

# Free schools, equality and inclusion





# Free schools, equality and inclusion

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**rota**  
Race on the Agenda

**NASUWT**  
The Teachers' Union

The views expressed in this report are those of the author and may not reflect the position of the NASUWT.

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<b>CONTENTS</b>	<b>PAGE</b>
<b>Executive summary</b> .....	<b>7</b>
<b>Key findings</b> .....	<b>7</b>
<b>Potential equality implications</b> .....	<b>8</b>
<b>Key recommendations</b> .....	<b>11</b>
<b>1. Introduction</b> .....	<b>13</b>
<b>2. Methodology</b> .....	<b>13</b>
<b>3. Findings</b>	
<b>3.1 Literature review</b> .....	<b>14</b>
<b>3.2 Impact assessment and evaluation of school policies</b> ...	<b>21</b>
<b>3.3 Free schools' admissions policies</b> .....	<b>33</b>
<b>3.4 Online survey</b> .....	<b>45</b>
<b>4. Conclusions</b> .....	<b>49</b>
<b>5. References</b> .....	<b>51</b>



## **EXECUTIVE SUMMARY**

### **Key findings**

1. There is a failure of free schools to demonstrate awareness of the Equality Act 2010 and adherence to the Public Sector Equality Duty (PSED).
2. In practice, many free schools are not operating fair and inclusive admissions policies and there is an almost total absence of any reference to Fair Access Protocols in free schools' oversubscription criteria.
3. Fourteen per cent of free schools referred to additional procedures such as tests, interviews or auditions. Although some of these schools were post-16 colleges or converter schools, around 3% of primary and secondary free schools were testing, auditioning or selecting on ability or aptitude.
4. The subject areas on which free schools intend to select a proportion of pupils by ability or aptitude now include drama, maths and science as well as music.
5. Only a very small minority of free schools appear to be taking positive steps to make their admissions arrangements equal and inclusive.
6. Barriers linked to financial expertise, resources and social capital continue to affect Black, Asian and Minority Ethnic (BAME) communities disproportionately in their efforts to establish free school projects.
7. The expectation that free schools would generate significant interest in opportunities for BAME communities to address some persistent educational inequalities is not being fully realised.
8. Measures to review the effectiveness of the free schools programme appear unlikely to directly address issues of equality and inclusion.
9. Some free schools have been approved to open even though proper equality impact assessments have not been carried out and others have opened although their impact on other local schools had been judged likely to be detrimental.

10. Where free schools provide a map of their catchment area, the information provided is insufficiently explanatory, e.g. in cases where the catchment area appears to exclude certain neighbourhoods, or is very wide, or where feeder schools are mentioned.

## **Potential equality implications: Equality Information and Objectives**

### **Equality information**

A lack of knowledge and understanding of the Equality Act 2010 and what it requires makes it difficult for free schools to fulfil their PSED.

If information is not published, the free school's community and others will not be able to see how the school is advancing equality.

### **Equality objectives**

Where free schools are not publishing their equality objectives, their commitment to equality and inclusion cannot be clearly demonstrated.

In schools where equality objectives are clearly defined and associated with specific measurable outcomes, this substantiates the free school's commitment to equality and inclusion more clearly and helps them to take more practical and active steps to address inequalities than in schools where the objectives are absent or weak. It is of concern that so few free schools are able to provide good equality objectives.

## **Potential equality implications: Admissions Policies**

### **Catchment area information**

Some children from socioeconomically less advantaged neighbourhoods or schools which seem to be geographically close may appear to be excluded from the free school's specified catchment area.

### **Oversubscription criteria**

That the majority of free schools are publishing their oversubscription criteria and referring to all groups of children prioritised in the School Admissions Code shows a good adherence to the guidelines and awareness of the need to consider equality and inclusion.

It is of concern that over a quarter of the free schools that opened in 2013 have oversubscription criteria which refer to founders and/or staff. This



proportion appears to have increased by 20% since examining the oversubscription criteria of the first 40 free schools which opened in 2011.

Free schools may choose to select a proportion of pupils on ability or aptitude and, if doing so, must explicitly state this in their admissions information. Aside from difficulties in distinguishing between ‘aptitude’ and ‘taught ability’ there is the likelihood that children who experience socioeconomic deprivation will be at a disadvantage. Such children may not have access to out-of-school lessons such as music, or tutoring or coaching in other subjects, or may not have received preparation for tests or auditions.

The use of a selection test to ‘band’ or allocate children to places, instead of gathering the information by other means, such as primary school assessments, may have potential equality implications. It cannot be said conclusively that some free schools are using a form of testing and banding to select on ability that may advantage children of higher ability, but more transparency is needed about the purpose of the test and more information about whether such tests are widely used in other maintained schools.

The issue of some free schools prioritising applicants from named feeder or partner schools continues to give some concern around the risk of this allowing for pupil selection by excluding local schools serving areas of higher deprivation (ROTA, 2012). There appears to be a higher proportion of schools which give priority to feeder/partner schools now (19.6%) than in 2011, when only 5% were doing so.

### **Equality and inclusion in admissions policies**

The finding that so many free schools are failing to make reference to equality or inclusion in their admissions policies indicates a lack of any convincing commitment to ensuring that equality is central to the free schools programme.

Where free schools provide details about equality and inclusion, it is of concern that commitment is not followed through adequately in policy and practice. This implies considerable unmet need amongst free schools in terms of meeting the PSED and achieving equality and inclusion in service provision.

## **Application forms and processes**

Where there are no forms and no clear details of how parents should apply, whether in person or in writing for instance, this may signify a lack of transparency about the admissions process.<sup>1</sup>

Forms which are more complicated may deter parents with limited literacy skills or knowledge of the British school system from applying, reducing potential admissions of pupils from certain BAME communities.

Giving preference to parents who can demonstrate that they take part in voluntary or charitable activity may result in deterring those who are not able to undertake such work, such as the working poor, among which group BAME communities are over-represented.

Transparency may be an issue regarding the purpose of some social or informal events to which parents are invited. Where free schools hold information events or parents are asked to make a 'booked session', unless the nature of the session is clearly stated, such as an open evening or tour of the school, it may not be clear that the purpose of the session is not part of an interviewing or pre-selection process.

There may also be a question of transparency around free schools requiring parents to pre-register or write in with their details before applying, as was found to be the case with two secondary free schools and one primary free school.

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1 A few schools indicated that their websites did not yet contain all the information they intended to publish on their admissions arrangements.

## 1. INTRODUCTION

The free schools programme initiated by the Coalition Government in 2011 aimed to give parents, teachers and others that are interested the chance to create new schools, thereby improving the choice of schooling. Free schools will often be run by an 'education provider' brought in by the group setting up the school. There are now 174 open free schools. A further 102 have been approved to open in 2014 (Department for Education, 2013).

The Race on the Agenda (ROTA) report *Inclusive Schools: The Free Schools Monitoring Project* (2012) gathered material which related to free schools in England, BAME communities and/or the Equality Act 2010 and referenced sources in the US and Sweden, where similar school programmes have been established. The research found that the programme has been characterised by a lack of transparency and accountability and a lack of evidence as to whether disadvantaged communities are benefiting. The research addressed the degree to which disadvantaged communities were engaging with the free schools programme and the degree to which equalities are being considered in service planning and development. It also looked at the impact of free schools on access to local education services. There was evidence that the free schools programme in England was not being adequately equality impact assessed and that there are risks that free schools may increase ethnic and socioeconomic segregation and inequality.

Research undertaken by ROTA in 2013 surveyed the first two cohorts of free schools that opened in 2011 and 2012. The websites of 78 free schools were examined to see whether free schools showed an awareness of the Equality Act 2010 and their PSED and the extent to which free schools were publishing equality information and specific and measurable equality objectives. Findings indicated that not only were most free school leaders lacking knowledge and understanding of the Equality Act 2010 and what it requires, but also that there was widespread lack of compliance with the statutory requirement to publish equality information and equality objectives (ROTA, 2013).

This research aims to provide further evidence to help establish whether findings such as these are more entrenched and widespread.



## **2. METHODOLOGY**

The project included a literature review, an examination of the websites of free schools through equality impact assessments and evaluation of school policies and a survey of free schools.

### **2.1 Literature review**

A review of literature was carried out of: material relating to 93 free schools which were approved to open in England in 2013 to see how they will implement and practise their PSED; material relating to BAME engagement with and participation in the free schools programme to identify the level of involvement of BAME communities within successful free school projects; and material relating to aspects of free schools' potential impact on local education services. The sources of information included publicly available information on the free school programme, research reports, survey findings and media commentary.

### **2.2. Equality impact assessment and evaluation of school policies**

The websites of 93 free schools approved to open in 2013 were examined to identify the degree to which these schools were considering equality and inclusion in their education service delivery and in their admissions policies. The range of material included equality and inclusion policies, anti-bullying policies, Special Educational Needs and Disability (SEND) policies, behaviour policies, school vision and ethos statements, school admissions policies and application forms.<sup>2</sup>

### **2.3. Survey of free schools**

A total of 1,210 successful and unsuccessful free school projects were identified. A survey of these projects was carried out during January and February 2014 to determine how BAME communities can benefit from the free schools programme and the type of support, interventions and strategies needed to ensure that equalities are embedded in policy and practice.<sup>3</sup>

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2 Policies and information could not be located on around one third of the free school websites visited between November 2013 and January 2014.

3 The survey of free schools is to be extended from February to April 2014.

### 3. FINDINGS

#### 3.1. Literature review

With specific regard to BAME children and young people from communities historically faced with acute educational disadvantage, we explored any available literature and critical evidence on:

- how free schools will implement and practise their PSED;
- BAME engagement/participation with the free schools programme;
- some aspects of free schools' potential impact on local education services.

#### 3.1.1 Free schools, equality and the Public Sector Equality Duty Equality duties

Prior to the instigation of the free schools programme, concerns had been raised that schools were not adhering to their PSED. The Equality and Human Rights Commission (EHRC) reported that:

*'Many schools in England and Wales are not, generally speaking, operating fully within the equality duties framework. Rather, the evidence suggests that schools are falling somewhere along a scale of adherence to and adoption of the duties and consequently there is some considerable variation in schools' capacity to link pupil outcomes to the equality framework'.*

*(EHRC, 2011)*

Evidence from ROTA in relation to free schools substantiates this concern. Based on a survey by ROTA in October 2013, of the 78 free schools that opened in 2011 and 2012, it was found that:

- only two of them are fully meeting the requirement to publish equality information and measurable equality objectives;
- only six (7.7%) have published at least one equality objective – a poorer level of compliance than other types of school;
- most free schools appear to be unaware of the Equality Act 2010 and the equality duty, 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 anti-bullying or behaviour policies (ROTA, 2013).

Ofsted's briefing paper *Inspecting Equalities* (January 2014) gives guidance to school inspectors on compliance with equality objectives with regard to the PSED and how well a school advances equality, in relation to pupil achievement, quality of teaching, behaviour and safety, and leadership and management.

The EHRC's guidance to schools on equality makes specific mention of admissions, educational access and exclusions regarding pupils of all protected-characteristics groups (EHRC, 2010).

Few other sources have been identified which make specific reference to how it can be ensured that equality is a central commitment of the programme.

### **Admissions**

The School Admissions Code applies to admissions to all maintained schools in England. The purpose of the code is:

*'To ensure that all school places for maintained schools (excluding maintained special schools) and Academies are allocated and offered in an open and fair way.'*

(DfE, 2012)

Although free schools are bound by the School Admissions Code, ROTA's report (2012) found evidence to suggest that admissions policies used by free schools and academies (which administer and deliver their own admissions policies) may be a deterrent to disadvantaged parents. Certainly, the proportion of all pupils at first-year intake at free schools who are eligible for Free School Meals (FSM), compared with the proportion in maintained schools, although rising, is still calculated to be below the national average at 16.4% and 18.3% respectively (DfE, Statistical First Release, 2013).

Do free schools operate less inclusive admissions policies than other local schools? A lack of data relating to admissions and acceptances has hampered ROTA's investigation of this question since the free school programme was instigated. A paucity of evidence on admissions

data in all schools, including academies and free schools, has been noted by the Academies Commission (The RSA, 2013). The Commission, although broadly supportive of the aims of the academies programme to address educational disadvantage, found that many schools were not publishing the kind of information which enables a proper assessment and scrutiny of admissions policies and practices and recommended that:

*'The Department for Education should require all schools and academies to publish data on applications and acceptances for school places in relation to Free School Meals or other socio-economic data. The data should be scrutinised and reported on by the Office of the Schools Adjudicator with a particular focus on identifying any growing risk of socio-economic segregation.'*

*(The RSA, 2013)*

The lack of information about admissions policies with regard to banding/fair banding and the use of selection tests has also been noted. The means by which free schools band applicants, and the effectiveness of the practice, cannot always be easily established. This appears to be true of many schools and academies. Research by the Sutton Trust has indicated that in none of the areas in which secondary schools in England were examined regarding banding did they use the same banding arrangements:

*'In each area a banding test was carried out within local primary schools. Nevertheless, in two of the three areas some schools required applicants to sit an additional banding test. The use of multiple banding tests was criticised on the grounds that it did not assist pupil access, was inconvenient for parents, demanding for children and wasteful of public resources.'*

*(Sutton Trust, 2014)*

Despite the requirement to comply with the PSED and the availability of guidelines from the DfE, the EHRC and Ofsted, it is apparent that in practice many free schools are not operating fair and inclusive admissions policies.



### **3.1.2 BAME engagement with free schools projects**

#### **Barriers to engagement**

Previous research carried out by ROTA indicates that although there is strong motivation for BAME communities in areas of high educational need to become involved as proposers or supporters of free school projects, barriers exist. There are particular barriers in leading and engaging in successful free school projects which are linked to financial expertise, financial resources and social capital, along with inconsistencies in the free school application process. These affect BAME communities disproportionately in their efforts to establish free schools and have important equality implications (ROTA, 2012).

The findings of ROTA's survey of free schools (ongoing) appear to confirm that this is still the case for a number of free schools proposers. The level of support available to free school proposers has been an issue with some free schools surveyed, who have been unaware, for example, of the resources available, or unable to access information provided by the advisory body, New Schools Network.

Groups facing discrimination and exclusion from the decision-making processes in education are still less likely to engage with the free schools project and are less likely to have the social capital for participating. There is also a question of whether the application process itself may present barriers to some free school proposers.

The case of Diaspora High School in the London borough of Lewisham recently served to illustrate some of the challenges faced by free school proposers from BAME communities. Diaspora's application was rejected three times by the DfE, giving rise to concerns from the proposers that there had been some degree of discrimination in the application process. Details of the decision were not available on the website of the DfE (accessed 18 February 2014) but it has been reported in local and national media that, as a result of the decision being challenged in the High Court, the DfE agreed to make changes to the free school application process and record details of any equality impact with applications. A Judicial Review was called off after the DfE promised talks with the free school proposers (*The Independent*, 18 February 2014).

## **Confidence in the free schools programme**

A YouGov poll for *The Times* conducted in October 2013 reported that support for free schools had dropped from 36% to 27% (YouGov, 2013). The expectation that free schools would generate significant interest in potential opportunities for BAME communities to address some persistent educational inequalities has received setbacks. It is almost certain that recent, widely publicised failures of several free schools have contributed to a lack of confidence about the governance and oversight of free schools. The Al-Madinah free school in Derby, for example, faced a number of difficulties which resulted in the school being unable to continue. Ofsted inspectors said: ‘The governors have failed the parents of this community who have placed their trust in them’ (Hansard, 17 October 2013, Column 889).

Instances where free schools have struggled to deliver educational services highlight a need for better support for free school projects, whether successful or not. This was reflected in findings from ROTA’s first report on free schools (ROTA, 2012) which indicated that free schools which are open need more support, to comply, for example, with the Equality Act 2010.

## **Measures to address issues of engagement and equality within the free schools programme**

Questions were raised in the House of Commons on 17 October 2013 by Tristram Hunt MP, Labour Shadow Education Secretary, who brought up some wider policy issues regarding the oversight and support for free schools; the qualification and training of teachers; and scrutiny of pre-applications (Hansard, 17 October 2013). Subsequently, the Education Committee Inquiry announced that the effectiveness of academies and free schools in ‘narrowing the gap for disadvantaged children’ and ‘the process for approving free schools’ is to be addressed, both of which directly or indirectly have bearing on BAME communities’ involvement and participation (UK Parliament Education Select Committee, 6 November 2013). This is particularly timely, in view of findings about the lower rate of enrolment of pupils from disadvantaged backgrounds in free schools and inconsistencies found by BAME communities in the free schools application and approval process, which ROTA highlighted in 2012.

Other initiatives regarding the free schools and academies programme have been announced, including the proposed appointment of Regional Schools Commissioners in eight regions and the Blunkett Education Review into improving the local oversight of schools, published in 2014.

At present it seems unlikely that any of the proposed measures to review the effectiveness of the free schools programme will directly address issues of engagement and equality.

- The UK Parliament Select Committee Education Inquiry has begun gathering evidence (5 February 2014). Its remit does not appear to specifically address equality.
- The main role of the proposed Regional Schools Commissioners is to support existing schools seeking to convert to academies or free schools (DfE, 2014).

It may, however, be useful to monitor the findings of these inquiries to see whether any policy recommendations or actions on equality and the free schools programme are likely to result. The Select Committee Education Inquiry has received 94 written submissions from a range of stakeholders, parent organisations, community groups, school alliances, teachers and others. Voluntary sector organisations which are concerned about equality and inclusion are to be contacted to respond to reviews and inquiries of free schools so that they ensure that equality and inclusion is included in their remit.

### **3.1.3 Impact of free schools on local education services**

#### **Impact assessments**

The Academies Act (2010) stipulates that where a new school is to be opened, the impact on neighbouring schools must be taken into account. Issues to do with premises and location have had significant equalities implications, particularly in relation to free schools opening in areas where disadvantaged BAME communities are often over-represented (ROTA, 2012).

The Academies (Land Transfer Schemes) Regulations 2012 allow free schools to take over land or premises formerly occupied by maintained schools, a development which has led to a degree of unease about the impact on local educational services. In 2013 in Hammersmith and Fulham, for example, the proposed closure of an Ofsted-rated

good/outstanding primary school with a large majority of pupils from BAME communities, to enable occupancy by a new free school, prompted particular concerns about educational and social disruption to pupils (Local Schools Network, 2013).

Doubts have been expressed about the ‘need’ for free schools in areas which are apparently well served by other schools. In a press release from the DfE, the Rt Hon Michael Gove MP, the Secretary of State for Education, announced that 91% of approved primary free schools were in ‘areas of basic need’ (Gov.uk, 2013), but this had been disputed in several local areas.

The National Audit Office reported that:

*‘Most primary Free Schools are in areas that need extra school places but application levels from areas of high or severe need have been mixed...only 19% of secondary places in Free Schools are in districts forecasting high or severe need.’*

*(National Audit Office, 2013)*

Media reports indicated that, by the DfE’s own impact assessments of the first wave of free schools, some free primary schools had been established in areas where there was ‘no lack of places’, such as Priors School, East Warwickshire, Rainbow Primary, Bradford, and Maharishi, Lancashire, and that approvals had been skewed towards schools in areas in which middle class children lived (*Observer*, 2013).

Evidence is emerging that some free schools were allowed to open, even though their impact on other local schools had been judged likely to be detrimental. Currently, impact assessments, instead of taking place prior to the free school consultation process, are carried out after the signing of the free school funding agreements and full ongoing engagement of schools thereafter. This raises issues about local communities’ consultation rights, including those of BAME people living in areas in which free schools are proposed.

Suspicious have been raised that proper equality impact assessments have not been carried out in a number of cases where free schools have been given approval to open. With respect to one free school approved to open, it was reported that: ‘There had been an apparent failure by the Secretary of State to undertake a proper equality impact

assessment...to identify the circumstances of children affected by the opening of King's Priory Academy' (North Tyneside Council, July 2013).

### **Catchment areas**

Gathering information relating to free schools' admissions practices and whether they include anything that could be directly or indirectly discriminatory is hampered by a lack of information about catchment areas, such as the profile of the local school age population, in relation to pupil intake or characteristics of the school's pupil population. As schools are not required to provide information on their pupil intake, it is not easy to determine the characteristics of pupil population in free schools and how representative this is in relation to the local communities. A source for this type of information is Ofsted's reports, which refer to intake, albeit in general terms (Ofsted, 2013). Twenty-four free schools have been inspected in England by Ofsted so far.

In the especially diverse areas of London, the Ofsted reports on five free schools (three primary, two secondary) indicated that:

- two of the five had an intake which was 'largely' white British and 'below' or 'well below' average intake of pupils eligible for FSM;
- three had an intake of 'around/above' or 'with a wide range' of BAME pupils and 'average' or 'below average' pupils eligible for FSM.

Although it is not possible to draw conclusions from this limited sample, a further analysis of all schools which have been inspected by Ofsted may help determine whether the pupil population of the school in relation to the local school age population has equality implications for the way free schools develop fair and inclusive admissions practices.

## **3.2 Impact assessment and evaluation of school policies**

### **3.2.1 Introduction**

All schools in the maintained sector, including free schools and academies, are required to meet the PSED as set out in the Equality Act 2010. Schools are expected to respond to the needs and improve the outcomes for pupils from all backgrounds and circumstances. The Equality Act 2010 refers to the advancement of equality of opportunity as having due regard to the need to: remove or minimise disadvantages; take steps to meet different needs; encourage participation when it is disproportionately low; and tackle prejudice and promote understanding.

The EHRC, which is the regulator responsible for the equality duty, publishes guidance to help schools meet their equality obligations (EHRC, 2012).

The first specific duty which all schools in England, including academies and free schools, must carry out to help meet their general equality duty is:

- to publish, at least annually, equality information to demonstrate how they are complying with the equality duty.

Advice from the DfE (2013) that the information should be ‘accessible to those members of the school community and the public who want to see it’ is more fully explained by the EHRC, which advises that:

*‘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.’*

(EHRC, 2012)

This information should include: evidence of the analysis undertaken to establish whether the schools’ policies and practices have, or will have, furthered the three Equality Aims of the General Equality Duty; details of the information used in carrying out the analysis; and details of engaging with people with an interest in furthering the aims of the duty.

Some examples of the type of information which schools should consider publishing might be data on ‘key stage results broken down by protected groups’ or information on ‘how well different ethnic groups do at different key stages’, e.g. in regard to exam results, exclusions, reports and bullying (EHRC, 2011).

The second specific equality duty is:

- 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 (The Equality Act 2010, Specific Duties).

The EHRC's guidance to schools on equality objectives focuses on actions that will improve pupil outcomes which are linked to measures of success:

*'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.'*

(EHRC, 2012)

When referring to 'equality objectives', we have used the EHRC's definition of an equality objective as 'a clearly defined and measurable commitment' (EHRC, 2012).

### **3.2.2 Equality and inclusion**

The websites of 93 free schools opening in 2013 were examined to identify the degree to which free schools are considering equality and inclusion in their education service delivery, specifically:

- If free schools show awareness of the Equality Act 2010 and the PSED.
- Whether free schools are publishing equality information and specific and measurable equality objectives.

### Awareness of Equality Act 2010 and PSED

Eighteen free school websites visited were recorded as not currently accessible/website under development/redirected to another site/web pages or links to documents empty. These websites will continue to be monitored so that information can be added to the database as it becomes available.

#### Most free schools appear to be unaware of the Equality Act 2010 and Public Sector Equality Duty.

Of the 75 free school websites where information was available, fewer than half (48%) made reference to the Equality Act 2010 in key policies and documents. Only one made reference to the PSED.

When this is compared with data collected for 2011 and 2012, there is an increased percentage of free schools making reference to the Equality Act 2010 than in the previous two years. The percentage of free schools making reference to the PSED appears to have diminished in 2013. The overall figures for 2011, 2012 and 2013 indicate that the majority of free schools are not making reference to the Equality Act 2010 or the PSED.

	Free schools opened in 2011	Free schools opened in 2012	Free schools opened in 2013	All free schools opened in 2011, 2012 and 2013
Reference made to the Equality Act 2010.	8 (33.3%)	10 (18.5%)	36 (48%)	54 (35.2%)
No reference made to the Equality Act 2010.	16 (66.6%)	44 (81.5%)	39 (52%)	99 (64%)

Table cont'd.



Reference made to the Public Sector Equality Duty.	3 (12.5%)	6 (11.1%)	1 (1.3%)	10 (6.5%)
No reference made to the Public Sector Equality Duty.	21 (87.5%)	48 (88.8%)	74 (98.6%)	143 (93.4%)

*Table 1. Reference made to the Equality Act 2010 and Public Sector Equality Duty 2011-2013*

*Source: ROTA, 2013*

**PSED specific duties: publication of equality information and objectives**

Schools may choose to publish their equalities information in a range of ways: on an equality page on the school’s website, for example, or in other documents. The EHRC advises that these may include school performance data, anti-bullying policies, school development plans, equality milestones, curriculum materials, governing bodies’ minutes, equality training materials, parent or pupil surveys (EHRC, 2012).

Where there were no equality pages or links to equality statements, we looked at the school’s prospectus, ethos or aims, SEND policy, anti-bullying and behaviour policies.

**Over one third of free schools appear to have no equalities information and no equality objectives relating to their public sector equality duties.**

Of the 75 free school websites which were accessible, over one third (37%) appeared to have no equalities information and no equality objectives relating to their public sector equality duties.

Around a half (47%) provided minimal or some equalities information, some with and some without general or specific objectives.

Fewer than 10% of free schools were providing good equalities information and one or more specific objectives.

	Free schools opened in 2013
No equalities information or equality objectives.	28 (37.3%)
Minimal equalities information. No equality objectives.	22 (29.3%)
Some equalities information. General objectives.	14 (18.6%)
Some equalities information. One or more specific equalities objectives.	4 (5.3%)
Good equalities information. One or more specific and measurable equality objectives.	7 (9.3%)

*Table 2. Equalities information and equalities objectives*

The analysis of the free school websites revealed a lot of variation in the publication of equality information and objectives. Examples are given for:

- free school websites with no equalities information and no equality objectives;
- minimal equalities information and no equality objectives;
- some equalities information and general objectives;
- some equalities information and one or more specific objectives;
- good equalities information with one or more specific and measurable equality objectives.

Thirty-seven per cent of free school websites have no equalities information and no equality objectives.

Examples 1 and 2 below are illustrative of free school websites where there is no information on equalities provided separately or in anti-bullying, SEND or behaviour policies, equality statements,

prospectuses, ethos or aims, nor any reference to the Equality Act 2010 or PSED.

**Example 1. No link to any policies; ‘policies kept in office’ (primary school).**

**Example 2. No statement on equality or any equalities information on the website, prospectus or elsewhere. No equalities policy on the website. No reference to Equality Act 2010 or PSED (secondary free school).**

Examples 3 and 4 below are illustrative of free schools which make reference to relevant documents, or refer to inclusivity and diversity, but where the documents or policies are not publicly accessible.

**Example 3. Behaviour policy refers to ‘Race Equality’ and ‘Equal Opportunities’ documents but these are not available on the website. No equalities policy on the website. No reference to Equality Act 2010 or PSED (secondary free school).**

**Example 4. Paragraph on inclusivity and diversity, ‘ensuring that learning opportunities reflect the mix of children’, but no equality information, no explanation or enlargement of this, no reference to Equality Act 2010 or PSED, no policies or documents (primary free school).**

**Twenty-nine per cent of free school websites have minimal equalities information and no equality objectives.**

The examples below illustrate minimal information, i.e. it appeared insufficient for the school to use in order to ‘help parents to understand what the school is doing to eliminate any potential discrimination, advance equality of opportunity and foster good relations’, or to develop equality objectives (EHRC, 2011).

In these examples there were no equality policies on the website, but there were some references to equalities elsewhere, e.g. in vision/mission statement/ethos or in other school policies, such as the anti-bullying or SEND policies.

Examples 1 and 2 are general references, e.g. a statement of commitment to equality and diversity or an outline of equality principles or aims, but policies are not yet complete. These examples appear to show that the schools are aware of the need to carry out certain actions, such as collecting pupil data for example, so that equality objectives can be developed.

**Example 1. No equalities policy on the website. 'Inclusion Policy' refers to the Equality Act 2010 regarding disability and mentions 'effective provision for all EAL students'. Unclear whether inclusion policy has been developed from the school's equality data. Statement on the website that policy is incomplete/will be added to (secondary free school).**

**Example 2. No equalities policy on the website. Race, equality and diversity, and community cohesion policies mentioned but not on the website. Anti-bullying policy refers to the Equality Act 2010 and PSED and mentions all protected-characteristics groups. Statement that pupil equality data is not yet available (primary free school).**

Example 3. Although having no equality policy on the website, reference is made to the Equality Act 2010 and some general aims for promoting equality.

**Example 3. No equalities policy on the website. Anti-bullying and SEND policies refer to the Equality Act 2010 and mention all protected-characteristics groups. Some general objectives in SEND policy, e.g. promoting equality of opportunity (secondary alternative provision free school).**

**Eighteen per cent of free school websites have some equalities information and some general objectives.**

The examples below are where some equality information, accompanied by some statements, principles or general objectives about equality were found. There was either an equality policy on the website which mentioned the Equality Act 2010 and/or SEND policy or other documents or policies with equality principles, guidelines and general objectives that indicated awareness of equality duties. The general objectives, however, were not evidenced by follow-through, e.g. action plans or specific objectives relating to particular protected-characteristics groups or specific issues of inequality they faced.

These free schools indicated that they were taking some steps to address inequality in comparison with those which provided no information. However, as there were no specific objectives published which could be said to demonstrate ‘a clearly defined and measurable commitment’, as described by the EHRC, it was less likely that the objectives would be acted on and would lead to improvements in equality.

Example 1 has identified a clause in the Equality Act 2010 which, if related to anything more specific that the school could take action on, would be a good illustration of positive steps to address inequality, e.g. in the progress and attainment of a particular group of children.

**Example 1. Equality policy on the website mentions the Equality Act 2010 and states that the school ‘may decide to use the Positive Action Clause in relation to Afro-Caribbean boys’. Anti-bullying policy refers to all protected-characteristics groups (alternative provision free school).**

Examples 2 and 3 have broad equality objectives, but need to be more clearly linked with specific actions.

**Example 2. Equality policy on the website mentions the Equality Act 2010. Broad objectives, e.g. ‘achieve a staffing composition that reflects the wider community’ and ‘actively promote anti-discriminatory behaviour’ (secondary free school).**

**Example 3.** Equal opportunities, diversity and anti-racism policies on website. Although there is no specific reference to Equality Act 2010, previous legislation, e.g. Race Relations Act (1976, amended 2000), Disability Discrimination Act (1995) and Sex Discrimination Act (1986), mentioned and some general objectives developed. Equal opportunities policy has aims for diversity, inclusion and good practice, e.g. 'monitor and evaluate effectiveness in providing an appropriate curriculum for students from all racial groups'. Diversity policy aims to 'make equal opportunities practices evident and embedded in school programmes of study, in extra-curricular activities, school ethos, personal relationships' (secondary free school).

Example 4 shows awareness of educational inequality faced by a particular group of children (traveller children) and has identified an action that could concretely address this inequality. However, it could be improved by showing how the need for it is evidenced in the school's pupil data for example. A way of making the objective more specific and measurable would be to state the number of children to whom learning packs would be provided and how their use would be evaluated.

**Example 4.** Equalities policy mentions the Equality Act 2010 and the PSED. Equal opportunities (pupils) policy has examples of objectives/actions for particular protected-characteristics groups, e.g. 'Distance Learning Packs are provided to support continuous learning for Traveller children' and 'Interpretations and translation services made available as quickly as possible for children with EAL'. No outcomes or measures for evaluating objectives (secondary free school).

**Only 5% of free school websites with some equalities information have one or more specific equalities objectives.**

Some free schools are providing more detailed information on equality with at least one specific equality objective. These schools are beginning to develop better equality information and objectives, but there was variation in the type and amount of equality information available, the degree to which they had developed specific equality objectives and the degree to which they had put in place measures of

achievement. In Example 1, below, the school appears to be using equality information which it collects on pupils and staff to identify areas where action needs to be taken, but specific actions have not been put in place.

**Example 1. Equalities duty policy has employees' protected-characteristics profile and statistical information, equality principles and guidelines. Policies on equality and anti-discrimination refer to the Equality Act 2010 and the PSED. The policy for students with English as an Additional Language/BME students has some actions for tracking individual pupil progress to narrow attainment gap, but no specific or measurable objectives. The equalities policies outline some broad objectives, e.g. 'training for staff in racism awareness, equalities and legislation' (all-through free school).**

**Fewer than 10% of free school websites have good equalities information and one or more specific and measurable equality objective.**

In line with recommendations from the EHRC, 'measurable, positive outcomes' should demonstrate 'a perceptible link between an action taken by the school to promote equality or to counter discrimination and the impact regarding positive pupil outcomes.'

A minority of free schools published more complete information, of the kind that would 'help parents to understand what the school is doing to eliminate any potential discrimination, advance equality of opportunity and foster good relations' and had at least one 'clearly defined' and specific objective or 'commitment' with an explanation of how it was to be measured (EHRC, 2011).

Example 1 [over] illustrates a good awareness of specific actions which can be taken in one particular area, e.g. to ensure equal participation of girls in physical activity. The objective is specific, in that it mentions monitoring activities, pupil surveys and feedback on impact of action over a defined time frame.

**Example 1.** Equality objectives on the website refer to the PSED and identify which protected-characteristics groups the objective relates to, the target, the action, who responsible and the timeframe. There are ten specific objectives listed, e.g. 'Ensure girls are equally involved in physical activity. Ensure good participation of girls in targeted sports activities. Involve female teachers in PE. Monitor attendance of girls at out-of-hours sports clubs. Survey girls and understand barriers to participation over 1-year time frame.' Equality Impact Assessment Framework on website for collecting evidence on equalities for age, disability, gender, gender identity, sexual orientation, race, religion, with type of impact, level, whether negative impact, consultation, research evidence, changes in impact, implementation, issues, action to be taken and timescale (secondary free school).

Example 2 has specific equality objectives for an area of concern which the school has prioritised for action. The steps to be taken are listed with aspects of equality to be addressed, success criteria, outcomes, person responsible for leading, activities to be undertaken, monitoring and gathering evidence and timescale. In this respect, the information and the equality objectives are more comprehensively explained and appear to demonstrate a good level of commitment to addressing specific equality issues through targeted actions.

**Example 2.** Equality Policy on the website refers to the Equality Act 2010 and demonstrates awareness of the PSED in relation to equality objectives. Annex 2 of policy contains strategic objectives with actions, outcomes, monitoring criteria and timescales, e.g. 'Eliminate discrimination by addressing prejudice related incidents, raising awareness of sexual orientation and promote positive attitudes towards alternative lifestyles, lessening the chances of the word "gay" being used negatively especially among KS3 students', is associated with a range of actions such as assemblies, staff training, curriculum revisions, peer support and mentoring, with measures to monitor reduction of incidents, changes in attitudes, impact of peer mediators and supporters, bi-annually (alternative provision free school).



## Potential equality implications

- A lack of knowledge and understanding of the Equality Act 2010 and what it requires make it difficult for free schools to fulfil their equality duty.
- If information is not published, the free school's community and others will not be able to see how the school is advancing equality.
- Where equality objectives are not available, a commitment to equality and inclusion cannot be clearly demonstrated.
- In schools where equality objectives are clearly defined and associated with specific measurable outcomes, this substantiates the free school's commitment to equality and inclusion more clearly, and helps them to take more practical and active steps to address inequalities, than in schools where the objectives are absent or weak. It is of concern that so few free schools are able to provide good equality objectives.

### 3.3. Free schools' admissions policies

#### 3.3.1. Catchment areas

The catchment information provided by free schools appeared to be limited and could be improved, e.g. where the catchment area appears to exclude certain neighbourhoods or is very wide, or where feeder schools are specified.

Some children from socioeconomically less advantaged neighbourhoods or schools, although geographically close, may appear to be excluded from the free school's specified catchment area. For example, the Office of the Schools Adjudicator ruled in February 2012 that the Charter School in south London was in breach of the admissions code because it had defined a catchment area which was 'excluding children from two council estates with the risk of skewing its intake against some socioeconomically disadvantaged children' (Office of the Schools Adjudicator, 2012).

Other instances have been identified where the list of 'feeder schools' appears to exclude those which serve less advantaged communities, even though they are geographically nearby, as in the case of Falconbrooke Primary School. This school, which served a social housing estate in an area of high deprivation, where BAME residents

were over-represented, was excluded from the list of feeder schools identified by Ark Bolingbroke Academy. A local campaign succeeded in the academy revising its list to include the school (ROTA, 2012).

Further evidence suggests that free schools are leading to segregation in many local areas where they have been set up. At least three quarters of free schools already open have admitted a lower proportion of disadvantaged pupils than is average for their wider neighbourhoods, based on data provided by schools on the number of children eligible for FSM (ROTA, 2012).

Some geographical information on catchment was provided by the majority of free schools, usually in the form of a map, which is all the description information that the Admission Code requires (DfE, 2012). However, as noted in the literature review, this information on its own is not sufficient to determine whether the characteristics of the pupil population in free schools is representative of the local communities and may have potential equality implications.

Useful equality information could be provided by comparing the ethnic profile of free schools with that of the school age population in surrounding areas and neighbouring schools to determine whether ethnic segregation is emerging in local school systems (ROTA, 2012).

### **Potential equality implications**

There may be potential equality implications for some children from socioeconomically less advantaged neighbourhoods or schools which, although geographically close, may appear to be excluded from the free school's specified catchment area. Verification of whether this is the case cannot easily be made, because free schools are only required to provide minimal details.<sup>4</sup>

#### **3.3.2 Oversubscription criteria**

The websites of 93 free schools were examined during January and February 2014 to see if their oversubscription criteria were published. Thirty free school websites visited appeared to have no admissions information and no links to admissions policies, statements or other documents where oversubscription criteria could be found.

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<sup>4</sup> Free schools which have not yet settled in a permanent location will in any case have no catchment information available.

Of the 63 free school websites where information was available, the majority published oversubscription criteria.

Oversubscription criteria published on website.	51 (80.9%)
No oversubscription criteria published.	12 (19%)

*Table 3. Free schools publishing oversubscription criteria*

The vast majority of free schools refer to the most common oversubscription criteria as mentioned in the School Admissions Code.

Seventy-nine per cent of free schools referred to the most common oversubscription criteria as mentioned in the School Admissions Code (DfE, 2012), i.e. children with statements of special educational needs (SEN), looked-after or previously looked-after children, siblings of pupils at the school and distance from school.

Reference to children with statements of special needs, looked-after or previously looked-after children, siblings of pupils at the school and distance lived from school.	50 (79.3%)
Reference to children with social and medical needs.	14 (22%)
Reference to disability.	6 (9.5%)
Reference to children eligible for Free School Meals, in receipt of Pupil Premium or with English as an Additional Language.	4 (6.3%)
Reference to a Fair Access Protocol.	1 (1.5%)
No reference to any of these.	1 (1.5%)

*Table 4. Free schools referring to the most common oversubscription criteria*

Twenty-two per cent of free schools also made reference to children with social and medical needs and 9% mentioned disability. Two free schools mentioned prioritising children eligible for free school meals, one referred to children in receipt of Pupil Premium (additional funding attached to children eligible for free school meals/or who have been in care for six months or more) and one referred to children with English as an additional language.

One free school mentioned the Fair Access Protocol in its admissions policy. The DfE advises that a Fair Access Protocol is an agreement which 'every local authority must have with the majority of schools in which all schools and academies must participate since it is binding on all schools' (DfE, 2012). The School Admissions Code states that 'the list of children in a Fair Access Protocol must, as a minimum, include children and young people from the criminal justice system or Pupil Referral Units, out of education, Gypsies, Roma, Travellers, refugees, asylum seekers, homeless, from unsupportive families where a place has not been sought, children who are carers and children with unstatemented special needs'. Schools may participate in the protocol but how effectively they are able to carry its principles out is open to question.

The report of the Academies Commission noted that 'effective engagement with Fair Access arrangements depended more on the commitment of individual head teachers and governors than on the type of school, academy or otherwise' (The RSA, 2013).

It is of interest that almost no free schools mentioned a Fair Access Protocol in their oversubscription criteria. There is no obligation for schools to refer to the protocol, but it may be helpful to those seeking places for difficult-to-place children if the groups covered by the Fair Access Protocol were more explicitly included in the oversubscription criteria of all free schools where such an agreement had been made with the local authority.

Instances where free schools have additional criteria were also examined to see whether there were any potential equality implications.

**Over one quarter of free schools refer to the children of staff and/or founders in their oversubscription criteria.**

Fourteen free schools (27%) mentioned the children of staff and/or founders in their oversubscription criteria. Seven of these referred to staff, four to founders and three to both staff and founders.

Ten free schools (19%) mentioned feeder/partner schools in their oversubscription criteria.

Priority given to applicants who are the children of staff and/or founders.	14 (27.4%)
Priority given to applicants from feeder/partner schools.	10 (19.6%)

*Table 5. Other applicants referred to in oversubscription criteria*

**Potential equality implications for free schools’ oversubscription criteria**

- That the majority of free schools are publishing their oversubscription criteria and referring to all groups of children prioritised in the School Admissions Code shows a good adherence to the guidelines and awareness of the need to consider equality and inclusion. It is a positive sign that some free schools also identify particular groups of children with additional needs or who come from socioeconomically disadvantaged backgrounds in their oversubscription criteria.
- As indicated in previous findings, many free schools are of a small size, so giving priority to children of founders and/or staff may have significant implications for the pupil population, particularly as founders usually share socioeconomic and/or ethnic backgrounds (ROTA, 2012). It is of concern that over a quarter of the free schools approved to open in 2013 have oversubscription criteria which refer to founders and/or staff, a proportion which appears to have increased by 20% since examining the oversubscription criteria of the first 40 free schools which opened in 2011.
- The oversubscription criteria of five free schools also mentioned that priority would be given to children based on aptitude or ability such as music, drama, maths and science. It was apparent from looking at the application forms that some other free schools also had selective or partially selective admissions policies. There is a

potential cause for concern regarding some free schools testing on 'ability' or 'aptitude'. When this was previously discussed by ROTA, it was in the context of musical aptitude testing. Since 2011, the subject areas on which free schools intend to select by ability or aptitude appear to have expanded. Aside from difficulties in distinguishing between 'aptitude' and 'taught ability', there is the likelihood that children who experience socioeconomic deprivation will be at a disadvantage. This is not only because they may have less access to music lessons, as noted in the previous research, but because they may not have access to other kinds of tutoring or coaching, or may not be used to, or prepared for, tests or auditions.

- Fair banding was mentioned by one secondary free school. The school qualified its decision to prioritise children according to a 'selection test' that it proposed to use in conjunction with a fair banding system. Banding is a mechanism by which equal numbers of children of different abilities are admitted to a school to ensure that children in one 'band' of ability are not over-represented. The use of a selection test instead of gathering the information by other means, such as primary school assessments, may have potential equality implications. It cannot be said conclusively that some free schools are using a form of testing and banding to select on ability that may advantage children of higher ability but selection tests may advantage children who have been coached or prepared.
- The issue of free schools giving priority to named feeder/partner schools in their oversubscription criteria continues to give some concern around the risk of this allowing for pupil selection by excluding local schools serving areas of higher deprivation (ROTA, 2012). There appears to be a higher proportion of schools which give priority to feeder/partner schools now (19.6%) than in 2011, when only 5% were doing so.

### **3.3.3. Equality and inclusion in free schools' admissions policies**

The admissions policies and associated documents on the websites of the free schools were examined to see whether they explicitly considered equality and inclusion. The majority of free schools (60%) appeared to have no information that explicitly considered equality and inclusion in the admissions policy or in the school vision statement, ethos or prospectus.

As ROTA's 2012 report highlighted, admissions policies can have significant equalities implications. We examined admissions criteria and policies, as this is an area where it is important that equality considerations are made. No schools linked their admissions policies to their duties under the Equality Act 2010 or properties that they had identified under these.

**The majority of free schools do not explicitly consider equality and inclusion in their admissions policies or make links to equalities legislation or duties**

No reference to equality or inclusion in admissions policies or associated documents on websites.	38 (60.3%)
Some reference to equality or inclusion in admissions policies or associated documents on websites.	25 (39.6%)
Links made to the Equality Act 2010, the Public Sector Equality Duty or equalities information or objectives compiled as a result of these duties.	0 (0%)

*Table 6. Equality and inclusion in the admissions policies of free schools*

**Potential equality implications regarding equality and inclusion in admissions policies**

- The finding that so many free schools are failing to make reference to equality or inclusion in their admissions policies indicates a lack of any convincing commitment to ensuring that equality is central to the free schools programme.

Where the admissions policies or associated documents made some reference to equality and inclusion, the information was considered in terms of how well they appeared to address these issues. Examples are given of the type of information provided, whether ‘superficial’, ‘moderate’ or ‘good’.

1. Superficial information. Passing reference to inclusion or equality; no equality principles or guidelines or admissions; statements not qualified by commitment or active steps to addressing equality. Examples:

**‘Admissions are decided without reference to ability or aptitude’ (secondary free school).**

**‘The school welcomes pupils from all backgrounds, truly reflecting the broad community’ (all-through free school).**

2. Moderate information. Equality principles and/or guidelines for admissions published; not qualified by specific steps or arrangements for addressing equality. Examples:

**‘The school is open to all, irrespective of faith, background, ethnic origin or ability’ (primary free school).**

**‘The school’s co-operative values include “democracy”, “equality” and “equity”’ (secondary free school).**

3. Good information. Equality principles and/or guidelines for admissions published; the school appears to be taking positive steps to make admissions arrangements equal and inclusive. Examples:

**The school has an equality and diversity statement. It is ‘committed to taking active steps to promote the inclusion of community groups with protected characteristics’ (secondary free school).**

**‘The school provides for children from disadvantaged backgrounds to achieve their potential’ and ‘to enhance the social mobility of disadvantaged families’ and ‘will not discriminate on grounds of gender, race, faith, first language, ability or social status’ (primary free school).**



Where free schools provide information referring to equality or inclusion, the type of information varies. Seventeen per cent of free schools make a superficial or passing reference in their admissions policies or associated documents which may be broadly inclusive, but which is not qualified by explicit statements or commitments to indicate that they are actively addressing equality.

A similar percentage (19%) are acknowledging some equality principles or are publishing equality guidelines for their admissions arrangements, but still do not appear to be taking positive steps towards actively addressing equality. A very small number (3.1%) of schools provided good information which was explicit and which referred to specific steps or actions to make admissions equal and inclusive.

**Only a very small minority of free schools appear to be taking positive steps to make their admissions arrangements equal and inclusive.**

Superficial information – refers to inclusion in general terms but is not qualified by any specific equality guidelines, specific steps or actions.	11 (17.4%)
Moderate information – refers to some equality principles or guidelines for admissions but does not mention specific steps or actions.	12 (19.0%)
Good information – explicit, refers to specific steps or actions to make admissions equal and inclusive.	2 (3.1%)

*Table 7. Type of information provided on equality and inclusion in admissions policies and associated documents*

### **Potential equality implications regarding the type of information provided on equality and inclusion**

- Where free schools provide details about equality and inclusion, it is of concern that commitment so often appears to be on a superficial level. This implies that the majority of free schools are not taking sufficient steps to embed principles of equality in their admissions processes.

### 3.3.4 Application forms and processes

The websites of free schools were examined to see whether application forms were available or easily accessible.

**The majority of free school websites have application forms available or easily accessible.**

The majority of free school websites (63%) had application forms available on their websites. Twenty-three free school websites (36%) appeared to have no forms or links to forms. Twelve of these schools are alternative provision free schools, whose admissions are handled via the local authority or from another school, and are thus not part of a process by which parents apply directly for a place. Of the remainder, seven had details of their application processes, but no forms. Four free schools appeared to have incomplete information or instructions on accessing forms, so these schools were counted as having forms not available. On two free school websites, parents were instructed to apply directly to the school but there were insufficient details of how to do this.

The application forms, where available, were examined to see whether they were straightforward or needed more detailed or extensive information from parents and whether there were other application procedures such as tests or interviews.

No forms on website.	23 (36.5%)
Straightforward forms. Any supplementary information sought is brief or uncomplicated.	24 (38.0%)
Supplementary Information Forms require detailed or extensive information.	7 (11.1%)
Additional procedures, e.g. tests, auditions, interviews.	9 (14.2%)

*Table 8. Application forms and procedures*

A minority of free schools, excluding Alternative Provision free schools, do not appear to have forms available. This in itself may not be a problem for applicants as long as there are clear instructions on the application process.

## Potential equality implications regarding application forms and processes

- Where there are no forms and no clear details of how parents should apply, whether in person or in writing, for instance, this may signify a lack of transparency about the admissions process. A few schools indicated that their websites did not yet contain all the information they intended to publish on their admissions arrangements.

**Of the free school websites where forms were available, 38% were easily accessible and mostly straightforward.**

Of the free school websites where forms were available, 38% were easily accessible either on the website or via a link to a local authority website, e.g. where the free school was part of the Common Application Form (CAF) scheme. Where these free schools required a Supplementary Information Form to be filled in, as is frequently the case with faith free schools, the information sought was relatively straightforward, short and uncomplicated and unlikely to deter parents from applying.

**Eleven per cent of free schools had Supplementary Information Forms requiring detailed information.**

Seven free schools had Supplementary Information Forms requiring detailed information, e.g. externally supported statements, testimonials or evidence of a faith commitment. Two free schools requested evidence of parental voluntary activity – ‘evidence of parental volunteering’ or ‘volunteer in faith activity work’.

## Potential equality implications

- Forms which are more complicated may deter parents with limited literacy skills or knowledge of the British school system from applying, reducing potential admissions of pupils from certain BAME communities.
- Giving preference to parents who can demonstrate that they take part in voluntary or charitable activity may result in deterring those who are not able to undertake such work, such as the working poor, among which group BAME communities are over-represented.

The Academies Commission, referring to a study by West et al (2009, 2011), found that ‘some Supplementary Information Forms used principally by schools which are their own admissions authorities can be lengthy, involve open questions and sometimes include requests for information not permitted by the code. Such practices can enable schools to select pupils from more privileged families where parents have the requisite cultural capital to complete the form in ways that will increase their children’s chances’ (The RSA, 2013).

**Around 10% of the free school websites where forms were available referred to additional application procedures, e.g. pupil aptitude assessments, written tests, auditions, interviews.**

This was most common in post-16 free schools or colleges. Post-16 free schools or colleges, along with other post-16 provision in the maintained sector, can, if they wish, set minimum entry requirements or conduct interviews or tests for selected courses or programmes of study. Where free schools are ‘converter’ schools, e.g. from existing grammar or selective schools which had selective or partially selective application criteria in the years prior to converting, or from the independent sector, they can also continue to select a certain proportion of pupils on ability or aptitude and may choose to use tests such as non-verbal reasoning tests as part of their admissions procedures, such as those described by one secondary selective ‘converter’ free school.

Outside the post-16 or ‘converter’ free schools though, examples are to be found of both primary and secondary specialist free schools testing, auditioning or selecting on ability or aptitude for a proportion of entrants. One primary free school, for example, holds pupil auditions (‘children applying for a music or drama place are tested on aptitude and qualifications’) and another secondary free school uses ‘verbal, non-verbal and quantitative skills tests’ plus a music audition consisting of a ‘90-minute group task and a 3-minute individual performance’.

### **Potential equality implications**

- Free schools may choose to select a proportion of pupils on ability or aptitude and, if doing so, must explicitly state this in their admissions information. There is though a potential risk that this may lead to indirect exclusion of socioeconomically disadvantaged groups who, as previously noted, may not have access to tutoring, coaching or other preparation for interview or audition that children from more advantaged backgrounds may have.

- When formulating criteria to deal with oversubscription, the DfE is clear that interviews of parents or children must not be carried out for the purpose of selecting applicants:

*‘Schools must not give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation.’*

*(DfE, 2012)*

Parental interviews did not appear to be sought as part of the application process in any of the free schools, with the exception of alternative provision free schools, where a meeting with family might be sought as part of a needs assessment. However, evidence gathered by the Academies Commission suggested that ‘schools, including academies, have ways to get round this such as by holding “social” events with prospective parents or pre-admission meetings’ (The RSA, 2013). Two free school websites referred to such events for prospective parents, but it was not possible to determine precisely what their purpose was.

- Where free schools hold information events or parents are asked to make a ‘booked session’, unless the nature of the session is clearly stated, such as an open evening or tour of the school, it may not be clear that the purpose of the session is not part of an interviewing or pre-selection process.
- There may also be a question of transparency around free schools requiring parents to register or write in with their details before applying (as was the case with two secondary free schools and one primary free school, where the purpose of pre-registration was not made clear).

### **3.4 Online survey**

The aims of the survey are to establish:

- how BAME communities can benefit from the free schools programme;
- if BAME communities face any particular barriers in seeking to establish successful free schools;
- the type of support, interventions and strategies needed to ensure that equalities are embedded in policy and practice.

An online survey was administered to ask about: location; characteristics of each free school project; proposers' aims; ethnic composition of proposal teams; plans for considering equalities; and challenges and barriers to projects being approved.

The survey was sent out in January 2014 to those who were:

- developing or planning a free school application;
- awaiting the outcome of a free school application;
- awaiting approval of an application;
- approved but whose school was not yet open;
- involved with open free schools.

The survey form is available at <https://www.surveymonkey.com/s/7C2CRVP>.

### **Preliminary findings from survey**

An initial analysis of survey data indicates that:

- Although all schools reported that they were 'very' or 'fairly' confident of complying with the Equality Act 2010 in their service planning, there were evident difficulties for free schools in providing information that demonstrated compliance with the Equality Act 2010. Promoting equality and diversity in admissions and curriculum policies was most frequently mentioned. Specific policies on equal opportunities and inclusion and promoting equality through the school's ethos, mission statement, aims and objectives were less frequently mentioned. More training and support was requested, especially one-to-one and peer support and whole-school training on the Equality Act 2010.
- The main challenges faced when developing a free school proposal centre around difficulty finding premises, a lack of financial resources and expertise and difficulty with application forms.
- Problems attending events hosted by New Schools Network and the DfE were also cited, along with a lack of access to educational expertise.

- The services provided by New Schools Network were not considered easily available/the free school was not aware of resources available to help with their application. The type of support services which free school proposers would find useful were mainly to do with help finding premises, help finding people with experience of finance and proposal checking, and help in particular with finding partnership match.





## 4. CONCLUSIONS

The free schools programme continues to be characterised by a lack of knowledge about equality legislation and duties in policies and practice; a lack of commitment to equality and inclusion in admissions; a lack of transparency about information on admissions and the way applications are handled; and a lack of support for free school proposers and leaders from BAME communities in establishing free school projects.

There is a lack of knowledge and understanding of the Equality Act 2010 and the PSED. Fewer than ten per cent of free schools which opened in 2013/14 have good equalities information and objectives in policies or associated documents.

Despite signs of good adherence to some of the requirements of the School Admissions Code, many free schools show poor commitment to ensuring that equality and inclusion are central to their policies. This is exemplified by: oversubscription criteria that appear to prioritise children of founders and staff or from feeder or partner schools; the use of selective or partially selective admissions policies, including ability or aptitude testing in subject areas such as music, drama, maths and science; and supplementary application forms requiring detailed information, testimonials or evidence of parental voluntary or faith activity.

There is not enough transparency in the way that admissions and applications are handled. Over one third of free schools have no application forms, or instructions of how to obtain them, on their websites. Where free schools hold pre-registration or informal events for parents, it is not always clear that these are not part of an interviewing or selection process.

There is evidence that free school proposers and leaders from BAME communities disproportionately experience barriers linked to financial expertise, resources and social capital and that the DfE appears to be failing to acknowledge or address the systemic inequalities this presents with the programme.

There is a role for the DfE to continue to ensure that equality and inclusion remain central to the free schools programme and for voluntary sector organisations to monitor and make representations to current or future reviews of free schools for coverage of equality and inclusion.

Where schools effectively implement equality duties, there are significant positive impacts on educational outcomes for disadvantaged groups.

While compliance by state-maintained schools requires considerable improvement, it is considerably better than that of free schools as found in this study. In a 2011 survey, only 30% of schools had an equality policy or scheme and action plan with set targets for all three equality duties that preceded the current PSED (Bukowski et al, 2011). Schools had limited awareness of the new PSED and had made limited progress on newer equality issues like sexual orientation and pregnancy and maternity. A more recent survey by the EHRC reported that fewer than 23% of schools had published one or more equality objectives covering the period since the introduction of the PSED in April 2011. Where schools had developed equalities objectives, many were inadequate. For example, less than 42% of the equalities objectives were relevant to the aims of the general equality duty, less than 48% of the equality objectives were clear about the time frame for improvement and less than 57% were clear about the quantity of improvement sought (ROTA, 2012).

There is a range of other concerns linked to the findings of this research that indicate the Coalition's free schools programme is developing contrary to the aims intended for it of providing opportunities to address educational disadvantage and addressing attainment gaps.

Previous studies by ROTA have highlighted the DfE's complete lack of transparency around the free schools programme, which is characterised by refusal of freedom of information requests and limits on the information about free schools the Department is putting in the public domain. This lack of information reduces accountability and has prevented scrutiny of the programme. This is exacerbated by free schools' independence from local authorities who are unable to scrutinise free schools in similar ways to maintained schools and thus inequalities which exist are less likely to be identified and challenged at local levels.

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