thinking about how to tackle equality issues across all elements, schools can consult with:

- Parents
- Pupils
- Staff
- Members of the local community
- People with specialist knowledge (e.g., disability equality groups)

Evidence of engagement with these groups can be included in published materials to show compliance with the PSED.

Publishing employee data

The requirement to publish information about people who share a relevant characteristic covers both staff and pupils.

However, public authorities with fewer than 150 employees do not need to publish employee-related data. This means that the majority of schools will only need to publish pupil-related data.

Schools with fewer than 150 employees can choose to publish employee-related data if this will help them demonstrate their compliance with the PSED. They must make sure that none of their employees can be identified through the data as this would be a breach of the principles of data protection.

Show due regard to equality considerations

Schools must have 'due regard' to equality considerations whenever significant decisions are being made.

The DfE guidance explains in paragraph 5.5 that the school must consider the impact of significant decisions on particular groups. For example, when a school trip is being planned, the school should consider whether the trip:

- Cuts across any religious holidays
- Is accessible to pupils with disabilities
- Has equivalent facilities for boys and girls

The guidance adds that publishing a note of any equality considerations may help the school to demonstrate that it is having due regard to its equality duties.

Schools should also keep a written record showing they "have actively considered their equality duties and asked themselves relevant questions".

Set equality objectives

Schools need to publish equality objectives in order to meet with the requirements of the PSED.

There are not any rules about how many objectives must be published - schools can set as many as they feel are appropriate. However, it is best practice to develop more than one, as the school will likely be able to improve equality for more than one protected group or for one protected group in multiple areas.

Equality objectives usually address outcomes for pupils, but they can also aim to reduce or eliminate inequalities for parents, members of the community and the school workforce.

Where should this information be published?

It is entirely up to each school to decide how to publish its equality information, as long as the information is accessible to members of the school community and the public.

Presenting the information on the school website is likely to be the simplest approach for most schools.

The published information has to be updated at least annually, with objectives published at least every 4 years, according to the DfE guidance (paragraph 5.11).