

SEN and disability access policies



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SEN and disability policies



- SEN policy
- Accessibility plan
- Equality impact assessment
- Equality objectives

SEN policies



- What are the requirements?
- What do parents want to know?
- What is good practice?

SEN policies



For maintained schools:

- Policy requirements in the 1993 Act
- 17 requirements

SEN policies



What parents want to know:

- What provision the school makes for children with or without a statement
- How they will be kept informed
- SEN policies and procedures
- Where they can get support and information
- Staff, staffing and expertise
- SENCO, key contacts and who does what

SEN policies



What have you got in yours?

or

What will you put in yours?

Equality Act 2010



- Single legal framework
- Consolidates all pre-existing equality duties
- New terms:
 - ‘Protected characteristics’
 - ‘Prohibited conduct’
- Covers many different areas of life

Equality Act 2010



Protected characteristics in relation to schools’ provisions:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Commencement



- Equality Act: most duties commenced October 2010
- Public Sector Equality Duty commenced April 2011
- Exception: schools providing auxiliary aids under EQA - date to be decided

Who and what are covered?



All schools:

- private, publicly funded
- local authority maintained or academy
- mainstream or special
- nursery, primary, secondary or 6th form

Who and what are covered?



- Admissions
- Provision of education
- Access to any benefit or service
- Exclusion or other forms of detriment

Who has responsibility?



- 'Responsible body'
- governing body of a maintained school
- proprietor of an independent school

Definition of disability



- A physical or mental impairment with an adverse effect on the person's ability to carry out normal day-to-day activities. Effect must be:
 - substantial
 - long-term

Definition of disability



- All conditions need to be considered as they would be without 'treatment'
- Progressive conditions
- Some conditions covered automatically:
 - Cancer, multiple sclerosis, HIV
- Recurrence
- Diagnosis

Definition of disability



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Which of these children is disabled?



A child with:

- eczema
- a hearing impairment
- a learning difficulty
- cancer
- dyslexia



Nationally what percentage of children do you think may be disabled?

- a) 2.7%
- b) 5%
- c) 7%
- d) 10.76%
- e) 21%



How might you know that a child is disabled?



Definition of disability

- Asking the question
- Data collection
- 'Capacities'
- Pupils, parents and carers, other users of the school



Disability discrimination

- Direct discrimination
- Indirect discrimination
- Discrimination arising from a disability
- Failure to make reasonable adjustments
- Harassment
- Victimisation

Direct discrimination



- Less favourable treatment
- Because someone is disabled
- Cannot be justified

Indirect discrimination



- Provision criterion or practice applied to all
- Puts groups of pupils at a particular disadvantage
- Can be justified only as *a proportionate means of achieving a legitimate aim*

Discrimination arising from a disability



- Unfavourable treatment
- Because of something arising in consequence of a disability
- Can be justified only as *a proportionate means of achieving a legitimate aim*
- Unless did not know, and could not reasonably be expected to have known, a pupil has the disability

Failure to make reasonable adjustments



- Reasonable adjustments: anticipatory duty
- Three elements:
 - Provision, criterion or practice
 - Physical feature: does not apply to schools; schools must have an accessibility plan
 - Auxiliary aid: schools commencement date to be determined
- Breach of the duty to make reasonable adjustments
 - cannot be justified
 - constitutes discrimination

Making a claim of discrimination



- Parents make a claim to the First-tier Tribunal (SEND)
- Period of 6 months to make a claim, extended where conciliation is used

What goes wrong?



- 'Blanket' policies
- Examples from the Tribunal:
 - Exclusions
 - Uniform policies
 - Healthy eating policies

What are the 3 key elements in an accessibility plan?



Accessibility plans



- Publish
- Allocate resources
- Implement
- Review
- Revise if necessary

Why the public sector equality duty?



Disabled pupils:

- persistent absence figures
- attainment
- participation in activities beyond the school day
- exclusions
- bullying
- not in employment education or training (NEET)

Public sector equality duty



S.149 EOA, Due regard to the need to:

- Eliminate discrimination, harassment, victimisation and other 'prohibited conduct'
 - Advance equality of opportunity:
 - Remove or minimise disadvantage
 - Take steps to meet needs
 - Encourage participation
 - Foster good relations
 - May involve more favourable treatment
- STOP PRESS: voting on DCLG website**

Public sector equality duty



Requirements:

- Publish information
- Equality objectives
- Details of engagement undertaken

STOP PRESS: GEO re-consulted on regulations

Public sector equality duty



- Publish information:
 - on the effect of policies and practices
 - sufficient to demonstrate compliance with the duties
 - evidence of analysis
 - maintained schools, pupil referral units, academies: first published information by Dec 31st 2011
- Annual information thereafter

Public sector equality duty



- Equality objectives:
 - Specific and measurable
 - How progress towards objectives should be measured
 - Must consider the information published
 - Publish first objectives by 6th April 2012
 - Subsequent objectives at intervals of not more than 4 years from date of previous publication
- Details of engagement undertaken

Information and equality objectives



- What information would you gather?
- How would you decide what objectives you should set?
- What objectives do you think you might set?

Public sector equality duty



- Publication:
 - Information
 - Objectives
 - Engagement
 - ‘In a manner that is accessible to the public’
 - Can be included in another document, as can accessibility plan

Equality Act 2010



Other considerations for schools

- Employment
- Provision of services
- Other equalities

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Resources and references:

Special Educational Needs

Department for Education and Skills (2001) *Special Educational Needs Code of Practice*

The Education (Special Educational Needs) (Information) (England) Regulations 1999 Statutory Instrument 1999/2506. See back of the SEN Code of Practice

Disability

Department for Education and Skills and Disability Rights Commission (2007) *Implementing the Disability Discrimination Act in schools and early years settings. A training resource for schools and local authorities (a shortened pack)*. TSO

Available from TSO (The Stationery Office):
PO Box 29
Norwich NR3 1GN
Tel: 0870 240 3701

ISBN 978 0 11 271191 9
Cost: £17.35

DfE (2010) *Equality Act 2010: Advice for school leaders, school staff, governing bodies and local authorities*

<http://www.education.gov.uk/schools/pupilsupport/inclusionandlearnersupport/inclusion/equalityanddiversity/a0064570/the-equality-act-2010>

Please note it is anticipated that this advice will be updated to take account of the Public Sector Equality Duty.

Equality and Human Rights Commission (2011) *Equality Act 2010: Draft Code of Practice: Schools in England and Wales: For consultation*

Office for Disability Issues (2010) *Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability*.

This document is available on the Office for Disability Issues website:
www.odi.gov.uk/equalityact

Porter J, Daniels H, Georgeson J, Hacker J, Gallop V, Feiler A, Tarleton B and Watson D (2008) *Disability Data Collection for Children's Services*. Research Report. Department for Children, Schools and Families: RR062

Research carried out for DCSF by the Universities of Bath and Bristol

Porter J, Daniels H, Martin S, Hacker J, Feiler A and Georgeson J (2010) Testing of Disability Identification Tool for schools. Research Report. Department for Children, Schools and Families: DFE-RR025

Research carried out for DCSF by the Universities of Bath and Bristol

Tribunal website: disability cases. You can search the Tribunal's decisions on SEN and disability cases at the Tribunals Judiciary website:
http://www.sendist.gov.uk/Public/search_decisions.aspx