

GUIDANCE

Public Sector Equality Duty Guidance for Schools in England

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Introduction

What is this guide about?

On 6 April 2012 schools were required to publish information showing how they comply with the new equality duty and to set equality objectives. They will need to update the published information at least annually and publish objectives at least once every four years.

This guide will help school leaders meet the equality duty. It describes some of the benefits that the equality duty can bring.

The focus in this guide is on the practical implementation of the equality duty in schools. It supplements the DfE Guidance on the Equality Act 2010 with practical case studies of how the equality duty can be applied in contexts which will be familiar to teachers, see:

www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010

This guide also has a section with answers to frequently asked questions about the equality duty in schools, including about the specific duties to publish equality information and equality objectives.

The guide does not address how schools can meet the equality duty as employers. This is covered by guidance for all public authorities published by the Equality and Human Rights Commission. Please see: www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/

Who is this guide for?

Governing bodies, head teachers, special educational needs co-ordinators and staff at all maintained primary and secondary schools, including Academies, free schools, and Pupil Referral Units (PRUs) in England only.

Schools in Wales and Scotland have different guidance:

www.equalityhumanrights.com/about-us/devolved-authorities/commission-wales/public-sector-equality-duty-wales-2014

www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland

Why should you read this guide?

Compliance with the equality duty is a legal requirement for schools, but meeting it also makes good educational sense. The equality duty helps schools to focus on key issues of concern and how to improve pupil outcomes. These are also central to the OFSTED inspection framework. See the Frequently Asked Questions section below for more details on inspections.

According to research commissioned by the Equality and Human Rights Commission,¹ schools are working hard at equality. The research, however, also found that schools need more tailored guidance to help them use the equality duty to bring about more improvements for pupils.

¹ Available at:

www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/equality_duties_and_schools_policy_paper.pdf

The Public Sector Equality Duty and Schools

What is the equality duty?

Previously public bodies were bound by three sets of duties to promote disability, race and gender equality. In April 2011 these were replaced by a single public sector equality duty (known as the PSED or the equality duty).

This new duty extends to all the aspects of a person's identity – known as 'protected characteristics' – that are protected under the Equality Act 2010. These are race, disability, sex, age,² religion or belief, sexual orientation, pregnancy and maternity and gender reassignment.³

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

The general equality duty sets out the equality matters that schools need to consider when making decisions that affect pupils or staff with different protected characteristics. This duty has three elements. In carrying out their functions public bodies are required to have 'due regard' when making decisions and developing policies, to the need to:

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

² For schools, age is not a protected characteristic in the equality duty in relation to education or the provision of services, it is included however in relation to staff.

³ Marriage and civil partnership are also protected characteristics but only in relation to employment.

Having due regard to the need to advance equality of opportunity is defined further in the Equality Act 2010 as having due regard to the need to:

1. Remove or minimise disadvantages
2. Take steps to meet different needs
3. Encourage participation when it is disproportionately low.

In order to help schools in England meet the general equality duty, there are two specific duties that they are required to carry out. These are:

- To publish information to demonstrate how they are complying with the equality duty.
- To prepare and publish one or more specific and measurable equality objective.

Schools need to comply with these duties from 6 April 2012 and update yearly.

What does this mean for schools?

For a school, having 'due regard' means:

- When making a decision or taking an action a school must assess whether it may have implications for people with particular protected characteristics.
- It should consider equality implications before and at the time that it develops policy and takes decisions; not as an afterthought, and it needs to keep them under review.
- It should consciously consider each aspect of the duty (having due regard to the need to eliminate discrimination is not the same thing as having due regard to the need to advance equality of opportunity).
- It should assess the risk and extent of any adverse impact that might result from a policy or decision and the ways in which the risk may be eliminated before the adoption of a proposed policy.
- The equality duty has to be integrated into the carrying out of a school's functions. The analysis necessary to comply with the duty should be carried out rigorously and with an open mind – it is not a question of just ticking boxes.

Continued...

- Schools need to do this themselves and cannot delegate responsibility for carrying out the duty to anyone else. The steps they have taken to meet the duty must be recorded.

How does it help schools?

The equality duty supports good education and improves pupil outcomes. It helps a school to identify priorities such as underperformance, poor progression, and bullying. It does this by requiring it to collate evidence, take a look at the issues and consider taking action to improve the experience of different groups of pupils. It then helps it to focus on what can be done to tackle these issues and to improve outcomes by developing measurable equality objectives.

Is there any other useful guidance?

Yes. As indicated, this guide should be read in conjunction with chapter five of the Department for Education Guidance on the Equality Act 2010. This covers the equality duty as it applies to schools.

There is also more generic guidance on the equality duty on the Equality and Human Rights Commission's website: www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/meeting-the-duty/guidance

Issues that the equality duty will help to address

Attainment

The equality duty will help to focus attention on performance gaps between groups of pupils, for example girls and boys, black, white and Asian pupils, and disabled and non-disabled students.

Example

When deciding on what action to take under the equality duty, an inner city academy analyses its data on attainment and identifies a number of issues amongst different groups of pupils. Of particular concern is data showing that at Key Stage 4 Bangladeshi pupils are underachieving compared to other pupils when previous attainment is taken into account. Further investigation of data on post-school destinations reveals that this is impacting negatively on the numbers of Bangladeshi pupils progressing to higher education. As the academy has relatively high numbers of Bangladeshi students this is identified as a priority issue.

The school decides to set an objective under the equality duty to tackle the underachievement of Bangladeshi pupils. In order to achieve this they plan to undertake a range of activities including study skills support, mentoring, additional classes and higher education visits. These activities are lawful positive action measures that contribute to meeting the duty to have due regard to advancing equality of opportunity. The school includes monitoring of changes in achievement levels and destinations of Bangladeshi pupils as part of the school improvement plan and is able to report positive impact of its targeted activities (see Frequently Asked Questions for more information on positive action).

This example shows that decision-makers will have to balance competing priorities and that schools have discretion to set their own priorities.

The example also illustrates the importance of having good evidence in the early stages of decision-making. This supports the decision to focus on this group of pupils and provides evidence to show that it is a reasonable approach.

Participation in school activities

The equality duty provides a framework for identifying pupil needs, and weighing them against other education priorities when making any relevant decisions including those decisions on participation in school activities.

Example

A primary school plans a trip to a local history museum. Before confirming it checks the accessibility of the venue. One of the pupils is deaf and the museum does not have a hearing loop. The school decides to change the trip and attend a museum in a neighbouring town that has a hearing loop. Although the travel time to and from school is longer, the school decides that this is a reasonable adjustment to make given the substantial disadvantage faced by the disabled pupil if she is unable to participate fully in the trip.

This approach demonstrates that the school is trying to eliminate potential discrimination in the way it operates and that it balances the interests of its pupils to ensure the best possible educational outcomes. It is also meeting the second aim of the equality duty by addressing the particular needs of deaf pupils.

Ensuring pupils engage effectively in learning

The general equality duty reminds us that equality is not necessarily about treating people the same way, but about developing different strategies to meet the different needs of pupils. This will be familiar to schools through the SEN framework or through providing additional support to groups of pupils who need it.

Schools should consider how each decision and policy may affect pupils with different protected characteristics. This can help identify priorities.

Example

A primary school is considering its resource and stationery order for the new school term and it consults with teachers. The special educational needs coordinator identifies that visually impaired and dyslexic pupils will require accessible handouts. As a result, it orders additional supplies of different coloured paper to meet the needs of these pupils.

Bullying

The equality duty reminds schools that they have to think about the interests of all of their pupils.

One of the key aims of the equality duty is to foster good relations. To help ensure this happens it is useful to ask:

- Does the policy/decision help the school to tackle prejudice?
- Does the policy/decision promote understanding between different groups of pupils and parents?

Example

A primary school becomes aware that there may be an issue with homophobic bullying when a boy in reception is bullied for having same-sex parents. As a result, the head teacher asks all teachers to report incidents of homophobic bullying and name-calling.

Information gathered shows that homophobic name-calling is focused in years 4, 5 and 6. The head teacher asks pastoral staff to research curriculum resources and classroom strategies to tackle this issue.

In the meantime, the parents of the children involved are reminded what the school expects in terms of dignity and respect and behaviour from pupils; clear boundaries are set for pupils who are found to bully other pupils; and support is given to those affected by bullying.

Once pastoral staff have reported back to the head teacher, new measures are introduced to tackle bullying throughout the school with a focus on the areas of greatest need – in years 4, 5 and 6.

As a result, the number of incidents of homophobic bullying decreases.

This example shows the importance of having sufficient information when making decisions. It also demonstrates the importance of engaging with staff where possible when making decisions so that they pass on any relevant information.

Schools can also tackle bullying through proactive measures such as participating in LGBT or Black History month.

Improve careers and progression

Analysing evidence of where pupils go after they leave school will help schools to maximize the potential of all their pupils. The following case study shows that the disaggregation of data can feed into school policy and good practice.

Example

A secondary grammar school looks at the destinations of their boys and girls and finds ‘occupational segregation’ – job stereotyping – with few girls going into science/ technical careers or trades.

It also notes that many boys and girls from Asian backgrounds are not choosing engineering subjects, and that differences between their choices and other racial groups is striking.

As a result the school changes its exam options policy, merging it with its careers policy. It also establishes taster sessions in year 9 for all pupils, and arranges a series of outside speakers who have made non-traditional career choices as role models to share their experiences. Early indications show that there is a greater willingness for girls and Asian pupils to consider non-stereotypical options, with greater numbers choosing science and technical subjects.

The equality duty encourages schools to consider how to increase the participation of pupils with different protected characteristics when it is disproportionately low in particular areas of school life. This extends beyond the curriculum to areas of the school's activities such as option choices and work experience opportunities.

Primary schools can also tackle 'occupational segregation' by encouraging children to think more broadly about the sorts of roles boys and girls can take in employment, for example by arranging for pupils to talk to men and women who work in non-stereotypical jobs. The Commission has developed a Key Stage 2 curriculum resource, 'Equal Choices, Equal Chances' to tackle stereotyping around employment, available free at: www.equalityhumanrights.com/private-and-public-sector-guidance/education-providers/primary-education-resources

Exclusion

The general equality duty explains what issues need to be borne in mind before making significant decisions. Turning these into questions or prompts can help schools when they are considering policies or making decisions. The first question a school might ask could be: Is the policy/decision likely to result in discrimination?

Examples

- As part of its equality duty, a school reviews its data on exclusions and finds that a disproportionate number of pupils who have been either temporarily or permanently excluded are Black Caribbean boys. The school also looks at data held at the local and national level which supports its own evidence. The school recognises that its exclusion policy needs to be re-written to set out clear exclusion thresholds that are applied consistently for all pupils. It then runs some focus groups with teachers, pupils and parents from Black Caribbean backgrounds to identify other measures that can be taken to reduce the high numbers of exclusions amongst this group of pupils. Following the consultation, the school implements a range of actions including parent/pupil workshops, visits from Black role models, learning mentors and classes on emotional literacy, assertiveness, socialisation and behaviour management skills. Over time, the number of exclusions of Black Caribbean boys declines significantly.

- A local authority offers vocational but not academic courses to excluded pupils through its pupil referral unit (PRU). Aware from national statistics that a high proportion of black boys are excluded from school, it recognises the potential for indirect discrimination if academic courses are not offered at the PRUs. As a result, its PRU starts offering academic options to all pupils referred there. The local authority includes this change of policy as part of the information it publishes to demonstrate compliance with the equality duty.

Additional information and guidance on exclusions can be found in the Schools Exclusions Inquiry report from the Office of the Children's Commissioner: 'They Never Give Up on You', available at:

www.childrenscommissioner.gov.uk/content/publications/content_561

How the equality duty can help improve teaching and learning in schools

Policy making

The equality duty can help policy making in schools become more relevant to all groups of pupils and help the school decide on its priorities.

The duty applies to all your policies and procedures. It also applies to what may not be written down, i.e. practices.

Applying the equality duty can help to identify issues and shape policies around the needs of different groups of learners whose interests are protected by it. When reviewing a policy the school needs to consider emerging equality issues.

Example

A secondary school decides to revise its literacy policy. Detailed analysis of its English results at Key Stage 3 reveals that there is a significant gap opening up between boys and girls in year 8. When reviewing its literacy policy, the head teacher asks those who are developing the policy to consider this gap.

As a result the school proposes to invite male authors to come and describe their work, plus developing lessons in English that seek to break down stereotypes and misconceptions about boys, for example, that they are not interested in arts or academic success. The school also stresses that the needs of girls who are falling behind in English will not be overlooked.

When the policy has been written, it is discussed with the school governing body at committee before being approved at a full governors meeting. The head teacher agrees to include the measures in the school development plan and report back to

the school governing body. The governor/committee with responsibility for inclusion is given the task of overseeing the implementation of the new policy.

Making effective use of data and information

Collating and analysing information and data on all aspects of school life can lead to policies and practices that are more attuned to the needs of different groups of pupils.

The duty to have 'due regard' to equality considerations is a continuing one, so monitoring the success of any initiative is important to ensure that it is an effective use of resources.

Whilst statistical data can be an important source of information in monitoring, a great deal of useful information can also be obtained from individual tracking of attainment, lesson observation and talking to pupils and parents.

Example

A primary school recognises from its RAISE online performance data that achievement levels for SEN learners (a rough proxy for disability) are below national figures and significantly below those in comparative schools. In response to the equality duty, the school seeks to improve the learning experience for disabled pupils to help close attainment gaps.

It recognises that it needs to identify ways in which learning needs can be more fully met and begins by undertaking a mapping exercise of disabled pupils' learning journeys to understand how key contact points could be improved. Members of the senior leadership team, inclusion staff and teaching staff consult with the disabled pupils and their parents to develop a more in-depth understanding of pupils' wants and aspirations. Staff then combine this information with individual academic data to design a series of initiatives targeted at pupils with a learning difficulty or disability. These include more inclusive teaching practices, the up-skilling of some existing staff, additional support staff and providing specialist equipment.

To monitor the success of the initiative, the school collects feedback from parents and pupils and tracks individual progress. This reveals increased participation in

lessons, a greater degree of socialisation and improved academic achievement among pupils with disabilities.

Supporting effective partnerships

The equality duty supports effective partnerships by encouraging initiatives among local authorities, schools, parents, carers, and members of local communities. This includes discussions on what actions are needed to improve education for groups of pupils and to foster good relations across all protected characteristics.

Example

An inner city academy with a diverse pupil population recognises the importance of working in partnership with pupils, parents, community leaders and other local schools to address religious tensions amongst young people, fuelled in the wider community. Drawing on discussions with all these groups, it introduces a range of actions to promote tolerance and respect for different beliefs including: assemblies dealing with good relations, twinning arrangements with other schools which enable pupils to meet and exchange experiences with children from different backgrounds, strengthened behaviour and anti-bullying policies to deal with tensions between different groups of pupils, and a strengthened focus on aspects of the curriculum which promote tolerance and friendship and which share understanding of a range of religions or cultures.

The Commission's Key Stage 3 curriculum resource, 'Equal Rights, Equal Respect' is available free at: www.equalityhumanrights.com/private-and-public-sector-guidance/education-providers/secondary-education-resources

By collecting and analysing relevant information, schools can identify priorities for the partnerships within which they work, so they can pool resources and develop cost-effective solutions.

Continued...

Example

A secondary school uses a mixture of individual attainment data and observation in lessons to help them understand learning and pastoral issues affecting ethnic minority pupils. This evidence helps staff to identify the challenges which prevent some ethnic minority pupils from participating in extracurricular activities and interacting with pupils outside of their own ethnic group.

The school's evidence base, combined with experiences shared at head teacher meetings with other local schools, leads to the decision to pool resources across a number of schools to introduce new language support provision for Roma migrant pupils.

As a consequence, attendance rates and attainment for this group of pupils increases markedly, along with their integration in the school community both in and outside of lessons.

An opportunity to reconsider how schools treat their pupils

One of the aims of the equality duty is 'advancing equality of opportunity'. With that aim in mind, when schools consider adopting a new policy or making a decision, they may find it useful to pose three questions, or prompts:

1. Does this policy/decision remove or minimize disadvantages suffered by pupils with particular protected characteristics?
2. Do we need to adopt different approaches for different groups of pupils?
3. Is there any way we can encourage these groups of pupils to become more involved with the school or open up opportunities for them that they wouldn't otherwise enjoy?

In practice this means that schools should always try to use information about pupils with different protected characteristics to mitigate adverse effects or bring about positive ones.

Frequently asked questions

The specific duties and positive action

1. How do the specific duties help schools to meet the general equality duty?

On 6 April 2012, under the specific duties, schools had to:

- publish information to demonstrate compliance with the general equality duty
- publish one or more specific and measurable equality objectives.

Schools will need to update the published equality information at least annually and to publish objectives at least once every four years. Further details are at the start of this guide under the section ‘What are the equality duties?’

The equality objectives that a school publishes as part of the specific duties will be clearly defined and measurable commitments. It makes sense if the objectives address key equality issues identified by the school and are contained in the school’s published equality information. By publishing the objectives, the school is making public its priorities for equality.

The objectives will be agreed with the governing body (see Question 5 below) and it would be good practice to include them in the school development plan.

Both the specific duties aim to promote transparency in schools and to increase accountability to parents, carers and regulators.

The publication of non-confidential equality-related data and information about a school and its pupils will help parents to understand what the school is doing to eliminate any potential discrimination, advance equality of opportunity and foster good relations. Published information will also be a resource for decision-makers within the school.

Teachers may also want to draw inspiration from the case studies in this guide, many of which are based on real examples. These cases should generate information, feedback and/or policies that could be published to demonstrate compliance.

Also note that schools that employ more than 150 people are expected to publish information about staff as well as pupil-related data. You will find more information on employment in the general PSED guidance and in the Code of Practice on Employment:

- www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/meeting-the-duty/guidance
- www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/equality-act-codes-practice-and-technical-guidance

2. What information do schools have to publish?

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 also 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.

Chapter Five of the DfE Guidance on the Equality Act 2010 contains many useful and practical suggestions about what schools may publish:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/269341/Equality_Act_2010_-_advice.pdf

3. Does the equality duty mean that schools will have to collect lots more statistical information?

The equality duty does not require schools to routinely collect any more information than they do already.

In most instances schools will already have sufficient information, either in the data that it routinely collects, through individual profiling or in the records that classroom teachers keep. Where there are gaps schools may decide to fill them by getting the views of parents and pupils with particular protected characteristics. They may also use information from national surveys or from the local authority, or by conducting surveys through partnerships with other schools. The discretion lies with the school leader to decide if the school has

enough information about pupils with different protected characteristics to enable the school to meet their equality duty.

4. How is the equality information used?

Data and information is used to help provide a complete picture of the school – the opportunities and experiences it offers, the quality of teaching and learning within it, and the behaviour and safety of pupils. By putting all this information together and looking at it when making relevant decisions, schools are likely to make decisions that are more attuned to the needs of different groups of pupils.

Using evidence and information may also 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.

5. Can schools publish just one equality objective?

Yes, but given the wide range of equality issues in schools, it is likely that they will want to publish more than one objective.

The equality duty encourages schools to take action to improve outcomes for pupils with different protected characteristics so it is likely that schools will generate a number of their own internal equality-related targets. The key ones could be identified as equality objectives and integrated with school improvement and development plans. The approach should be proportionate, with larger schools likely to have more objectives than smaller ones.

The challenge will be to develop measures that can demonstrate success. In some cases this will be obvious, such as lifting girls' attainment in mathematics if this is low, or reducing the number of homophobic incidents. In other cases, 'qualitative' measures can be used, such as asking pupils in one year group about their attitudes to/experiences of the school and then repeating the questions after a period of time following the introduction of policies intended to alter those attitudes/experiences. An example of this could be increasing understanding between faith groups.

6. What is positive action?

In some circumstances, schools will need to meet the needs of pupils in different ways so they can receive the same standard of education as everyone else does. The positive action provisions of the Equality Act 2010 permit schools to take proportionate steps to help particular groups of pupils to overcome disadvantages connected to protected characteristics (like gender, race, sexual orientation etc).

Provided that these steps are based on need/disadvantage/low participation and are not excessive, they will be lawful – for example organising ‘female only’ design and technology taster sessions, where participation of girls in the subject is clearly disproportionately low, or organising separate support classes for ethnic minority children who do not speak English. The [Department of Education guidance](#) contains more information about positive action, with examples and is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/269341/Equality_Act_2010_-_advice.pdf.

Inspections

7. How can the equality duty help schools face inspections with confidence?

It is clear that there are significant overlaps between fulfilling the equality duty and meeting the requirements of the school inspection framework.

The Ofsted ‘Framework for School Inspection’ states that:

‘School inspection acts in the interests of children, young people, their parents and employers. It encourages high-quality provision that meets diverse needs and fosters equal opportunities’.

School inspectors will focus on pupils’ needs by:

- evaluating the extent to which schools provide an inclusive environment which meets the needs of all pupils, irrespective of age, disability, gender reassignment, race, religion or belief, sex, or sexual orientation.

Continued...

The Ofsted Framework (and Inspection Handbook) also identifies the following components of an inspection:

- As part of their overall evaluation of the school inspectors will consider the extent to which the education provided by the school meets the needs of the range of pupils at the school, and in particular the needs of disabled pupils and those who have special educational needs.
- When evaluating the achievement of pupils, inspectors must consider
 - how well disabled pupils and those who have special educational needs have achieved since joining the school
 - how well gaps are narrowing between the performance of different groups of pupils in the school and compared to all pupils nationally
- In coming to an assessment of how effectively a school is meeting the individual needs of pupils it may be relevant for inspectors to pay particular attention to the achievement of:
 - those with protected characteristics, as defined by the Equality Act 2010,
- The Inspection Handbook also makes particular mention of:
 - disabled pupils, and those who have special educational needs
 - Gypsy, Roma and Traveller children
 - boys
 - girls.

When evaluating the behaviour and safety of pupils at the school, inspectors must consider:

- pupils' behaviour towards, and respect for, other young people and adults, and their freedom from bullying, harassment, and discrimination.⁴ This may include cyber-bullying and prejudice-based bullying and language related to special educational needs, sexual orientation, sex, race, religion and belief, gender reassignment or disability as defined in the Equality Act 2010.
- how well teachers manage the behaviour and expectations of pupils to ensure that all pupils have an equal and fair chance to thrive and learn in an atmosphere of respect and dignity.

⁴ As defined in the Equality Act 2010.

When evaluating the quality of leadership and management of the school Inspectors should focus on how effectively leadership and management at all levels enable pupils to overcome specific barriers to learning. This will include engaging with parents and carers in supporting pupils' achievement, behaviour and safety.

8. Will the equality duty help schools to self-evaluate?

Schools can now decide what form of self-evaluation they undertake. The results of self-evaluation can support the creation and review of a school's self-development/improvement plan. Complying with the equality duty by collating and publishing equality information and objectives can help to provide evidence for the evaluation and should be drawn on by OFSTED when carrying out school inspections to test the robustness of the school's self-evaluation, particularly on achievement and behaviour and safety. For example, schools can provide evidence of how gaps in achievement between different groups of pupils have been closed by referring to equality information for SEN/disabled pupils, boys and girls etc. Where schools have used information about attainment gaps to drive school improvement, it can be used to demonstrate the effectiveness of leadership in the school. The classroom strategies developed as a result can also provide evidence as to the quality of teaching within a school.

Another example would be to demonstrate how effectively prejudice-based bullying has been tackled. The Ofsted evaluation schedule is clear that judgements on behaviour and safety must not be made solely on the basis of what is seen during the inspection but must take into account a range of evidence over an extended period. This includes the school's analysis of and response to pupils' behaviour in lessons over time, for example incident logs, complaints, the use of exclusion, rewards and sanctions and surveys. Case studies may be used to evaluate the experiences of particular groups. Progress can be evidenced by showing how the views of pupils, parents and carers have altered over time as a result of anti-bullying policies.

Revising policies

9. Do we have to revise our equality policies now?

Not unless it helps schools to address equality issues. The key point about the equality duty is that it should influence everything schools do rather than requiring them to produce policies for the sake of it.

Schools need to integrate equality into their day-to-day decision-making. How that is achieved is up to the school, provided it publishes information showing how it is complying with the equality duty and the school's equality objectives. If schools already have one (or more) equality policies in place they may find it helpful to revise them to take into account the new extent of the duty, including the new protected characteristics.

10. How do we set about addressing newer areas, like sexual orientation and gender reassignment?

Under the equality duty all schools must have due regard to the need to eliminate discrimination, advance equality and foster good relations between lesbian, gay and transsexual pupils and those who do not share those protected characteristics. Schools are required to publish information to demonstrate compliance with this aspect of the equality duty. Schools need to be mindful of the need to do this in a way that is relevant to the age and stage of the children. It is not always appropriate to monitor certain protected characteristics of young people, for example their sexual orientation or gender assignment status. Alternative sources of information such as national statistics, research or engagement may help schools to identify priority issues instead. As indicated above, the DfE Equality Act guidance suggests possible national sources of information.

The Commission has published guidance about monitoring around sexual orientation:

www.equalityhumanrights.com/uploaded_files/research/improving_sexual_orientation_monitoring_v6_22-12-10.pdf

When a school is considering whether to monitor the sexual orientation of pupils, they should consider that pupils may be unsure of their own sexuality or unwilling

to disclose it because of lack of trust. As a preliminary measure, schools intending to monitor for sexual orientation are advised to create a culture of trust and to think carefully about the questions they wish to ask. One way of creating trust is to take all complaints of bullying because of sexual orientation very seriously, to support complainants and to take appropriate action.

Establishing policies and guidance concerning prejudice-based bullying, which are shared with all parents and pupils, can be an effective way forward. Good and regular staff training will also help.

Schools should try to be aware which of their pupils are vulnerable to bullying and homophobic name-calling (such as the pejorative use of the word, 'gay') because of their sexual orientation or that of their parents. The DfE website states that it is compulsory for schools to enforce measures that will encourage good behaviour and prevent all forms of bullying. It provides support for designing anti-bullying policies and strategies in your school:

www.education.gov.uk/schools/pupilsupport/behaviour/bullying

It is relatively rare for pupils – particularly very young pupils – to want to undergo gender reassignment, but there is evidence that the number of such cases is increasing and schools should aim to address any issues early on and in a proactive way as part of the equality duty. Further guidance is available from the GIRES website: www.gires.org.uk/assets/Schools/assistingschools.pdf

What does the equality duty apply to?

11. Does the equality duty apply to the independent sector?

No. The equality duty applies only to listed public authorities and to those carrying out public functions. Providing education in return for a fee is a private activity and therefore not covered by the equality duty. Independent fee-paying schools, however, are subject to anti-discrimination law and pupils can issue proceedings for discrimination, harassment and victimisation as well as other conduct prohibited by the Equality Act 2010.

12. Does the equality duty apply to schools buying goods and services?

Yes. Schools buy in £9.3 billion worth of goods and services every year. These include ICT, supply staff, consultancy, school meals, learning resources, training and administrative supplies. Where relevant, schools need to take account of the equality duty when purchasing goods and services.

Here are some considerations:

- Is there a possibility that the goods or services being purchased are relevant to equality? If it is absolutely obvious that they are not, no further action need be taken. If it might be, then schools need to use evidence to decide if the aims of the equality duty are relevant and, if so, how they might apply. (For example, is playground equipment appealing to both boys and girls.)
- Do supply teachers supplied by an agency understand about your bullying policies and your commitment to eliminating identity-based bullying in particular?
- Are school supplies bought with reasonable adjustments in mind for disabled/SEN pupils? For example coloured overlays for dyslexic pupils?
- When considering changes, has the school thought about auxiliary aids and access? For example installing a hearing loop in anticipation of the needs of potential deaf pupils.
- Does the school buy food that meets pupils' religious and dietary needs?

A key principle to remember is that schools cannot delegate complying with their equality duty to others. The onus is on the school to specify relevant matters in the procurement contract. Schools will find further guidance on the practical aspects of [procurement](#) on the DfE website. The Commission is planning to publish a guide to equality and procurement early in 2013.

Enforcement

13. Who enforces the equality duty?

The Equality and Human Rights Commission is the regulator with responsibility for the equality duty.

The Commission encourages public authorities to meet their equality obligations. It also monitors how public authorities, including schools, are implementing the equality duty.

In addition it has a range of legal enforcement powers. It can, for example, issue compliance notices to schools that are not complying with the equality duty. These legal notices could compel a school to take action to remedy any breach of duty. As an alternative the Commission may negotiate a binding statutory agreement with the school.

The Commission will usually only take formal enforcement action where attempts to encourage compliance have failed. In most cases the Commission would hope to resolve compliance issues through informal action and cooperation. The Commission will use the least intrusive regulatory tool to achieve compliance and will usually adopt an escalation process. In appropriate circumstances, however, formal enforcement action will be the most effective method of ensuring legal compliance with the equality duty or other provisions contained in the Equality Act 2010.

The Commission is also an authoritative source of information about current equality and human rights issues in education. Please see its triennial review: www.equalityhumanrights.com/about-us/our-work/key-projects/how-fair-is-britain and Human Rights Review: www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review

These will alert schools to the most pressing national issues concerning equality and human rights in education.

Schools may also be challenged about their compliance with the equality duty by parents and pupils through judicial review.

Legal status

14. What is the legal status of this guide?

This is non-statutory guidance to help schools meet their equality duties. Courts may take it into account in deciding whether a school has complied with the equality duty but are not bound to do so.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

Website	www.equalityadvisoryservice.com
Telephone	0808 800 0082
Textphone	0808 800 0084
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Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback

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