

Do free schools help to build a more equal society?

An assessment of how free schools are complying with statutory requirements on equality

rota
Race on the Agenda

Bill Bolloten, Education
Consultant

Race on the Agenda

November 2013

Contents

1. Introduction
2. Key findings
3. About Race on the Agenda
4. Background to ROTA's research on free schools and equality
5. The Equality Act 2010
6. The public sector equality duty
7. The specific duties
8. Transparency and accountability
9. Methodology
10. What we found
11. Conclusions
12. Recommendations
13. Appendix

1. Introduction

Free schools, as well as all maintained schools and academies, are required to meet the public sector equality duty (PSED), introduced by the Equality Act 2010.

The equality duty supports schools to meet diverse needs and improve outcomes for all pupils regardless of their background and circumstances. The duty requires schools to collate evidence and identify priorities such as underperformance of different groups of pupils or prejudice-related bullying. It helps schools to focus on what can be done to tackle these and other issues, and improve outcomes by developing measurable equality objectives.

Meeting the equality duty can deliver important benefits for all schools. It helps schools to address the needs of vulnerable and disadvantaged groups, and contributes to achieving outstanding achievement for all. The duty supports schools to become places where all pupils feel valued and safe from all kinds of bullying and harassment.

In 2011, the government introduced two new specific duties for schools to help them meet their obligations under the PSED. By 6 April 2012, schools should have published information to demonstrate their compliance with the equality duty, and published one or more specific and measurable equality objectives.

The specific duties aim to promote transparency in schools and increase accountability to parents, local communities and regulators.

In October 2013, education consultant Bill Bollothen worked with Race on the Agenda (ROTA) to carry out a survey of the first two cohorts of free schools that opened in 2011 and 2012.

The websites of 78 free schools¹ were examined to identify:

- If free schools show awareness of the Equality Act 2010 and the PSED.
- Whether free schools are complying with the statutory requirements to publish equality information and specific and measurable equality objectives.
- If free schools demonstrate a commitment in their policies and documents to tackle all types of prejudice-related bullying and derogatory language.

¹ The Department for Education indicates that total of 79 free schools opened in 2011 and 2012. However, it could not be established if one particular school had opened.

2. Key findings

ROTA's survey of the 78 free schools that opened in 2011 and 2012 finds that:

- The vast majority (87%) of free schools are not complying with the statutory regulations on the PSED specific duties.
- Only two free schools are fully meeting the requirement to publish equality information, and specific and measurable equality objectives.
- Only six free schools (7.7%) have published at least one equality objective. This is a poorer level of compliance than maintained schools and academies.
- Most free schools appear to be unaware of the Equality Act 2010 and the PSED, with less than a quarter (23.1%) making reference to the Act in key policies and documents.
- Two-fifths of free schools (39.7%) are failing to identify prejudice-related bullying and/or derogatory language in their policies on anti-bullying or behaviour.

3. About Race on the Agenda

Race on the Agenda (ROTA) is a London-based, social policy organisation focused on issues affecting Black, Asian and Minority Ethnic (BAME) communities. ROTA's work is based on the principle that those with direct experience of inequality should be central to solutions to address it. Our policy priorities of health, education and criminal justice are shaped by the lived experiences of BAME communities and their organisations.

4. Background to ROTA's research on free schools and equality

In 2012, ROTA examined the government's free schools programme. The *Inclusive Schools: The Free Schools Monitoring Project*² assessed the involvement of BAME communities in developing free school proposals and the extent to which equality issues were considered.

The research found that many BAME communities lacked engagement with the government's free schools programme, and insufficient attention had been paid to encouraging their engagement and participation. It also found that when developing free schools, the consideration of legal requirements on equality and diversity, as set out in the Equality Act 2010, was inadequate.

ROTA recommended that the Department for Education (DfE) and the New Schools Network provide more support for free schools to enable them to develop inclusive practices that are compliant with the Equality Act 2010.

² <http://www.rota.org.uk/content/rota-october-2012-inclusive-schools-free-schools-monitoring-project>

5. The Equality Act 2010

The Equality Act 2010 replaced previous anti-discrimination laws with a single Act. It simplified the law, making it easier for people to understand and comply with it. It also strengthened the law in important ways, to help tackle discrimination and inequality.

Schools had legal obligations under previous equality legislation that prohibited discrimination, harassment and victimisation on the grounds of age, disability, marriage and civil partnership, race, religion and belief, sex and sexual orientation. These categories are known as 'protected characteristics'.³ The Equality Act 2010 extended protection to new protected characteristics of gender reassignment, and pregnancy and maternity.

In England and Wales, the Act applies to all schools⁴, including academies, free schools and maintained and non-maintained special schools.

6. The public sector equality duty

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

The race equality duty was enacted as a response to the findings of the Stephen Lawrence Inquiry and took effect in 2001. The disability equality duty followed in 2006, and the gender equality duty in 2007.

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

The general equality duty sets out the equality matters that schools need to consider when making decisions that affect pupils and staff with different protected characteristics. It applies to all the policies and practices of the school.

This duty has three elements. Schools are required to have 'due regard', when making decisions and developing policies, to the need to:

- Eliminate all forms of discrimination, harassment and victimisation that are prohibited by the Equality Act 2010.
- Advance equality of opportunity, and
- Foster good relations.

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

- Remove or minimise disadvantages

³ For schools, age is not a protected characteristic in relation to the provision of education or services to pupils. It does apply however in relation to staff. Marriage and civil partnership are protected characteristics, but only in relation to employment.

⁴ Independent fee-paying schools are also subject to anti-discrimination law. However the equality duty applies only to listed public authorities and to those carrying out public functions.

- Take steps to meet different needs
- Encourage participation when it is disproportionately low.

Having due regard to the need to foster good relations involves 'tackling prejudice' and 'promoting understanding.'

'Due regard' is central to understanding what schools have to do to fulfil the equality duty. It means more than just thinking about equality or having an equal opportunities policy. It means actively taking equality into account as decisions are made, as well as reflecting on the impact of policies and practices as they are implemented. Just avoiding discrimination is not enough.

7. The specific duties

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

- To publish, at least annually, equality information to demonstrate how they are complying with the equality duty.
- To prepare and publish, at least every four years, one or more specific and measurable equality objectives that the school thinks it needs to achieve to further any of the aims of the general equality duty.

Publication of equality information and objectives is compulsory in England for all schools, including free schools⁵. They should have complied with the two specific duties no later than 6 April 2012.

The DfE provides guidance for school leaders and governing bodies on their legal obligations and the statutory policies and other documents⁶ they are legally required to hold. This guidance makes clear that free schools must comply with the specific duties requirements to publish equality information and objectives.

8. Transparency and accountability

The principles of transparency and accountability are central to how schools will show due regard for the aims of the equality duty.

Ofsted, in its *Inspecting Equalities*⁷ briefing, makes clear that:

"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."

⁵ The Equality Act 2010 (Specific Duties) Regulations 2011

⁶ <http://www.education.gov.uk/schools/toolsandinitiatives/cuttingburdens/a00201669/statutory-policies-for-schools>

⁷ <http://www.ofsted.gov.uk/resources/briefings-and-information-for-use-during-inspections-of-maintained-schools-and-academies>

9. Methodology

In October 2013, education consultant Bill Bolloten worked with ROTA to survey the websites of the 78 free schools that had opened in 2011 and 2012⁸. These schools were identified by reference to the list of open free schools published by the DfE⁹.

The research aimed to answer the following questions:

- Do free schools show awareness of the legal requirements of the Equality Act 2010, the PSED and the specific duties for schools?
- Are free schools complying with the statutory requirement to publish equality information, and specific and measurable equality objectives?
- Are free schools demonstrating a commitment to tackle prejudice-related bullying and derogatory language?

The complete findings from the research are available on the publications pages of ROTA's website at www.rota.org.uk.

School policies, and other information provided on free schools' websites, were examined to identify if schools are aware of the requirements of the Equality Act 2010 and the PSED. If schools made references to the Equality Act 2010 and the PSED this was noted.

Free schools' policies on anti-bullying and behaviour were checked, where they existed, to identify if the schools acknowledged the importance of taking action to prevent and tackle all forms of bullying and harassment. This includes prejudice-based bullying related to disability, gender reassignment, race, religion and belief, sex, sexual orientation or special educational need.

Schools are required to publish their equality information and objectives in a way that is accessible to parents and local communities. DfE guidance for school leaders and governors¹⁰ states:

"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."

A school was judged to be compliant with the specific duties if it had published relevant equality information and at least one specific and measurable equality objective. It was judged to be partially compliant with the specific duties if it had published either equality information, or at least one equality objective that may or may not be specific and measurable. If a school failed to publish any equality information or objectives, it was judged to be noncompliant with the specific duties.

⁸ The websites of free schools that opened in 2011 were checked on 16.10.13. The websites of free schools that opened in 2012 were checked on 15.10.13.

⁹ <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/b00222175/open>

¹⁰ Equality Act 2010: Advice for school leaders, school staff, governing bodies and local authorities <http://www.education.gov.uk/aboutdfe/advice/f00215460/equality-act-2010-departmental-advice>

10. What we found

a. The vast majority of free schools are not complying with statutory requirements on equality.

- Only two free schools (2.6%) are fully complying with the requirement to publish equality information and specific and measurable equality objectives.
- Seven free schools (9%) are partially complying with statutory requirements and have published equality information or at least one equality objective.
- 21 out of the 24 free schools (87.5%) that opened in 2011 have not published any equality information or objectives.
- 47 out of the 54 free schools (87%) that opened in 2012 have not published any equality information or objectives.

| | Free schools opened in 2011 | Free schools opened in 2012 | All free schools opened in 2011 and 2012 |
|-----------------------------|-----------------------------|-----------------------------|--|
| Fully compliant | 0 (0%) | 2 (3.7%) | 2 (2.6%) |
| Partially compliant | 3 (4.2%) | 4 (7.4%) | 7 (9%) |
| Not compliant | 21 (87.5%) | 47 (87%) | 68 (87%) |
| Compliance uncertain | 0 (0%) | 1 (1.8%) | 1 (1.3%) |

Table 1: Compliance with the requirement to publish equality information and objectives

b. In relation to publishing equality objectives, free schools are performing poorly compared to maintained schools and academies.

- Only six free schools (7.7%) out of the 78 that opened in 2011 and 2012 have published at least one equality objective.
- Free schools are performing poorly compared with the sample of primary and secondary schools recently surveyed by the Equality and Human Rights Commission (EHRC)¹¹. The EHRC found that 21.2% of primary schools and 23.2% of secondary schools had published one or more equality objectives covering the period since the introduction of the PSED in April 2011.

| | Free schools opened in 2011 | Free schools opened in 2012 | All free schools opened in 2011 and 2012 % |
|---|-----------------------------|-----------------------------|--|
| Publication of at least one equality objective | 3 (4.2%) | 3 (5.5%) | 6 (7.7%) |

Table 2: Publication of equality objectives

¹¹ *Assessment of the publication of equality objectives by public authorities*, Equality and Human Rights Commission (2013)

http://www.equalityhumanrights.com/uploaded_files/assessment_of_the_publication_of_equality_objectives.pdf

c. Most free schools appear to be unaware of the Equality Act 2010 and the PSED.

- Only a third (33.3%) of the free schools that opened in 2011 make references to the Equality Act in key policies and documents.
- Of the free schools that opened in 2012, less than a fifth (18.5%) make references to the Act.
- More than three-quarters (76.9%) of the free schools surveyed make no reference to the Act.
- Only nine free schools (11.5%) make any reference to the PSED.
- 69 out of the 78 free schools (88.5%) make no reference to the PSED.
- More than a quarter of free schools (26.9%) make out-of-date references in their policies to previous duties (such as the disability, gender and race equality duties) that were replaced by the PSED.

| | Free schools opened in 2011 | Free schools opened in 2012 | All free schools opened in 2011 and 2012 (%) |
|--|-----------------------------|-----------------------------|--|
| Reference made to the Equality Act 2010 | 8 (33.3%) | 10 (18.5%) | 18 (23.1%) |
| No reference made to the Equality Act 2010 | 16 (66.6%) | 44 (81.5%) | 60 (76.9%) |
| Reference made to the PSED | 3 (12.5%) | 6 (11.1%) | 9 (11.5%) |
| No reference made to the PSED | 21 (87.5%) | 48 (88.8%) | 69 (88.5%) |

Table 3: Awareness of the Equality Act 2010 and the PSED

d. Many free schools are failing to demonstrate a clear commitment to tackle all types of prejudice-related bullying and harassment.

- Less than half (41.6%) of the free schools that opened in 2011 identify different types of prejudice-related bullying and/or derogatory language in their anti-bullying or behaviour policies.
- A third (31.5%) of the free schools that opened in 2012 do not indicate a commitment to tackle different types of bullying in policies and documents¹².
- 60% of the free schools that opened in 2011 and 2012 do identify the importance of tackling all forms of prejudice-related bullying and harassment.

| | Free schools opened in 2011 | Free schools opened in 2012 | All free schools opened in 2011 and 2012 (%) |
|---|-----------------------------|-----------------------------|--|
| Policies and documents identify prejudice-related bullying | 10 (41.6%) | 37 (68.5%) | 47 (60.2%) |
| Policies and documents do not identify prejudice-related bullying | 14 (58%) | 17 (31.5%) | 31 (39.7%) |

Table 4: Demonstration of commitment to tackle prejudice-related bullying and harassment

¹² No mention of prejudice-related related bullying or derogatory language is made in policies or documents, or the relevant policies are not available on the school website.

11. Conclusions

ROTA is very concerned that the findings of this research indicate that most free school leaders lack knowledge and understanding of the Equality Act 2010 and what it requires. A consequence of this is the widespread lack of compliance with the statutory requirement to publish equality information and equality objectives.

The findings suggest that most free schools are not taking issues related to equality and diversity sufficiently seriously, and that their governing bodies and directors are failing in a core function to ensure that statutory duties are met.

ROTA believes the findings reflect a serious failure in the Department for Education to exercise due care and regard for equality. The Department has also yet to publish its own equality objectives.

ROTA believes that the PSED is a vital tool to make public authorities, including schools, take equalities seriously. Rather than being a burden on schools, the duty can help them to address important priorities such as:

- Eliminating any potential discrimination against pupils, staff and parents
- Narrowing performance gaps between groups of pupils from different backgrounds
- Tackling prejudice-related bullying and derogatory language, such as racist and homophobic abuse
- Meeting the needs of particular groups of pupils and employees
- Reducing disproportionately high rates of exclusion experienced by some groups of pupils, including those from African-Caribbean and mixed heritage backgrounds
- Developing a curriculum that values cultural diversity, challenges prejudice and racism, and promotes pupils' spiritual, moral, social and cultural (SMSC) development.

12. Recommendations

A. Recommendations for free school governors, directors and trustees

The governors' handbook for maintained schools, academies and free schools¹³, published by the DfE, states that:

"The governing body or academy trust is responsible for compliance with the public sector equality duties of the Act and the specific education sections for school pupils."

"Governing bodies should make sure that their school complies with all aspects of discrimination law."

¹³ <http://www.education.gov.uk/schools/leadership/governance/b00224781/govhandbook>

- Free school governors, directors and trustees must take steps to ensure that they know and understand what the Equality Act 2010 requires.
- Free school governors, directors and trustees should ensure that they hold school leaders to account and should require them to provide evidence that they have due regard for equality in all the functions of the school.
- Free school governors, directors and trustees must also ensure that schools are transparent and accountable to parents and local communities by publishing equality information and specific and measurable equality objectives.

B. Recommendations for Ofsted

Ofsted states that an evaluation of how effectively a school actively advances equality of opportunity, tackles discrimination and fosters good relations will contribute to the key judgements they make during school inspections.

To ensure better compliance by all schools with the equality duty, Ofsted should:

- Amend the *Inspecting Equalities* briefing to ensure that when school leadership and management is evaluated, inspectors check that the school has published annual equality information and at least one specific and measurable equality objective.
- Amend the School Inspection Handbook section related to the quality of a school's leadership and management, and ensure that grade descriptors for 'good' and 'outstanding' include compliance with the PSED specific duties.

C. Recommendations for the Department of Education

The government's recent review of the PSED¹⁴ recommended that:

"Guidance must be clearer on the minimum requirements placed on public bodies."

- The DfE should review their current guidance on the Equality Act 2010 and improve the practical advice for schools on what is expected of them under the specific duties regulations.

The equality and diversity page of the DfE website¹⁵ states:

"Under the Equality Act 2010 the department has a legal duty to publish information that demonstrates compliance with Public Sector Equality Duty and to publish equality objectives."

However, it appears that DfE has itself yet to fully comply with the PSED as required by the specific duty regulations.

¹⁴ <https://www.gov.uk/government/publications/the-independent-steering-groups-report-of-the-public-sector-equality-duty-psed-review-and-government-response>

¹⁵ <https://www.gov.uk/government/organisations/department-for-education/about/equality-and-diversity>

- **The DfE should take immediate steps to meet the statutory requirement to publish specific and measurable equality objectives. By doing so the department will be able to demonstrate that it takes the equality duty seriously and is setting an example to schools.**

D. Recommendations for the New Schools Network

The New Schools Network is an independent charity that exists to help groups of teachers, parents, organisations and charities set up free schools.

- **The New Schools Network should provide better guidance and practical support to free schools so they are aware of the Equality Act 2010 and what it requires of them.**

E. Recommendations for the Equality and Human Rights Commission (EHRC)

The EHRC is the regulator with responsibility for the equality duty. As well as publishing guidance to help public authorities, including schools, meet their equality obligations, the EHRC also monitors how they are implementing the equality duty.

The government's recent review of the PSED made a specific recommendation for the EHRC:

'Sector regulators have an important role in supporting implementation (of the PSED).'

- **The EHRC should determine and publish how it would use its range of legal enforcement powers to require free schools to comply with the equality duty.**
- **The EHRC should consider appropriate enforcement action to ensure the DfE fully complies with the equality duty.**

13. Appendix

The public sector equality duty: further information and guidance

Department for Education

Equality Act 2010: Advice for school leaders, school staff, governing bodies and local authorities

<http://www.education.gov.uk/aboutdfe/advice/f00215460/equality-act-2010-departmental-advice>

Equality and Human Rights Commission

Assessment of the publication of equality objectives by public authorities,

http://www.equalityhumanrights.com/uploaded_files/assessment_of_the_publication_of_equality_objectives.pdf

Assessment of public authorities' implementation of the specific duty to publish equality information

http://www.equalityhumanrights.com/uploaded_files/PSD/publishing_equality_information_final.pdf

Equality Act 2010: Technical Guidance for Schools in England

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/ehrc263_code_england_v3.pdf

Public sector equality duty guidance for schools in England

http://www.equalityhumanrights.com/uploaded_files/pdfs/public_sector_equality_duty_guidance_for_schools_in_england_final.pdf

Reasonable adjustments for disabled pupils

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/reasonable_adjustments_for_disabled_pupils_guidance_pdf.pdf

House of Commons Library

The Public Sector Equality Duty and Equality Impact Assessments

<http://www.parliament.uk/briefing-papers/sn06591/the-public-sector-equality-duty-and-equality-impact-assessments>

Ofsted

Inspecting Equalities

<http://www.ofsted.gov.uk/resources/briefings-and-information-for-use-during-inspections-of-maintained-schools-and-academies>

Trades Union Congress

TUC Equality Duty Toolkit

<http://www.tuc.org.uk/equality/tuc-20159-f0.cfm>

'London for All' is a London Councils' funded project to capacity build London's voluntary and community sector. The project aims to help organisations become more efficient, deliver accessible services and better support Londoners.

This is a partnership project, led by London Voluntary Service Council and delivered with Race on the Agenda, Women's Resource Centre, HEAR and Lasa.

'London for All' can help your organisation strengthen its knowledge and skills, work more effectively and efficiently, deliver more accessible services and better support service users.

The London focused aspects of this research report were funded by London Councils through 'London for All'. The parts of the research that focuses on Free Schools outside London were funded separately.

London Councils is committed to fighting for more resources for London and getting the best possible deal for London's 33 councils. To read about London Councils' grants funding and the work of some of the groups we support please visit www.londoncouncils.gov.uk/grants

What is ROTA?

ROTA is an action research and social policy organisation focused on issues impacting on Black, Asian and minority ethnic (BAME) communities.

As a BAME-led organisation, all ROTA's work is based on the principle that those with direct experience of inequality should be central to solutions to address it. Our work is actively informed by the lived experiences of BAME communities and their organisations.

c/o Resource for London, 356 Holloway Road, London N7 6PA
t: +44 (0) 20 7697 4093 e: rota@rota.org.uk

You can find out more at www.rota.org.uk
Follow us on Twitter: [@raceontheagenda](https://twitter.com/raceontheagenda)

Registered Charity: 1064975 Company Limited by Guarantee:
3425664
Published by Race on the Agenda (ROTA)
© 2013 Race on the Agenda

All rights reserved

