

The Equality Act 2010: duties of the governing board

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The Equality Act 2010

The [Equality Act 2010](#) replaced, and brought together for the first time under one Act, several anti-discrimination laws. The Act also introduced greater duties for public authorities to comply with in order to tackle inequality, harassment, victimisation and discrimination.

All schools are considered to be public authorities and have specific duties under the Act. Public authorities are required to consider individuals' protected characteristics when exercising their organisational functions. A protected characteristic is something that makes a person who they are, but may lead to them being treated unfairly, harassed, victimised or discriminated against. The Equality Act 2010 identifies the following nine protected characteristics:

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

Responsibilities of the governing board

The responsible body

In a maintained school, the responsible body for ensuring compliance with the Equality Act 2010 is the governing board or LA. In an independent school or academy, the responsibility lies with the proprietor or board of trustees.

Individuals have a personal responsibility to ensure they do not discriminate, harass or victimise a person through their own behaviour and practice, but the responsible body is required to address and put in place steps to remove any intended or unintended discriminatory practice.

The responsible body should ensure monitoring and systems are in place that evidence compliance with the Act – including compliance with the Public Sector Equality Duty (PSED). The PSED relates to the previously described nine protected characteristics and states that a public authority must have due regard to:

- The elimination of discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act – responsible bodies are required to maintain due regard to eliminating unlawful conduct.
- The advancement of equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – the Act includes provisions for treating a person with a protected characteristic more favourably than someone without, in order to treat them equitably. This is known as ‘substantive equality’.
- Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it – in order to tackle prejudice and promote understanding.

Protection for pupils

The Equality Act 2010 protects children and young people with regards to the education provided to them and services they receive. The Act does not provide age-related protection to children or young people, other than in relation to employment. The marriage and civil partnership protection duty covered in the Act does not apply to pupils.

The Act states that the responsible body of a school must not discriminate, harass or victimise a person in the following ways:

- In the arrangements for deciding who is offered admission as a pupil.
- The terms on which it offers to admit the person as a pupil.
- By not admitting the person as a pupil.

The responsible body should further not discriminate, harass or victimise a pupil:

- In the way it provides education for the pupil
- In the way it affords the pupil access to a benefit, facility or service
- By not providing education for the pupil
- By not affording the pupil access to a benefit, facility or service
- By excluding the pupil from the school
- By subjecting the pupil to any other detriment

A pupil must not be harassed, victimised or discriminated against due to the behaviour of their parent or a sibling.

Making reasonable adjustments for pupils

The responsibility to make required and appropriate reasonable adjustments due to a protected characteristic rests with the responsible body. A reasonable adjustment must be considered for any pupil who is at a disadvantage compared to pupils that do not have a

disability. There is no defined list of what a reasonable adjustment may be, and what is reasonable will vary from school to school. A reasonable adjustment may include:

- Provision of an auxiliary aid or service, e.g. specialist IT equipment.
- Adjustment to the school's physical environment, e.g. installation of a lift or ramp.

Protection for employees

The Act protects employees by ensuring employers apply fair and consistent policies and processes to make the workplace an equal, fair environment for all.

The Act states that when acting as the employer, the responsible body must not discriminate, harass or victimise an employee in the following ways:

- In the arrangements made for deciding whom to offer employment
- In the terms of employment
- By not offering employment
- By denying opportunity for promotion, transfer or training or receipt of any other benefit
- By dismissal
- By any other detriment

Making reasonable adjustments for employees

The responsibility to make any required and appropriate reasonable adjustments rests with the employer. A reasonable adjustment must be considered for a person applying for a job or an employee with a disability if one or more of the following provisions apply:

- The employer is made aware of an employee's disability
- An employee requests for an adjustment to be made due to their disability
- An employee is having difficulty in performing any part of their job due to their disability
- An employee's absence record or return to work is affected by their disability

Financial considerations

Consideration of the financial cost of meeting a reasonable adjustment is permissible, if the decision can be justified. Responsible bodies must not use finance as an excuse for not meeting a reasonable adjustment – to do so would be discriminatory.

Publishing equality information

The responsible body is required to publish an equality statement every four years, which must be reviewed and updated on an annual basis. The equality statement must include one or more objectives to demonstrate the school's compliance with the Equality Act 2010 and all information must be published in a way which makes it easy for people to access it. Further guidance on publishing equality information can be found within the following resources:

- [Equality Information and Objectives Policy \(TheSchoolBus\)](#)
- [Equality Objectives Statement Template](#)
- [Equality Objectives Statement Action Plan](#)

Equality impact assessment

What is an equality impact assessment (EIA)?

The DfE guidance '[The Equality Act 2010 and schools](#)' states that schools should consider equality implications before and at the time that they develop policies and take decisions, not as an afterthought, and they need to keep each under review on a continuing basis. The guidance also advises against this becoming a tick-box exercise.

An EIA is a process which can be used to analyse an organisation's policies and practices to promote equality, remove barriers to equality and prevent discrimination. Whilst it is not a statutory requirement under the Equality Act 2010 to undertake an EIA, doing so can support school leaders and governing boards in their equality responsibilities in the following ways:

- Making evidence-based decisions
- Making the decision-making process transparent
- Demonstrating that school leaders and the governing board understand their responsibilities for equality

Through rigorous analysis of policy and process, any intended or unintended discrimination can be identified, and a plan created to address these issues. It is not the responsibility of the governing board to undertake an EIA, but to decide if analysis through an EIA would support the governing board in its duties under the Equality Act 2010 and to decide who is responsible for completing an EIA, e.g. school leaders.

What policies and processes should an EIA cover?

Undertaking an EIA should not place unnecessary burden or work on school leaders. Not every school policy or process should be subject to an EIA, only those which have been identified as relevant to equality and a person's protected characteristics.

There is no defined list to identify which policies or processes should be analysed through an EIA. The governing board or responsible body may choose to include the identification of which policies should be subject to an EIA during the annual policy review schedule planning or request a completed EIA to be included with the information presented to governors when relevant policies are presented to the board for ratification.

A policy can also be analysed through an EIA retrospectively, when an issue is raised or when writing a new policy to implement. It is recommended that any EIA undertaken should be proportionate and reasonable.

Taking action

Once an EIA has been completed, if indirect or direct discrimination has been identified then there are three options to be considered:

- Removal of the policy or process
- Adaptation of the policy or process to remove the indirect or direct discrimination
- Continue without action

If the decision is made to continue with the policy or process without any action and discrimination has been identified, then the responsible body would be expected to clearly justify that decision – if it can't, then it may be liable for discrimination.

Engagement with stakeholders

There is no requirement for consultation when undertaking an EIA, but schools may decide to engage with a relevant stakeholder group to ensure full consideration and a broad and balanced analysis of the policy or process being assessed. A flexible approach is recommended and any requirement for engagement or consultation should be considered for each individual assessment.

It may also be decided to publish the outcome of completed EIAs with all stakeholder groups. This could be via email, using an online document storage system or attaching to published policies.

Next steps

Governing boards should ensure they and school leaders are clear on the board's role and responsibilities as the responsible body under the Equality Act 2010.

Consider including an agenda item to discuss and review how the board is meeting these responsibilities and identifying a list of policies for analysis by an EIA. Make sure this is included on the school's annual policy review schedule.

Use our '[Equality Impact Assessment Template](#)' to assess any policies or processes that may discriminate a person or groups protected characteristics.

Review the school's published equality information and ensure this has undergone an annual review and a new statement is published every four years.

Ensure governors are skilled in questioning and identifying equality issues when routinely analysing information and data, e.g. pupil performance data, behaviour and exclusion data, gender pay data and recruitment information.

Bibliography

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