



Willow Bank Infant School

Equalities Duties Guidance Policy

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The Equality Act 2010

Public Sector Equality Duty and Specific Duties for schools with regard to employment

Schools: who and what the Act applies to

In England and Wales the Act applies to all maintained and independent schools, including Academies, and maintained and non-maintained special schools

This guidance note is designed to provide a quick- start guide to how schools can comply with the Public sector equality duty and specific duties. It is not intended to be a comprehensive guide. Links are provided to sources of further information. Its focus is on the duties as they relate to schools as employers. Duties with regard to pupils can be found at:

<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>

Key Points:

- Schools with more than 150 employees must make information publicly available about their workforce
- All schools must publish at least one equality objective and this must be updated at least every four years. The objective/s could relate to workforce but are more likely to apply to pupils
- It is up to schools themselves to decide in what format they publish equality information. For most schools, the simplest approach may be to set up an equalities page on their website where all this information is present or links to it are available. The regulations are not prescriptive and 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.

Health Related Questions for Job Applicants

It is now unlawful for employers to ask health-related questions of applicants before job offer, unless the questions are specifically related to an intrinsic function of the work. This means that schools should no longer, as a matter of course, require job applicants to complete a generic health questionnaire as part of the application procedure. The model Equal Opportunities and Recruitment policies have been updated to comply with this requirement.

The Public Sector Equality Duty

The Equality Act 2010 introduced a single Public Sector Equality Duty (PSED) (sometimes also referred to as the 'general duty') that applies to public bodies, including maintained schools and Academies, and which extends to all protected characteristics - race, disability, sex, age, religion or belief, sexual orientation, pregnancy and maternity and gender reassignment. This combined equality duty came into effect in April 2011. It has three main elements. In carrying out their functions, public bodies are required to **have due regard to the need to:**

- Eliminate discrimination and other conduct that is prohibited by the Act,
- 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.

All public bodies were previously bound by three separate sets of duties to promote disability, race and gender equality. The new simpler, less bureaucratic, PSED has replaced those three duties.

With the new PSED, as with the previous general duties, schools are subject to the need to have **due regard** to the three elements outlined above. What having "due regard" means in practice has been defined in case law and means giving relevant and proportionate consideration to the duty. 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.

Specific Duties

There are also specific duties, which are intended to help public authorities to meet their obligations under the PSED. The PSED is set out on the face of the Act, while the specific duties are set out in secondary legislation (the Equality Act 2010 (Specific Duties) Regulations 2011).

What compliance with the specific duties means for schools

Schools have freedom to meet the duties in ways appropriate to their own set of circumstances.

The specific duties are meant to help public bodies fulfil their obligations under the general duty. They are designed to be flexible, light-touch and proportionate rather than being bureaucratic or a “tick-box” exercise. The emphasis is on transparency - making information available so that the school’s local community can see how the school is advancing equality in line with the PSED, and what objectives it is using to make this happen.

The specific duties regulations require schools:

- a) to publish information to demonstrate how they are complying with the Public Sector Equality Duty, and
- b) to prepare and publish equality objectives.

Schools had until **6 April 2012** to publish their initial information and first set of objectives. They will then need to update the published information at least annually and to publish objectives at least once every four years.

Data about employees will not need to be published where a public authority has fewer than 150 employees. There is no guidance on whether casual staff should be included in this headcount and schools may decide to count only permanent and fixed term contract staff. This means that for the great majority of schools, only pupil-related data will need to be published.

Under specific duties set out in previous equality legislation, schools were required to produce equality schemes in relation to race, disability and gender. Under the new specific duties there are no requirements to create equality schemes. But schools may choose to continue producing such a scheme, if it helps them to comply with the Equality Duty, and they can expand it to cover the additional protected characteristics.

How to Publish Information

It will be up to schools themselves to decide in what format they publish equality information. For most schools, the simplest approach may be to set up an equalities page on their website where all this information is present or links to it are available. The regulations are not prescriptive and it will be 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.

Where schools have to or decide to publish information relating to employees the expectation is that the following data will be provided:

Employment information

You may wish to note that there is no law that specifically requires employers to monitor the gender, ethnic origin, disability, age or marital status of their workforce. Nevertheless, it is good practice to monitor the responses of job applicants in relation to these protected characteristics, to ensure that the mix of people being recruited reflects the mix of the pool of applicants, and the mix of the local population as a whole. It also provides a check for the employer against discriminatory practices. If monitoring reveals that there is a disproportionately high number of women, men, members of a particular racial group, or older or younger people who do not apply for employment in the first place or who are rejected for employment, the organisation will be able to investigate the reasons for this and take steps to redress the situation.

Neither is there any requirement to collect data on employees' religions and beliefs or sexual orientation. However, in addition to the normal benefits of monitoring, gathering information on employees' religions or beliefs can help employers to understand their employees' needs and assist with business planning, eg it may be easier to anticipate when employees may wish to take annual leave to coincide with religious festivals.

The school processes any personal data collected in accordance with its data protection policy. Further details can be found in the Privacy Notice on the school's website. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of legitimate monitoring purposes.

As a minimum schools with more than 150 employees should publish the following:

This school has an Equal Opportunities policy for employees which can be found on the school website or in the school office

Employment exceptions for schools with a religious character

There are some specific exceptions to the religion or belief provisions of the Equality Act for employment by schools designated as having a religious character.

For the purposes of legislation, these schools fall into two broad categories – Voluntary Aided (VA) is one category and Voluntary Controlled (VC) and Foundation schools together form the other. VA schools have more autonomy than VC/ Foundation schools, especially in terms of employment. Academies, free schools and independent schools with a religious character generally operate under conditions which mirror those in VA schools.

All of the situations described here are provided for by existing legislation which has not been changed by the Equality Act.

Voluntary Controlled and Foundation Schools with a religious character

Headteachers

At VC and foundation schools, when appointing a head teacher the governing body may take into account any candidate's suitability and ability to preserve and develop the religious character of the school. The head may also be a reserved teacher – see below.

Reserved Teachers

VC and foundation schools must include reserved teachers where the number of teaching staff is more than two. Reserved teachers are selected according to their competence to teach RE according to the tenets of the school's faith and are specifically appointed to do so. This may include the headteacher.

The number of reserved teachers must not exceed one-fifth of the teaching staff (including the headteacher). For these purposes, where the total number of teaching staff is not a multiple of five, it will be deemed to be the next higher multiple of five. For example, if there were eight teachers at a school, for this purpose the total number would be deemed to be ten and the maximum number of reserved teachers would be two.

These teachers must not be appointed unless the foundation governors are satisfied that they are suitable and competent to give religious education. The foundation governors can insist on dismissing a reserved teacher who fails to give suitable and efficient religious education.

Other Teachers and Non-teaching Staff

Non-teaching staff and teachers other than those appointed as reserved teachers must not be treated unfavourably in any way because of their religion. This means they cannot be dismissed because of their religious opinions or attendance at religious worship, they cannot be required to deliver RE and cannot be subjected to a detriment for not giving RE or attending worship.

VC/Foundation Schools with a religious character becoming Academies

A VC school or a foundation school with a religious character which chooses to convert to Academy status will continue to be governed by the provisions described above which apply to VC and foundation schools.

Voluntary Aided schools, Independent schools, Academies and Free Schools with a religious character

Teaching Staff (including Headteachers)

Voluntary Aided schools may apply religious criteria when recruiting or dismissing any member of their teaching staff. In recruitment, remuneration and promotion they may give preference to persons:

- whose religious opinions are in accordance with the tenets of the religion of the school;
- who attend religious worship in accordance with those tenets; or
- who give, or are willing to give, religious education in accordance with those tenets.

In considering dismissals, the governing body may have regard to any conduct that is incompatible with the precepts, or with the upholding of the tenets, of the religion of the school. A teacher appointed to teach RE may be dismissed by the governing body without the consent of the local authority if he fails to give such education efficiently and suitably.

Non-teaching staff

Religious criteria may not be applied to any other posts in a VA school unless there is a genuine occupational requirement. This would need to be justified but might, for example, apply to a member of staff required to give pastoral care to pupils.

Further information

<https://www.equalityhumanrights.com/en/publication-download/public-sector-equality-duty-guidance-schools-england>