



## 7.1.6 The Legal Framework

There are a number of key legal documents and guidance materials that setting/school leaders and SENCOs should be familiar with.

Key documents are:

[The Children and Families Act 2014](#)

[Special Educational Needs and Disability Code of Practice 0 – 25 years \(2015\)](#)

[Working Together to Safeguard Children \(2018\)](#)

[Equality Act 2010: Advice to Schools](#)

[Supporting pupils at school with medical conditions 2017](#)

[A useful mini-guide from NASEN](#)

For practitioners working in Early Years settings, schools and colleges the Children and Families Act 2014, the Equality Act 2010 and The Code of Practice 2015 sets out the key legal requirements and guidance for schools, settings and colleges in relation to children and young people (CYP) with an identified special educational need and or disability.

The Children and Families Act came into force on the 1st September 2014. Part 3 of this Act and associated regulations reforms the duties, policies and procedures relating to children and young people with SEND.

The SEND Code of Practice: 0-25, 2015 provides statutory guidance relating to Part 3 of the Children and Families Act. The SEND Code of Practice: 0-25 (2015), promotes inclusive education and describes how the Equality Act and the Children and Families Act 2014 work together to ensure this:

‘The Children and Families Act (2014) secures the general presumption in law of mainstream education in relation to decisions about where children and young people with SEN should be educated and the Equality Act 2010 provides protection from discrimination for disabled people.’

Putting children/young people and their families at the centre is a key message of the SEND Code of Practice: 0-25 and is at the heart of South Gloucestershire’s Council’s strategic planning, systems and processes for supporting children and young people with SEND.

## So, what are the key principles of The Children and Families Act (2014) and The Code of Practice (2015)?

- Taking into account the views of children, young people and their families
- The needs of CYP are identified early and there is high quality provision to meet the identified needs
- There should be collaboration with partners in education, health and social care to provide the best support
- Focus on inclusive practices and removing barriers to learning
- Helping young people prepare for adulthood including independent living and employment

These principles are underpinned by legal duties placed on Councils and schools and support working in partnership with children, young people and their families.

### What are the duties of Councils?

- a duty to identify all the children and young people in its area who may have SEN or a disability
- to have regard to the views, wishes and feelings of the child, parents and young person
- to develop and publish a 'Local Offer' that sets out the services and provision it expects to be available both inside and outside the LA's area for children and young people with SEN and a disability

### What are schools and settings' duties?

- to build the identification of SEND into the school's overall approach to monitoring the progress and development of all children and young people (CYP)
- to prepare a SEN Information report and publish on their school website showing how they are implementing the school or setting's policy for pupils with SEND
- to use its best endeavours to make sure that a CYP with SEN gets the support they need
- ensure that CYP with SEN engage in the activities of the school alongside CYP who do not have SEN

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- to designate a member of staff at the school (to be known as the “SEN co-ordinator”) as having responsibility for co-ordinating the provision for pupils with special educational needs
- making the quality of teaching and progress for pupils with SEND a core part of the school’s performance management arrangements and professional development for teaching and support staff.
- **must** inform the child’s parent or the young person that special educational provision is being made for the child or young person.

## The Equality Act (2010)

The Equality Act 2010 brought together a range of previous acts including: The Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equality Act (Sexual Orientation) Regulations 2007.

Under this act, the term ‘schools’ applies to:

- local-authority-maintained schools
- academies and free schools
- local authorities
- non-maintained special schools
- independent schools

## What are the key principles?

- Schools have a responsibility not to discriminate
- Provision for disabled CYP is closely connected to policy and procedure for CYP with special educational needs
- Schools are allowed to treat disabled CYP more favourably than non-disabled CYP, and in some cases are required to do so, by making reasonable adjustments to put them on a more level footing with CYP without disabilities
- Direct discrimination or failure to make a reasonable adjustment for a disabled person cannot be defended as justified

As well as general duties for public bodies, the Equality Act states specific duties, mainly:

- Not to treat CYP with SEND less favourably
- To undertake reasonable steps to avoid putting pupils with SEND at a substantial disadvantage

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### **What must the council do in relation to the Equality Act?**

The council is required under Section 10 of the Equality Act 2010 to have an accessibility strategy in which it promotes better access for disabled pupils at school, settings and its local community. You can read the local strategy [here](#).

The purpose of this strategy is to ensure that all children and young people with special educational needs and disabilities have access to the curriculum and to the physical environment. Improving access to education is vital to improving inclusion within mainstream schools and settings, ensuring equality of opportunity, ensuring access to employment opportunities and in ensuring that all children and young people with special educational needs and disabilities have every opportunity to achieve their full potential.

The key aims of South Glos accessibility strategy:

- Increasing the extent to which disabled pupils can participate in the school and setting curriculum.
- Improving the physical environment of schools and settings for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by schools
- Improving the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled

### **What must schools and settings do?**

All schools and settings should have due regard to this Accessibility Strategy and use it to inform their Accessibility Plan that shows how, over time, access to education for disabled pupils will be improved. Schools must publish their Accessibility Plan with links to their SEN Information report on the Local Offer.

### **Reasonable adjustments**

In accordance with the [Equality Act 2010](#), education settings have a duty to make reasonable adjustments to avoid their disabled pupils being at a substantial disadvantage to their non-disabled peers.

This applies to:

- provisions, criteria and practices for example, school policies e.g. behaviour
- auxiliary aids and services e.g. supportive equipment or a member of staff.

When considering reasonable adjustments schools and settings should consider:

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- is the pupil at a substantial disadvantage without it? e.g. falling behind with schoolwork
- could this be avoided? e.g. with one-to-one support or specialist teaching
- is it reasonable for the school to take these steps?

The term 'reasonable' is not defined in the Equality Act, but things that are likely to be considered are the:

- extent to which the disadvantage would be overcome
- extent your child is supported through SEN legislation
- resources the school has, and the costs and practicality of making the adjustment
- extent to which your child will suffer if the reasonable adjustment is not made
- health and safety requirements
- need to maintain academic and other standards
- interests of other pupils and prospective pupils

When making reasonable adjustments, schools or education settings do not have to alter or remove physical features of their building, but they have a general duty to plan better access for disabled CYP.