

Documents Reviewed

Protect and Teach have reviewed the following documents which cover educational establishments and other agencies who work with children – on or off the school premises -with regard to safeguarding of children in schools. The relevant sections of the legislation and guidance has been quoted in full as it is our opinion that schools are deliberately ignoring Section 175 of The Education Act 2002 and, therefore, ignoring the safeguarding of children and promotion of their welfare in order to pander to adults who claim to be the opposite sex.

The Education Act 2002

Government legislation

<https://www.legislation.gov.uk/ukpga/2002/32/contents>

Section 175

Duties in relation to welfare of children

- (1) A local authority shall make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children.
- (2) The governing body of a maintained school shall make arrangements for ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school.
- (3) The governing body of an institution within the further education sector shall make arrangements for ensuring that their functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution.

Keeping Children Safe in Education 2024

Statutory guidance

https://assets.publishing.service.gov.uk/media/66d7301b9084b18b95709f75/Keeping_children_safe_in_education_2024.pdf

Summary The status of this guidance

This is statutory guidance from the Department for Education ('the Department') issued under Section 175 of the Education Act 2002 (as amended), the Education (Independent School Standards) Regulations 2014, the Non-Maintained Special Schools (England) Regulations 2015 and the Apprenticeships, Skills, Children and Learning Act 2009 (as amended). Schools and colleges in England must have regard to it when carrying out their duties to safeguard and promote the welfare of children. For the purposes of this guidance children includes everyone under the age of 18.

Working Together to Safeguard Children, December 2023

Statutory guidance

https://assets.publishing.service.gov.uk/media/669e7501ab418ab055592a7b/Working_together_to_safeguard_children_2023.pdf

What is the status of this guidance?

3. This guidance applies to all organisations and agencies who have functions relating to children. Specifically, this guidance applies to all local authorities, ICBs, police and all other organisations and agencies as set out in chapter 4.
4. It applies, in its entirety, to all education providers, and childcare settings.

Working Together to Safeguard Children, December 2023 (cont..)

5. It applies to all children up to the age of 18 years whether living with their families, in state care, or living independently.
6. This document should be complied with unless exceptional circumstances arise.
7. The guidance is issued under:
section 175(4) of the Education Act 2002, which states that governing bodies of maintained schools (including maintained nursery schools), further education institutions and management committees of pupil referral units must have regard to any guidance given by the Secretary of State

Education Act 2011

Government legislation

<https://www.legislation.gov.uk/ukpga/2011/21/contents>

Provisions in the Education Act 2011 are in addition to those in the Education Act 2002. i.e. it amends and adds to the Education Act 2002. Therefore, Section 195 of the Education Act 2002 still stands.

Education and Training (Welfare of Children) Act 2021

Government legislation for England and Wales only

<https://www.legislation.gov.uk/ukpga/2021/16/contents>

Section 1 Welfare of children: 16 to 19 Academies and further education

(1) The Education Act 2002 is amended as follows.

In section 175 (duties of local authorities and governing bodies in relation to welfare of children) after subsection (3) insert—

“(3A) The proprietor of a 16 to 19 Academy must make arrangements to ensure that the proprietor's functions relating to the conduct of the Academy are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the Academy.

(3B) The Secretary of State may not—

(a) enter into an agreement with the proprietor of an institution in England for the provision of further education, unless the agreement requires the proprietor to comply with the safeguarding duties, or

(b) give financial assistance under section 14 to the proprietor of an institution in England for the provision of further education unless the assistance is given on terms requiring the proprietor to comply with the safeguarding duties, but this subsection does not restrict the Secretary of State's powers to enter into an agreement with, or give financial assistance to, an institution to which subsection (3) or (3A) applies.

(3C) “The safeguarding duties” are—

(a) a duty to make arrangements to ensure that the proprietor's functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution, and

(b) a duty to have regard to any guidance given from time to time by the Secretary of State in considering what arrangements are required.”

Children Act 2004

Government legislation

<https://www.legislation.gov.uk/ukpga/2004/31/section/11/2022-07-01>

Section 11 Arrangements to safeguard and promote welfare

- 2) Each person and body to whom this section applies must make arrangements for ensuring that—
- (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
 - (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

(3) In the case of a local authority in England, the reference in subsection (2) to functions of the authority does not include functions to which section 175 of the Education Act 2002 (c. 32) applies.

This act was designed to get education and social services working more closely together.

Early years foundation stage statutory framework for group and school-based providers

Mandatory for all early years' providers

https://assets.publishing.service.gov.uk/media/670fa42a30536cb92748328f/EYFS_statutory_framework_for_group_and_school_based_providers.pdf

Section 3.7

Concerns about children's safety and welfare

All schools are required to have regard to the government's statutory guidance 'Keeping Children Safe in Education', and other childcare providers may also find it helpful to read this guidance.

The document refers readers to Section 175(4) of the Education Act 2002.

Using after-school clubs, tuition and community activities, September 2023

none-statutory guidance -applies to England

<https://www.gov.uk/government/publications/guidance-for-parents-and-carers-on-safeguarding-children-in-out-of-school-settings/using-after-school-clubs-tuition-and-community-activities#staff-and-volunteers>

Overview

There is no single legal framework that governs how clubs and activities for children operate. Although these settings offer provision for children, their staff members and volunteers are not typically inspected, overseen or assessed by any regulatory organisation.

Staff and volunteers

There is no single check that can be undertaken to show that a volunteer or staff member is suitable to work with children. Providers should be able to give you details of:

- the range of checks that they have done to reassure you that your child is safe in the care of their staff and volunteers
- their staff behaviour policy, which describes the standard of acceptable behaviour for staff and volunteers
- how they review and monitor the performance of staff to make sure they continue to have the necessary skills and training to carry out their role

After-school clubs, community activities, and tuition: Safeguarding guidance for providers, 2023

Non-statutory guidance -applies to England

https://assets.publishing.service.gov.uk/media/6509558022a783000d43e81f/After-school_clubs_community_activities_and_tuition_safeguarding_guidance_for_providers.pdf

Safeguarding and child protection policy

You should have an up-to-date safeguarding and child protection policy in place.

At a minimum, it should include:

a commitment that under no circumstances should any staff member or volunteer inflict physical or psychological harm on a child

This document also refers providers of after-school clubs, community activities, and tuition to the management of safeguarding in part 2 of Keeping Children Safe in Education 2024 which specifically references Section 175 of the Education Act 2002

Gender separation in mixed schools 2018

Non-statutory guidance for all mixed maintained and independent schools, academies and free schools

<https://assets.publishing.service.gov.uk/media/5b32201ce5274a55cdf21b3f/Gender-separation-guidance.pdf>

Negligible and exceptional separation

13. It is permissible for toilet and boarding accommodation facilities to be separate as they are captured under existing statutory exceptions. Separate toilet and washing facilities must be provided for boys and girls aged 8 years and over pursuant to Regulation 4 of the School Premises (England) Regulations 2012, which falls within the exemption provided for in Schedule 22 of the Equality Act 2010.

1. Schools should not generally separate pupils by reference to protected characteristics such as sex, race or faith while at school. Any separation by reference to a protected characteristic is likely to give rise to unlawful discrimination unless permitted by:
 - section 158 of the Equality Act 2010; or
 - section 195 of the Equality Act 2010;
 or unless the separation does not subject any pupil to a detriment because it is exceptional and its effect negligible (see paragraphs 12-13).

The Education (Independent School Standards) Regulations 2014

Statutory legislation

<https://www.legislation.gov.uk/ukSI/2014/3283/contents>

Welfare, health and safety of pupils

6. The standards about the welfare, health and safety of pupils at the school are those contained in this Part.
7. The standard in this paragraph is met if the proprietor ensures that—
 - (a) arrangements are made to safeguard and promote the welfare of pupils at the school and
 - (b) such arrangements have regard to any guidance issued by the Secretary of State.

The Non-Maintained Special Schools (England) Regulations 2015

The Regulations replace the Education (Non-Maintained Special Schools) (England) Regulations 2011

None statutory applies to England

<https://assets.publishing.service.gov.uk/media/5a7ff8aeed915d74e622bb59/NMSS-Advice-Final-19-08-15.pdf>

Paragraphs 4, 5 and 6: Suitability- of staff and governors, of supply staff, and of the chair of the governing body

29. Whilst the proprietor is ultimately responsible for ensuring the suitability of anyone appointed to a position or supplied by an employment business, all staff and governors have individual responsibility for the welfare and safeguarding of pupils.

Reference it made to safeguarding in Keeping Children Safe in Education

The Apprenticeships, Skills, Children and Learning Act 2009

Government legislation

<https://www.legislation.gov.uk/ukpga/2009/22/contents>

Financial resources: welfare

(2) “The safeguarding duties” are—

- (a) a duty to make arrangements to safeguard and promote the welfare of children receiving the education or training mentioned in subsection (1)(a) or (b) (as the case may be), and
- (b) a duty to have regard to any guidance given from time to time by the Secretary of State in considering what arrangements are required.

Academy trust governance guide 2024

Department of Education guidance for boards on how to meet their legal and regulatory responsibilities with regards to compliance

<https://www.gov.uk/guidance/-governance-in-academy-trusts/7-compliance>

7. Compliance

7.10 Safeguarding and pupil welfare

Trust boards have a duty to ensure that they:

- carry out their functions with a view to safeguarding and promoting the welfare of children
- have regard to the statutory guidance issued by the Secretary of State for Education relating to arrangements required to fulfil their safeguarding duties

This is outlined in [section 175 of the Education Act 2002](#) and the [Education \(Independent School Standards\) Regulations 2014](#).

Boards have a strategic leadership responsibility for their school’s safeguarding arrangements. They must:

- comply with their duties under legislation
- have regard to [KCSIE](#)
- ensure that policies, procedures and training in their schools are effective and comply with the law at all times

Trustees and local governors should ensure they have regard to this guidance.

Children Act 2004

Government legislation based on the 2003 Green Paper Every Child Matters

<https://www.legislation.gov.uk/ukpga/2004/31/data.pdf>

Page 26, Section 9

This Act does not make specific reference to Section 175 of the Education Act 2002 but it does consider serious or long-term impairment of a child's mental health or intellectual, emotional, social or behavioural development to be a serious safeguarding concern.