EQUALITY580 LTD
07949 291377
info@equality580.com

PUBLIC SECTOR EQUALITY DUTY

GUIDANCE FOR SCHOOLS

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The general duty came into force in April 2011 under the Equality Act 2010. It means that schools must pay **due regard** to the need to:

1. **eliminate discrimination**
2. **advance equal opportunities**
3. **foster good relations**

It is left up to individual schools to decide what is **relevant** and **proportionate** to their situation, but the law covers staff, parents and governors as well as pupils.

The relevant protected characteristics for pupils are:

- **ethnicity**
- **gender (**and **gender identity)**
- **disability**
- **religion or belief**
- **sexual orientation**
- **pregnancy and maternity**

In relation to employees, please add:

age,
marriage or civil partnership and
gender reassignment.

Several possible starting-points are suggested on the next few pages for you to consider, followed by a 15-point self-evaluation questionnaire based on the 2012 Ofsted evaluation schedule.

MENU OF POSSIBLE ISSUES TO CONSIDER

GENERAL EQUALITY ISSUES

1. Closing attainment gaps
2. Prejudice-related incidents
3. Spiritual, moral, social and (especially) cultural development
4. Human rights (e.g. UNICEF Rights-Respecting School Award)
5. Building resilience to extremism
6. Staff training needs
7. Opportunities to discuss controversial issues
8. Global dimension in the curriculum (e.g. British Council International School Award)
9. Monitoring data on attendance, exclusion and bullying by group
10. Which groups of learners, for example by ethnicity, are participating in after-school sport?
11. The needs of carers, who may face discrimination by association
12. Mental health of vulnerable groups (e.g. asylum-seekers)
13. “Hidden” children missing education
14. Needs of specific parents/carers (e.g. disabled, same-sex)
15. Diversity-friendly resources (e.g. displays, books)
16. Intergenerational opportunities for active citizenship
17. Positive action in recruitment for a more representative workforce

ETHNICITY

This relates to:
(a) colour;
(b) nationality;
(c) ethnic or national origins.

The Act also gives the Minister powers to introduce secondary legislation through Parliament when evidence of caste discrimination is found.

18. Gypsy/Roma/Traveller (GRT) education
19. Language support for parents
20. Cultural competence of staff
21. Implications for behaviour policy
22. English as an Additional Language for pupils
23. Resentments of disengaged white British groups
24. Use of interpreters
25. Racist attitudes emerging during lessons
26. Refugee awareness
27. Holocaust Memorial Day, GRT & Black History Months, Refugee Week, Kick Racism Out of Football
28. Multicultural resources from e.g. Letterbox Library

GENDER (INCLUDING GENDER IDENTITY AND TRANS ISSUES SHORT OF GENDER REASSIGNMENT)

This relates to boys and girls, women and men, and to people who for whatever reason do not fit comfortably into the gender role expected of them. It does not specifically refer to sexual orientation, which is a separate protected characteristic concerning sexual attraction (see below).

29. Gender pay gap
30. Gender imbalances in “upper ability’” groups
31. Violence against girls by “boyfriends”
32. Families affected by domestic violence
33. Gender-role stereotypes, e.g. in career aspirations
34. Commercialisation and sexualisation of childhood
35. Body image
36. Eating disorders
37. Involvement of fathers
38. Sexist bullying, disrespectful to a sex in general
39. Sexual bullying, personally intrusive (“Schools Safe 4 Girls”)
40. Transphobic bullying, relating to gender identity
41. Discrimination against pregnant pupils or new mums
42. Discrimination against breast-feeding mothers
43. Sex & Relationships Education (SRE)
44. Safe, healthy and respectful boy/girl relationships via SRE
45. Sexual exploitation and trafficking
46. Clear procedures for supporting the educational achievement of pregnant pupils and young parents.

GENDER REASSIGNMENT

As a protected characteristic for the purposes of the Act, gender reassignment is defined quite narrowly as where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment.

PREGNANCY AND MATERNITY

It is also now unlawful to discriminate because of a woman’s pregnancy or maternity, as distinct from her sex. The Act protects a woman from discrimination because of her current or a previous pregnancy. It also protects her from maternity discrimination, which includes treating her unfavourably because she is breast-feeding, for 26 weeks after giving birth. For example, a school must not prevent a pupil taking an exam because she is pregnant or ask a parent to leave a school event because she is breastfeeding her baby.

RELIGION OR BELIEF

This is another protected characteristic new to schools' positive duty.

47. Multi-faith RE curriculum
48. Collective worship
49. Parental withdrawal from visits to places of worship, e.g. synagogue
50. Withdrawal from other activities, e.g. Jehovah's Witnesses
51. Staff withdrawal from Religious Education (RE) teaching
52. Prayer needs
53. Dietary needs
54. The needs of non-religious members of the school community
55. Anti-Semitism and Islamophobia
56. Religious implications of school uniform policy
57. Checking credentials of speakers invited to lead assemblies

SEXUAL ORIENTATION

This is also new to schools' positive duty under the Equality Act 2010.

58. Lesbian, gay or bisexual (LGB) people in history
59. Different kinds of families, including those with same-sex parents
60. Relationships education within Sex & Relationships Education (SRE)
61. Whole-school approach to homophobic language (e.g. "maths is gay")
62. Institutional barriers to staff "coming out" at work to colleagues
63. Institutional barriers to staff "coming out" at work to parents or pupils
64. Homophobic bullying
65. Support for young people questioning their sexuality
66. Signposting to outside support for individuals

SOCIO-ECONOMIC

Socio-economic inequality is not in the list of protected characteristics under the Equality Act, but still represents one of the main challenges in this country. This is clearly acknowledged as an equality aim by the present Government.

67. Child poverty
68. Narrowing attainment gap for Free School Meals families
69. Snobbery against "chavs" and public transport users
70. Lack of respect for "working-class" culture
71. Aspiration defined in terms of material "success"
72. Inverted snobbery against "posh" people
73. Range of school uniform providers or specified suppliers
74. Access to the internet at home
75. Family transport options: car ownership, bus frequency
76. Rural deprivation

DISABILITY

There is still a duty to make **reasonable adjustments** for disabled people (now under s20 of the Equality Act 2010) and a duty to plan to improve the **accessibility** of schools to their disabled pupils (now under Schedule 10 of the Equality Act 2010). Physical improvements to premises come under access rather than reasonable adjustments.

As part of reasonable adjustments, some disabled pupils will have **auxiliary aids/services** provided by the LA under an SEN statement and so may not require anything further. However, if the disabled pupil does not have a statement (or the statement doesn't provide the necessary aid) then the duty to consider reasonable adjustments and provide such auxiliary aids now falls to the school. This is a change from the previous situation.

The legislation continues to define a disabled person as someone who has 'a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'. The definition includes a wide range of impairments familiar in schools, including hidden impairments such as dyslexia, autism, speech and language impairments, and long-term conditions such as cancer and HIV. It also covers some mental health and behavioural conditions. These can all amount to a disability, but only if the effect on the person's ability to carry out normal day-to-day activities is substantial and long term, as defined above. There are moves to include disability in the School Census, but it is important to think in terms of individual impact rather than just the label of an impairment. Also, impairments differ widely so data on pupils should be broken down by types of impairment and special educational need.

77. Opportunities available to, and achievements of, disabled pupils.
78. Reasonable adjustments for disabled members of school community
79. Unlawful discrimination, i.e. treating disabled people less favourably
80. Needs of disabled parents, staff and governors
81. Access for disabled visitors, including accessible parking spaces
82. Needs of non-disabled parents of disabled pupils
83. Budgeting for the cost of providing auxiliary aids and services
84. Equal opportunities recruitment training for governors
85. Disability-related bullying, and incitement of disabled pupils to bully others
86. Recruitment, development and retention of disabled employees
87. Awareness of sensory impairments and hidden disabilities
88. Mental health, and parents' veto on family-based interventions
89. Taking account of behavioural conditions
90. Confidence of disabled people to disclose their impairment
91. Signing classes for all pupils
92. Termly meetings with disabled pupils
93. A disabled pupil representative on the School Council.
94. Disability Awareness Weeks

SPECIFIC LEGAL REQUIREMENTS TO SHOW YOU ARE MEETING THE DUTY (SEPT 2011 REGULATIONS)

Please remember: the purpose is to show that the school pays *"due regard' to the need to eliminate **discrimination**, advance **equal opportunity** and foster **good relations**.* The steps below should not become aims in themselves!

1. **Gather and analyse** equality information on people (including staff) with protected characteristics who are affected by school policies and practices:
    a. from engagement with relevant people;
    b. from other data sources, e.g. internal, local, national;
2. Use this to prepare specific and measurable equality **objectives**.
3. **Publish** the equality objectives and the equality information to demonstrate your compliance with the three aims of the duty.

Detailed guidance follows on each of these steps.

WHAT DOES 'DUE REGARD' MEAN?

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. For schools this means:

- *Decision makers in schools must be **aware** of the duty to have "due regard" when making a decision or taking an action and must assess whether it may have implications for people with particular protected characteristics.*
- *Schools should consider equality implications before and **at the time** that they develop policy and take decisions, not as an afterthought, and they need to keep them under review on a continuing basis.*
- *The PSED has to be integrated into the carrying out of the school's functions, and the analysis necessary to comply with the duty has to be carried out **seriously**, rigorously and with an open mind – it is not just a question of ticking boxes or following a particular process.*
- *Schools can't **delegate** responsibility for carrying out the duty to anyone else.*
- *It is good practice for schools to keep a **written record** to show that they have actively considered their equality duties and asked themselves relevant questions… Publishing it will help to demonstrate that the due regard duty is being fulfilled… If challenged, it will be easier for a school to demonstrate that the duty has been met if a record has been made at the time.*

(DfE guidance June 2012)

SO HOW DO WE MEASURE UP AS A SCHOOL?

A self-evaluation, using Ofsted questions re-grouped under the aims of the duty.

Advancing equal opportunity

1. How well do we meet the needs of the range of pupils in our school, including those who meet the disability definition in the Equality Act?
2. How well are gaps narrowing between the performance of different groups of pupils in the school, and compared to all pupils nationally?
3. How well do we focus our attention on the needs of specific groups and make extra or special provision as appropriate?
4. Do we have clear procedures for supporting the educational achievement of pregnant pupils and young parents?

Eliminating discrimination

5. Are any pupils denied an equal and fair chance to thrive and learn?
6. Is there an atmosphere of respect and dignity?
7. How effective are the school's actions to prevent and tackle all forms of bullying and harassment, including prejudice-based incidents related to special educational need, sexual orientation, gender, ethnicity, religion or belief, gender identity or disability?
8. How much confidence do pupils have in the school's ability to address bullying successfully?
9. Do we provide appropriate training that equips staff to identify and deal confidently with prejudice-related incidents?

Fostering good relations

10. How well do we promote pupils' spiritual, moral, social and cultural development (SMSC)?
11. How well do we cover equality issues in the curriculum, particularly with regard to tackling prejudice and understanding diversity?
12. How well do we help pupils prepare for life in modern democratic Britain and a global society, and enable them to participate fully and positively?
13. What opportunities do we provide to help pupils understand and appreciate the range of cultures within school and further afield?
14. What views are expressed by different groups of pupils on harassment, racism, homophobia and different types of bullying?
15. To what extent are pupils able to understand and respond to risk, e.g. extremism, gangs and relationships (including sexual relationships)?
16. What is the school's response to any extremist behaviour shown by pupils?

EQUALITY INFORMATION

Paying due regard to equality issues means you need to gather and analyse equality information on all adults and children affected by the practices in your school. This includes staff and parents but should begin with the following groups of pupils identified by Ofsted:

- disabled pupils, as defined by the Equality Act 2010
- pupils who have special educational needs
- boys
- girls
- groups whose prior attainment may be different from that of other groups
- those who are academically more or less able
- pupils for whom English is an additional language
- minority ethnic pupils
- Gypsy, Roma and Traveller children
- looked after children
- pupils known to be eligible for free school meals
- lesbian, gay and bisexual pupils
- transgender pupils
- young carers
- pupils from low income backgrounds
- other vulnerable groups *[e.g. religious minorities]*

Rather than just producing statistics on your current profile, your information should usually fall into two main categories:

a. **information to identify equality issues.** This will include
    1. quantitative monitoring data; and
    2. qualitative information about the school's effect on pupils and staff with different protected characteristics.

b. **information about steps taken to have due regard** to equality issues. This could include
    1. minutes of governors or senior management meetings and any other records of how you showed due regard in making certain decisions;
    2. information that was considered in that decision-making (including engagement);
    3. consideration of steps to mitigate adverse impacts;
    4. details of policies and initiatives to address equality concerns; and
    5. measures of progress towards school equality objectives

Whereas previous duties covered only race, gender, disability and community cohesion, schools are now expected to gather and analyse equality information (where relevant and proportionate) relating to all the protected characteristics. The main change here is the addition of religion or belief and sexual orientation. So now your information should be routinely broken down by **protected characteristic**, as follows: gender and gender identity, ethnicity, religion or belief, disability and sexual orientation.

You will probably already have some of this information, "disaggregated" (broken down) by some characteristics. It is unlikely, however, that you will have information about every protected characteristic or on all relevant issues. You may well know less about religion or belief, sexual orientation and gender reassignment, for example, than about the other protected groups.

Again, gaps in your information should be filled in both ways (qualitative and quantitative):

a. from **data sources**, including:
    1. national: starting with "How Fair is Britain?" published in 2010 by the Equality & Human Rights Commission (EHRC), or statistics published by the Office for National Statistics (ONS)
    2. local: e.g. hate-crime or domestic violence statistics
    3. internal: what's different about our school?
b. from **engagement** with interested people, including
    1. pupil voice
    2. parent satisfaction surveys
    3. focus groups and consultation events
    4. analysis of complaints by protected characteristic

Case law from the previous equality duties states that engagement is important in ensuring public authorities understand the impact of their decisions on different people. A failure to engage has been at the heart of findings that a public authority has not complied with equality duties.

Also, some issues will be more relevant to monitor than others. You should therefore start to think about what gaps there are in your existing information and how you can go about filling them. For example, information on exam results, exclusions and reports of bullying will be of particular relevance for schools. So a school will want to collect its key stage results broken down by protected groups, and to ensure that its evidence on bullying covers racist, homophobic, gender-related and disability-related bullying.

Information is not collected for its own sake. There must be a reason, and that is to inform decision-making: for example, a school might record boys' and girls' writing scores but forget to compare them. In fact, the best insights come when the analysis can be more sophisticated, e.g. behaviour against ethnicity, use of extended services against disability, or staff pay against gender.

Here are some useful headings to collect information on:

1. Admissions of pupils and recruitment of staff, especially those refused
2. Attendance
3. Access to curriculum and extra-curricular activities
4. Participation, e.g. in activities, school council, governors, parents' groups
5. Spiritual, moral, social & cultural development
6. Achievement and perceived experiences of different groups
7. Behaviour and safety, especially prejudice-related incidents
8. Exclusions and other behaviour sanctions
9. Relations between groups in school and community
10. Progress towards existing equality objectives

EQUALITY OBJECTIVES

Equality objectives should be used as a tool to help improve the school experience of a range of different people. Since April 2012 there has been a legal requirement to publish them, and renew publication at least every four years. Many schools choose to bring them into line with their school development planning and publish them annually at the relevant time of year.

First you must decide on the priority equality challenges for your school. Gathering and analysing equality information, as described above, will provide sound evidence to show that the process you use is strategic and well informed. Schools are free to identify priorities that best reflect their individual circumstances and the welfare of their school community, e.g. the participation of black pupils in after-school activities; a gap in performance of disabled pupils; a lack of understanding between religious groups; the number of homophobic incidents; boys' attainment in English; girls' choice of stereotypical career options; anticipating the needs of incoming pupils from a new group, such as eastern European or Traveller children.

In short, schools should use data on inequalities of outcome and participation to help them aim for achievable and measurable improvements. The choice of actions needs to be based on an analysis of this data.

When wording the actual objectives, make them outcomes rather than outputs: be **specific** and avoid vague objectives such as "we would like to have a more diverse staff" or "we should give more attention to gender issues". Objectives must be **measurable**, but you do not have to use numerical indicators. Qualitative as well as quantitative evidence is fine. For example, you can use tools such as staff surveys, analysis of complaint letters and feedback forms to gauge progress.

There is a legal requirement to **publish** specific, measurable objectives but no requirement on which format to use. For example, they sit well in a school development plan or, should the school wish to keep equality paperwork together, in an equality scheme. There is no longer a requirement to create an equality scheme, but schools may choose to do so if it helps.

> **Example objective:**
> Raise the satisfaction rating of ….. in the parents' survey by 25% in 2 years.

WHAT NEEDS TO BE PUBLISHED

Schools should publish information that demonstrates how they have met the equality duty. This may include school performance data, anti-bullying policies, a school development plan and equality milestones, curriculum materials, governing body minutes, equality training materials, and parent and pupil surveys. Schools can refer to national surveys and other relevant information from the DfE, OFSTED, the teaching unions and the voluntary sector in the information that they publish. It would also be helpful to publish progress on meeting the school's equality objectives.

Published evidence and information will help governors and parents to understand why schools are making particular decisions. In governors' meetings when new policies are being approved it is a good idea to record discussions about equality issues that arise, making it clear what evidence was used. This will make it clear how the equality duty has been met.

Publishing information is not simply a matter of demonstrating your equality evidence base - it is about explaining **how you have used the evidence to have due regard** to equality issues in your school (i.e. how you have used it in making a particular decision or in the way you have delivered your work).

Since April 2012, schools must publish their equality information annually to demonstrate compliance with the three aims of the Public Sector Equality Duty.

- eliminating discrimination and harassment
- advancing equality of opportunity
- fostering good relations between people from different groups

The information should relate to the protected characteristics of pupils and others (e.g. parents) who are affected by school practice; and any school with over 150 staff must include employee information too. Publication can be stand-alone or as part of another document. It is entirely up to schools to decide how they publish the information, so long as it is accessible to those members of the school community and the public who want to see it. For most schools, the simplest approach may be to set up an equality page on their website where all this information is present or links to it are available.

Broadly speaking, schools must ensure that individuals cannot be identified through the publication of data. The Department for Education does not generally publish information which relates to fewer than 3 people (school staff or pupils) but it is for schools to determine whether the data they wish to publish will be suitable or not.

In summary, enough information must be published for a school to be held to account. In particular, parents and others should be able to judge how well the school works towards the three aims of the public sector equality duty under the Equality Act 2010, as listed above..