

Policy Update: The Equality Act and Relationships Education in primary schools

What is the issue?

Primary school leaders in some areas of the country have been the targets of campaigning, protests and abuse relating to their commitment to equality and diversity. LGBT+ inclusion has been the focus of these protests.

Protesters have argued that this learning should not happen in primary schools and that parents should be able to withdraw their children from it.

Are these protestors right?

No – the parental right to withdraw is from sex education only. The learning which has been taking place relating to equality and diversity in affected schools has not been part of a sex education curriculum.

Schools have the responsibility to determine what their pupils need to be taught about equality and diversity in the important context of other requirements, such as British Values, SMSC and their duties under the Equality Act and the Public Sector Equality Duty (PSED).

This is part of a whole school approach in most schools and a strong part of their ethos. It involves learning about equality, diversity, British laws and society, tolerance and respect. It should involve children learning about the community and world they live in, in an age appropriate way.

What are schools' responsibilities under the Equality Act?

[The Equality Act 2010 and schools](#) provides non-statutory advice from the Department for Education (DfE) to help schools to understand how the Equality Act affects them and how to fulfil their duties under the Act.

Of particular relevance is the Public Sector Equality Duty (PSED) that applies to maintained schools and academies and extends to all of the protected characteristics - race, disability, sex, age, religion or belief, sexual orientation, pregnancy and maternity, gender reassignment and marriage and civil partnership.

As part of this duty, schools have a responsibility to consider the need to foster good relations across all characteristics. Promoting good relations between people and groups of all kinds is inherent in many things which schools do through, for example, aspects of the curriculum which promote tolerance and friendship or through assemblies dealing with relevant issues.

Importantly, the Equality Act states that the content of the school curriculum is excluded from discrimination law. The guidance states that excluding the content of the curriculum ensures that schools are free to include a full range of issues and ideas, however challenging or controversial, without fear of legal challenge based on a protected characteristic. But schools do need to ensure that the way in which issues are taught does not subject individual pupils to discrimination.

How does schools' responsibility to promote SMSC and British Values support this learning?

The DfE published [Promoting Fundamental British Values as Part of SMSC in Schools](#) in 2014. This non-statutory advice states:

“It is expected that pupils should understand that while different people may hold different views about what is ‘right’ and ‘wrong’, all people living in England are subject to its law. The school’s ethos and teaching, which schools should make parents aware of, should support the rule of English civil and criminal law and schools should not teach anything that undermines it. If schools teach about religious law, particular care should be taken to explore the relationship between state and religious law. Pupils should be made aware of the difference between the law of the land and religious law.”

Can parents withdraw their children from this learning?

These elements of learning are not part of sex education. There is therefore no parental right to withdraw as such a right only applies to sex education, Religious Education and collective worship.

How is Relationships Education different?

Relationships and Health Education will become compulsory for all primary children from 2020, although early adopter schools, and other schools who choose to do so, will start teaching from September 2019. DfE [Teacher Voice Omnibus survey data](#) suggests that Relationships Education is already taught through personal, social, health and economic (PSHE) education in at least 85% of schools and NAHT supports this approach.

The new guidance makes clear the distinction between “relationships” and “sex” education which will help primary schools in their delivery of appropriate relationships education to all pupils.

The new statutory guidance outlines content for primary schools. The guidance can be accessed [here](#) and covers “Families and people who care for me”, “Caring friendships” and “Respectful relationships”.

Once schools are using the new statutory guidance, the content is clearly set out by the DfE, and schools have a responsibility to deliver it.

Can parents withdraw their children from Relationships Education?

There is no right to withdraw from Relationships Education.

Will the new Relationships Education be LGBT+ inclusive?

The draft statutory guidance states that in teaching Relationships Education, schools should ensure that the needs of all pupils are appropriately met, and that all pupils understand the importance of equality and respect. Schools must ensure that they comply with the relevant provisions of the Equality Act 2010.

It goes on to say that schools should ensure that all of their teaching is sensitive and age appropriate in approach and content. At the point at which schools consider it appropriate to teach their pupils about LGBT relationships, they should ensure that

this content is fully integrated into their programmes of study for this area of the curriculum rather than delivered as a stand-alone unit or lesson.

NAHT has sought further clarity on the situation for primary schools. In Damian Hinds letter to Paul Whiteman, he states:

“We have been clear that pupils should receive teaching on LGBT relationships during their school years - we expect secondary schools to include LGBT content. Primary schools are enabled and encouraged to cover LGBT content if they consider it age appropriate to do so.”

So how can primary schools decide what content is age-appropriate?

The outcomes for Relationships Education contained in the new statutory guidance are expressed as “by the end of primary school pupils should know...”. They are not allocated to a particular key stage or year group. Therefore, schools can decide what is appropriate for each key stage and year group in their school.

The DfE does signpost suggested resources in Annex B of the [statutory guidance](#) including those from the [PSHE Association](#), [Stonewall](#), [NSPCC PANTS](#) and the [Catholic Education Service](#). These organisations have particular expertise and experience and so their resources can help schools in planning a curriculum which is age appropriate.

The DfE regularly signposts to the PSHE Association, the national body for PSHE education, and has funded the Association in recent years to develop guidance for schools on topics such as consent, mental health and character education.

The PSHE Association publishes the Programme of Study for PSHE Education (Key stages 1–5). This programme is available for schools to follow when planning their PSHE provision, and is signposted to by the DfE, in the new statutory guidance on Relationships and Health Education.

This programme includes three core themes – Relationships; Health and Wellbeing; and Living in the Wider World. At primary level, the ‘Relationships’ theme includes a focus on how to respect equality and diversity in relationships, and there are specific outcomes related to this. The PSHE Association also publishes a PSHE Education Planning Toolkit for Key Stages 1 and 2 which expands on these learning aims detailing how to address these issues in lessons.

What role do parents play in these decisions about the curriculum content of relationships education?

The draft statutory guidance says that all schools should work closely with parents when planning and delivering relationships education. Schools should ensure that parents know what will be taught and when. Most schools have existing mechanisms in place to engage parents and should continue to use these as their means of engaging parents with Relationships Education – there is no requirement that this should involve additional mechanisms.

NAHT has sought clarity from the DfE about the role of parents in deciding curriculum content. Damian Hinds, Secretary of State for Education, wrote in his [letter](#) to Paul Whiteman:

“What is taught, and how, is ultimately a decision for the school. Central to the government’s entire education policy is trust for professionals -and we trust and support head teachers to make decisions that are in the best interests of their pupils.

I want to reassure you and the members you represent that consultation does not provide a parental veto on curriculum content. We want schools to consult parents, listen to their views, and make reasonable decisions about how to proceed (including through consideration of their wider duties) - and we will support them in this. We trust school leaders and teachers to make the right professional choices and act reasonably when considering consultation feedback and are clear that dedicated public servants faithfully discharging their duty have an absolute right to feel confident and safe.”

What about sex education in primary schools?

Sex education is not compulsory in primary schools.

It is for primary schools to determine whether they need to cover any additional content on sex education to meet the needs of their pupils. However, the DfE continues to recommend that all primary schools should have a sex education programme tailored to the age and the physical and emotional maturity of the pupils.

Where a maintained primary school chooses to teach aspects of sex education (which go beyond the national curriculum for science), the school must set this out in their policy and all schools should consult with parents on what is to be covered.

Primary schools that choose to teach sex education must allow parents a right to withdraw their children. Head teachers must comply with a parent’s wish to withdraw their child from sex education which goes beyond the national curriculum for science.

What needs to happen next?

The government must give absolute clarity on the following:

- Relationships Education in primary schools must be inclusive of all protected characteristics and treat the different types of relationships in our society equally, reflecting their equal status under the law and so promoting tolerance and respect for diversity
- Relationships Education in primary schools will include LGBT content as set out in the statutory guidance that has already been published
 - In addition to that guidance the DfE has said: “Primary schools are enabled to encouraged to cover LGBT content **if** they consider it age appropriate to do so” which is not helpful to school leaders.
 - The correct wording should be: “Primary schools are enabled to encouraged to cover LGBT content **when** they consider it age appropriate to do so”
- School leaders and their teams should receive the full support of the government and the full protection of the relevant authorities when delivering Relationships Education.