

6

EQUALITY: ACCESS, PROVISION AND OUTCOMES

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Introduction

In this chapter, we will explore the purpose of having equalities legislation and reflect upon whether specific groups of people are treated equally to each other. We will look at barriers to and enablers of equality, with a specific focus on educational experiences. This chapter will:

- Explore notions of difference and diversity, how these have implications for learners' educational experiences.
- Examine equality legislation and practice based on principles of equality of access, provision and outcomes.
- Consider other factors related to equality provision, such as culture, English as an additional language and looked after children.

Equal, equality, equity: What is the difference?

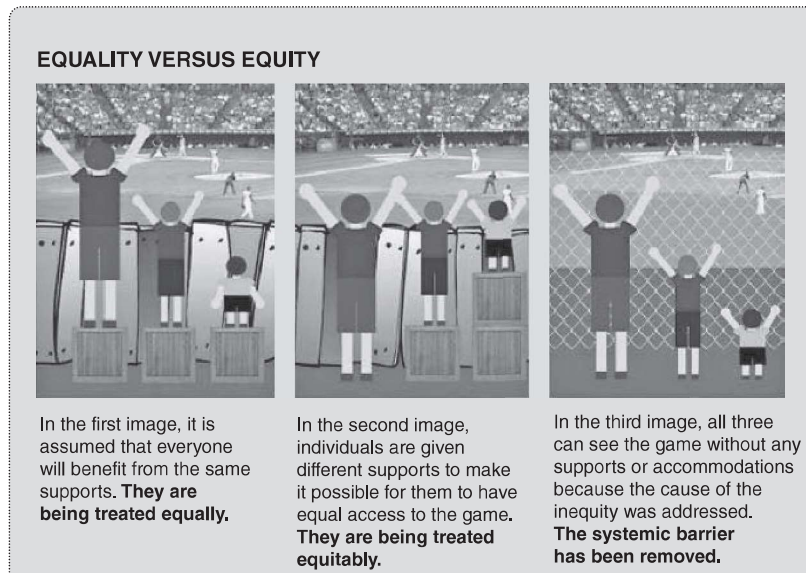


Figure 6.1 Equality vs equity

Source: Image adopted by unknown artist from original by Craig Froehle. Found on businessdisabilityinternational.org



Time to Reflect

Consider Figure 6.1 in relation to an inclusive classroom: what would it look like in terms of equal access; would you strive to remove systemic barriers?

The Equality Act (2010): Protected characteristics, concepts and definitions

The Equality Act (2010) replaced previous legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) ensuring consistency in what employers and employees need to do to make their workplaces a fair environment and comply with the law. Every organisation must not discriminate against employees and people that use their

services because of particular characteristics, known as the **protected characteristics**: age, **disability**, gender reassignment, marriage and civil partnerships, pregnancy or maternity, race, religion or belief, sex (gender) or sexual orientation (gay, lesbian or bisexual).

Discrimination is treating someone unfairly because of their characteristics. If organisations treat people differently because of these characteristics, then they could be acting unlawfully. This could result in the organisation being taken to court and sued for their actions (Equality and Human Rights Commission: www.equalityhumanrights.com). Refer to Chapter 10 for further discussion on discrimination.

Children and Young People (CYP) have equal protection for most of the protected characteristics. However, while a child is attending school there is no protection against age discrimination until they are educated post-16.

The Equality Act (2010) also includes the public sector equality duty. This means public bodies, like the police, schools and hospitals, not only have to take steps to stop discrimination, but also have to promote equality. Public bodies should promote equality of opportunity, for example, by ensuring girls and boys have access to the same apprenticeships, or disabled students have access to resources and support (see **reasonable adjustments**, discussed further on in the chapter). Public bodies should promote good relations, e.g. via anti-bullying policies and promotion of cultural understanding between different ethnic groups. The Act also allows 'positive action', which enables public bodies to provide additional benefits to some groups of people to tackle disadvantage, e.g. providing additional lessons for Gypsies and Travellers.

The environment: Disability and inclusion

The Equality and Human Rights Commission report in relation to disability (2018) found:

Disabled people are not enjoying the progress experienced by other groups. Their right to an **inclusive education** is not being fulfilled. The proportion of disabled children at special rather than mainstream schools has increased, and they are more likely to be excluded from school. Disabled people earn less per hour on average than non-disabled people. They are more likely to be in low-pay occupations and this likelihood has increased. Disabled people are more likely to be in poverty. Those who cannot work rely on an increasingly restricted welfare regime that is projected to lower their living standards even further. They also face poorer health and lack of access to suitable housing. Safety is another major concern, as fewer disabled people have confidence that the criminal justice system is effective. Without the

fundamental building blocks of good education, an adequate standard of living, and being safe and healthy, disabled people are often unable to participate fully in society. (p.6)



Time to Reflect

What are the implications of these findings in current education provision?

Table 6.1 Disabling and enabling environments

Disabling environments	Enabling environments
(The World Health Organization, 2001: 241)	(www.cdc.gov/ncbddd/disabilityandhealth/disability-strategies.html)
A physical environment that is not accessible	Making products, communications, and the physical environment more usable by as many people as possible (e.g. Universal Design for Learning)
Lack of relevant assistive technology (assistive, adaptive, and rehabilitative devices)	Modifying items, procedures, or systems to enable a person with a disability to use them to the maximum extent possible (reasonable adjustments)
Negative attitudes of people towards disability	Eliminating the belief that people with disabilities are unhealthy or less capable of doing things (stigma, stereotypes)
Services, systems and policies that are either non-existent or that hinder the involvement of all people with a health condition in all areas of life	Getting fair treatment from others (non-discrimination)

Reasonable adjustments duty

The duty requires an educational organisation to take positive steps to ensure that disabled students can fully participate in the education and other benefits, facilities and services provided for students. This was introduced in the Disability Discrimination Act (1995) and taken forwards into the Equality Act (2010). When the DDA was first implemented it was recognised that many organisations were likely to 'do the minimum' to comply, rather than using this requirement to provide a truly enabling environment.

Organisations are required to take reasonable steps to avoid the provision, criterion or practice putting disabled students at a substantial

disadvantage. They should also avoid any physical features that put disabled persons at a substantial disadvantage; this includes removing the physical feature in question, altering it or providing a reasonable means of avoiding it. Organisations cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue is whether the adjustment is 'reasonable' and this is an objective question, which may be determined through relevant legal channels if necessary.

The duty is an anticipatory and continuing one that organisations owe to disabled students generally, regardless of whether they know that a student is disabled or whether they currently have any disabled students. Organisations should plan and anticipate the requirements of and adjustments for participants who are disabled. It is not an expectation that organisations anticipate the needs of every prospective student, but they are required to think about and take reasonable and proportionate steps to overcome barriers that may impede people with different kinds of disabilities. For example, while it may be appropriate for universities to install a hearing loop in lecture theatres to anticipate deaf students' needs, it is not an expectation to have a British Sign Language (BSL) interpreter on the payroll (see Table 6.1).

Where a provision, criterion or practice places disabled students at a substantial disadvantage in accessing education and any benefit, facility or service, the further or higher education institution must take such steps as are reasonable to take in the circumstances to ensure the provision, criterion or practice no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether but often will involve just an extension of the flexibility and individual approach that many education institutions already show to their students.

For example:

A college has a strict policy that does not allow drugs on the premises. A student with a heart condition carries medication related to their condition. The college allows them to bring their medication with them to college. This is likely to be a reasonable adjustment to the college drug policy.

A competence standard is defined as an academic, medical or other standard applied by or on behalf of an education provider in determining whether a person has a particular level of competence or ability. It is not a provision, criterion or practice and therefore there is no duty to make reasonable adjustments in relation to the application of a competence standard. However, the duty does apply to the process of demonstrating that a person meets the competence standard.

For example:

A student with a visual impairment has their written exam provided in enlarged text. This would be an example of a reasonable adjustment to demonstrate meeting the competence standard.

When deciding whether an adjustment is reasonable you can consider how effective the change will be in avoiding the disadvantage the disabled person would otherwise experience, its practicality, the cost, the organisation's resources and size and the availability of financial support.



Time to Reflect

Which of the following do you think would be an appropriate reasonable adjustment? Why/why not?

- Allowing and making provision for an employee or a student whose immunity is compromised (e.g. due to chemotherapy treatment) to work from home at times.
- Relocating a small private training business to new premises to enable wheelchair access.
- Providing a support worker for a worker or a student whose disability has caused a lack of confidence.

Moving on from reasonable adjustments, there are other influencing factors to consider when exploring equality practice. This practice is evaluated in the final chapter of the book; however, we can consider some of these aspects here.

English as an Additional Language

There are more than a million children from 5–16 years old in UK schools who speak in excess of 360 languages between them in addition to English. The average proportion of English as an Additional Language (EAL) students in a school is 13.6%. Teaching EAL learners is sometimes controversial. Key debates often revolve around the question of whether it is better to immerse the learner in the 'new' culturally dominant language, or to allow or even encourage the learner to continue to speak their own language. Students from minority groups traditionally do less

well at school than students from the dominant group – this is not just because of the language issue, but is also more pronounced when the minority student’s culture and language are not valued by the school. Cummins (2014) argues that children with EAL learn better if they continue to develop their first language as well as their English – thereby arguing against the idea that only English should be spoken (immersion theory).

BICS are Basic Interpersonal Communication Skills; these are the ‘surface’ skills of listening and speaking which can be acquired quickly by many students; particularly by those from language backgrounds similar to English who spend a lot of their school time interacting with native speakers.

CALP is Cognitive Academic Language Proficiency, and, as the name suggests, is the basis for a child’s ability to cope with the academic demands placed upon them in various subjects. Cummins states that while many children develop native speaker fluency (i.e. BICS) within two years of immersion in the target language, it takes between five and seven years for a child to be working at the same level as native speakers as far as academic language is concerned.

Note: Although, as inclusive practitioners, we do need to consider the needs of those with EAL, we cannot assume that these learners are not competent or virtually fluent. We have included EAL here as a consideration of a potential barrier to learning that practitioners may need to plan for.

Gypsy, Roma, Traveller communities

(With acknowledgements to Lisa Smith, Global Leader for Young Children World Forum Foundation, The Advisory Council for the Education of Romani and Other Travellers)

The term Gypsy, Roma and Travellers (sometimes shortened to GRT) is an umbrella term for what is actually a very diverse ethnic group. In the UK the two main groups to whom legal status is afforded are ‘Gypsy/Roma’ and ‘Irish Travellers’ but there are many other sub-groups. The term ‘Gypsy’ encompasses many groups with tribal and geographical associations, e.g. ‘Vlach Rom’, ‘Rom’, ‘Kalderash’, and ‘Luri’.

To be recognised as an ‘**ethnic group**’, a group (such as GRT) must have the following characteristics: long shared history; cultural tradition of their own; common geographical origin; and a common language.

In 2003, GRT were added to the school census so the government could start collating statistical data. Irish Travellers are a separate and distinct ethnic group originating from Ireland. They share some of the same cultural values as Romani Gypsies, such as a preference for self-employment and living and travelling in caravans or 'trailers', but there are also big differences. For example, many Irish Travellers are Catholic and their language – 'Cant' – is not related at all to Romani. British Romani Gypsies are English, Scottish and Welsh. There has been central and eastern European Roma migration to the UK and GRT are Europe's largest and fastest growing ethnic minority.

Knowles and Lander (2011: Chapter 7) say that:

the law has served not only to radically affect the life and traditional culture of Gypsies, but also to criminalise it ... Is it surprising that some members of society continue to assume that Travellers are unclean and unwanted? Indeed, it is not surprising that those who are physically forced to live on the margins of society are also metaphorically thought of and treated like detritus by society.

In 2012 the government found a 90% decline in Traveller Education Services since 2010. They reported that GRT experience some of the worst outcomes of any group, across a wide range of social indicators. For example, there is an excess prevalence of miscarriages, stillbirths and neonatal deaths in GRT communities. Around 20% of traveller caravans are on unauthorised sites. GRT communities are subjected to hostility and discrimination, and in many places lead separate, parallel lives from the wider community (report found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf).

As a result of this report, 28 commitments were made to the GRT community to tackle these issues, including highlighting GRT pupils as a vulnerable group in the revised Ofsted framework. In response to high levels of exclusion, the government were to take steps to assess the impact of school-based commissioning, alternative provision and early intervention. Ofsted were to conduct a survey on prejudice-based bullying (www.tes.com/news/need-know-gypsy-and-roma-educational-inequality).

By 2017, after exam reforms, the overall percentage of pupils achieving the expected standard in reading, writing and maths at the end of primary was 61% on average, compared to 16% among GRT pupils; 59.1% of all pupils achieved Grade 4 or above in English and Maths while only 10.7% of Gypsy and Roma and 22% of the Travellers of Irish heritage achieved this. There were still also high levels of permanent and fixed-term exclusions. Department for Education statistics for 2016–17 show that while

2.29% of all pupils have one or more fixed period exclusions, this rises to 7.1% of Gypsy/Roma pupils and 7.3% of Travellers of Irish heritage.

Nine out of ten CYP from a GRT background have suffered racial abuse and nearly two thirds have been bullied or physically attacked (Lane et al., 2014). **Discrimination** can be intentionally or unintentionally racist in character on account of the lack of knowledge of legal minority ethnic status. As result of this, behaviour may not be identified as racist and consequently not taken seriously in schools. High exclusion rates were often a result of physical retaliation to these incidents (Traveller Movement, 2016). Gypsy, Traveller and Roma pupils are on average four times more likely to be excluded from school than the whole school population. Research also found that 100% of appeals against the exclusions of Gypsy, Traveller and Roma pupils were successful, suggesting that many exclusions were unfairly given. Bhopal (2011) found that despite race equality policies being in place, racism experienced by GRT pupils was not dealt with adequately or effectively. Some parents may have had a negative experience of formal education themselves and may be distrustful of the school's ability to ensure their children's safety and well-being.

Travelling is no longer an obvious reason for academic under-achievement, as many GRT families don't travel. Even for many pupils with stable attendance, attainment is significantly lower than those of their peers (Derrington and Kendall, 2008). Nationally, attendance for GRT pupils has increased and continues to do so. Although transition rates from primary to secondary school remain high, the majority of GRT pupils will not complete a high school education. Fragmentation of the school system and increased pressure to raise standards often contradict inclusion policies. Some schools are refusing to admit children from this group imposing discriminatory conditions on admissions or delaying registration. Parents may have a limited experience of the formal education system or how it works and may find it difficult to access supportive resources or know how to access support to challenge unlawful practice.

Ofsted (2014) have repeatedly reported unreasonably low teacher expectations. There is a severe lack of knowledge or recognition of GRT ethnicity and culture in many schools. Research shows that where pupils' identity is devalued, they do not go on to develop to their full potential. Roles involving economic independence, entrepreneurship and self-employment are of high value in the community. In high school, some teenagers may find the curriculum not relatable to the practical knowledge and skills needed for this type of role and parents may feel the curriculum is not flexible enough to offer appropriate support for this type of growth. Persistent disruptive behaviour was the most common reason given for school exclusions of children from these communities, which

could point to unmet need. However, GRT pupils are often viewed as oppositional to educational achievement.

Looked after children

Section 17 of the Children Act 1989 placed a duty on local authorities to safeguard and promote the welfare of children 'in need' and provide a range and level of services to meet their needs. **Children in need** are those who require local authority services to achieve or maintain a reasonable standard of health or development, who need local authority services to prevent significant or further harm to health development, or who are disabled.

Services for children identified as 'in need' can include: Family support (to help keep together families experiencing difficulties); leaving care support (to help young people who have left local authority care); adoption support; and disabled children's services (including social care, education and health provision).

Looked after children (LAC): Children in the care of the local authority. Section 47 of the 1989 Children Act states that social services have a duty to investigate if informed that a child in their area is suffering or is likely to suffer significant harm. There are 72,670 LAC and the number of LAC has increased steadily over the last nine years (DfE, 2016/2017). Provision for LAC should be child-centred based on the child's needs (www.gov.uk/government/uploads/system/uploads/attachment_data/file/647852/SFR50_2017-Children_looked_after_in_England.pdf).

Statutory Guidance for Local Authorities July 2014 (www.gov.uk/government/uploads/system/uploads/attachment_data/file/335964/Promoting_the_educational_achievement_of_looked_after_children_Final_23-....pdf).

Children Act 1989: Local Authorities (LAs) have a duty to safeguard and promote the welfare of a child looked after by them. This includes a duty to promote the child's educational achievement, wherever they live or are educated. The authority must give attention to the educational implications of any decision about the welfare of those children. The LA and LEA/school should work together to ensure that, except in an emergency, appropriate education provision for a child is arranged at the same time as a care placement.

Director of Children's Services (DCS): Has professional responsibility for the leadership and strategic effectiveness of local authority children's services. Independent Reviewing Officer (IRO): Every LAC must have a

named IRO who is appointed to participate in case reviews and monitor the local authority's performance in relation to a child's case. *The 'Virtual School Head'* should co-ordinate educational services for LAC within each LA area. Each school should have a '*designated teacher*' to oversee all LAC in the school. Children must have an appointed *social worker* and other support as required.

Reflection Activity

Primary experiences

(www.youtube.com/watch?v=DAfxqer1UP4)

What are the issues that hold back LAC?

Are these issues to do with learning, social or psychological factors?

How does the school address them?

Secondary experiences

(www.youtube.com/watch?v=J7EgWVfMne4)

What are the views of the children? What needs to change?

How does this relate to how schools and society in general view LAC?

Do you think that schools create an 'enabling environment' for LAC?
(Think about the social and medical models.)

What improvements can be made to increase success?

Now we have explored some of the factors that could affect a learner's educational experience, we also need to consider what happens if a learner has multiple influencing factors, i.e. intersectionality.



Spotlight on Theory: Intersectionality

The interaction between gender, race, and other categories of difference in individual lives, social practices and cultural ideologies and the outcomes of these interactions in terms of power. (Davis, 2008: 68)

(Continued)

Watch: Kimberlie Crenshaw: The urgency of intersectionality: (www.ted.com/talks/kimberle_crenshaw_the_urgency_of_intersectionality)

Factors involved in intersectionality include power – intersectionality usually involves multiple-minority identities, which are often the least powerful groups– and multiple discrimination: intersectionality means that a person may be discriminated against on a number of different fronts. Often, intersectional experiences reveal that existing legal and policy mechanisms are stacked against people with a multiple minority identity. And these institutions may fail to account for critical cultural differences.

Intersectionality refers to the hierarchal nature of power and how a person who belongs to many marginalised groups may have some of their issues from other identities ignored. Legal and political mechanisms generally think of all problems separately, which may leave out other identities. With intersectionality in place, legal and political mechanisms can look at the big picture, rather than separating a person's problems into small parts and ignoring some of these.

Moving on from mainstream education, which might not work or is not appropriate for some learners, we turn to considerations of alternative provision

Pupil referral units

(www.independent.co.uk/news/education/schools/pupil-referral-units-the-children-beyond-mainstream-education-and-the-schools-that-turn-their-lives-a6713976.html)

The current incarnation of Pupil Referral Units (PRUs) came about in 1993 during John Major's government. There are now just under 400 in England and Wales. More than 20,000 pupils are catered for by 'alternative provision', the umbrella term under which PRUs fall. Because of the need for a high staff-to-student ratio, the units tend to be small, with some teaching just a handful of pupils.

A PRU is a school that accommodates the most (perceived) troubled and disruptive of pupils, fulfilling local authority obligations to educate all children, including those expelled from mainstream schools. PRUs also provide education for teenage mothers, and children with physical and

mental health issues that prevent them attending mainstream school. The aim is to put as many pupils as possible back on an even keel and then reintroduce them to mainstream schools.

Often, children come to PRUs with unmet learning needs. Staff at PRUs may be trained in psychological diagnostic techniques – and pupils are frequently found to have communication or educational difficulties. In many cases, these children have adopted bad behaviour as a defence mechanism. By acting up they distract teachers from the fact that they do not understand what they are being taught. The Pendlebury Centre makes use of drama therapists, a cognitive behavioural therapist, a bereavement councillor, social workers, a family liaison worker, one psychotherapist for the children and another one for the staff.

In their eyes, normal is just being able to come to school. These children are often here because they have had an emotional experience which they have struggled to come to terms with. Our job is to give them the space to do that while making sure their learning continues. (Janice Cahill, Headteacher – Pendlebury Centre)

Other alternative schools include:

- The Boxing Academy: Uses sport to help 'disruptive' young male students regulate their behaviour.
- Everton Free School: Uses football to re-engage excluded children with education.
- Family School: Strong emphasis on mental health therapies, bringing children's family members into the classroom.

Special schools

Current English government policies identify a role for special schools in both transforming mainstream education and continuing to provide specialist support for individual needs (DfE and DoH, 2014: 28; Fredrickson and Cline, 2015: 82). Department for Education data on SEN provision shows that the proportion of pupils with statements/EHC plans attending special schools has been increasing since 2007. By contrast, the percentage attending secondary schools has fallen by a similar amount. The percentage attending primary schools has remained constant and there has been a small increase in the percentage attending other settings such as independent schools, alternative provision and non-maintained special schools.



Time to Reflect

What does the data tell you about mainstream vs special/alternative provision in terms of SEND?

Note that some learners may have part-time placements, attend specialist units attached to mainstream schools, be home educated or have dual registration.



Key Points

In this chapter you have:

- Explored equality legislation and its impact on inclusive practice.
- Looked at influencing factors that affect the learners' experience including disability, EAL, LAC and GRT.
- Considered the impact the learning environment may have on these factors, and gained an introductory understanding of alternative provision to mainstream education.



Final Reflection Questions

- In your experience, are people treated equally? If not, why not?
- What are the barriers/enablers to equality?

Further reading

This insightful chapter provides information on the effects of using creativity in prison education:

Taylor, S. (2017). Inclusion and the arts. In R. Woolley (ed.), *Understanding Inclusion: Core Concepts, Policy, Practice*. London: Routledge.

This book gives further insights into considerations for equality and inclusion within school settings:

Goepel, J., Childerhouse, H. and Sharpe, S. (2015). *Inclusive Primary Teaching: A Critical Approach to Equality and Special Educational Needs and Disability*. Northwich: Critical Publishing.

This book provides you with a deeper understanding of the concepts of 'family' and 'difference':

Knowles, G. and Holmstrom, R. (2013). *Understanding Family Diversity and Home-School Relations: A Guide for Students and Practitioners in Early Years and Primary Settings*. London: Routledge.