Equality and Human Rights Commission Response to Consultation on Supporting Children and Young People with Healthcare Needs in Schools

Creating a fairer Britain
Equality and Human Rights Commission Response to Consultation on Supporting Children and Young People with Healthcare Needs in Schools

24 April 2017

Contact details:

Irene Henery
Equality and Human Rights Commission
2nd Floor 151 West George Street
Glasgow
G2 2JJ

0141 228 5966

Irene.Henery@equalityhumanrights.com
The Equality and Human Rights Commission (EHRC) is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

Question 1: Introduction

Is the information provided in the introduction clearly set out? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

No

Early learning and childcare settings, grant aided schools and independent schools
The guidance highlights that many elements of the legislative and policy framework referred to within this guidance will also apply to early learning and childcare settings, grant aided schools and independent schools. It would be helpful to highlight where particular sections are relevant to these settings or perhaps to have a separate chapter for these settings.

Principles
The explanations in the principles section would be improved by making it clear whether each principle referred to is something required by law, a matter of guidance or of best practice.

The Equality Act
Our particular area of interest is in the duties under the Equality Act and we would make a couple of general points about how the Act is dealt with in the guidance. Two key sets of duties under the Act need to be highlighted in the guidance and their mandatory nature made clear – the duty to make reasonable adjustments and the public sector equality duty. The duties work in different ways and sufficient explanation will be required within the guidance to show in general terms the obligations under each. However, the guidance does not need to duplicate information in the EHRC’s Technical Guidance for Schools in Scotland and EHRC Technical Guidance on the Public Sector Equality Duty in Scotland. It is appropriate for the guidance to explain the impact of these legal duties in outline, referring to a more detailed section in the annex which explains how the duties work and which links to the EHRC’s Technical Guidance.
Within this introductory section and throughout the guidance what is important is that the guidance makes clear that there is a legal duty to make reasonable adjustments, by provision of auxiliary aids and services. This duty covers the support required by children and young people with healthcare needs in schools and the law confers individual rights. The guidance needs to set out in plain terms that education authorities and other responsible bodies must take reasonable steps to meet those healthcare needs and that this duty is anticipatory. What is reasonable will of course depend on the particular set of circumstances and the guidance will reflect that. While it is not possible for the guidance to say what will or will not be reasonable in a particular situation, reference can be made to the EHRC Technical Guidance at para 6.29 list of factors which are likely to be taken into account in deciding what a school has to do. The guidance can explain that in meeting healthcare needs in school, while this might for example involve a teacher or classroom assistant providing the necessary assistance to a pupil to meet their healthcare needs, other steps may be reasonable – but the guidance must explain clearly that the duty lies with education authorities and other responsible bodies to ensure reasonable steps are taken. The Public Sector Equality Duty (PSED) is covered in Annex C. (See comments later in the Annex question as to the title of that Annex). The guidance should where relevant in the introduction and in the body of the guidance, refer to the legal duties under the PSED on both education authorities and NHS boards. (For example see comments on Chapter 3.) Where relevant, the guidance should explain when the duty would apply and in broad terms what might be required. The guidance can then refer to the Annex for a general explanation about the concept of due regard and what will be required for practical compliance. Reference can be made to the EHRC Technical Guidance for further details.

**Question 1 Introduction**

Are there any areas missing, requiring strengthening or which are not required? If yes, please provide alternative suggestions or indicate the areas which should be removed.

Yes. It would be helpful to add a very brief note of the main changes since the last guidance eg the introduction of the Additional Support Needs Framework and the duty to provide auxiliary aids or services.
Question 2 Chapter 1 – The legislative and policy context.

Does this chapter provide sufficient reference to the relevant policy and legislative provisions? If no, please provide details of additional information which should be included or removed and a brief reason for it.

Does the information provided under each heading in this section adequately explain how the legislation or policy applies in relation to provision of healthcare or administration of medicines in schools. If no, please provide suggestions or additions that should be made and a brief reason for it.

It is recognised that there is a lot of legislation and policy which covers this area and it is difficult to summarise its extent and its effect. There is a logic to a chronological list for legislation, but it has the disadvantage that the list then jumps between different topics. It would be easier to follow the guidance if it was possible to explain the legislation and policy under the relevant topic areas eg a section explaining the law on capacity would refer to the Age of Legal Capacity (Scotland) Act; a section on pupil records and data protection would cover the relevant legislation.

Some of the matters covered in the policy context section are less directly relevant than others; for some it is not immediately clear what the relevance is. Perhaps the most relevant sections could be highlighted, with more explanation of those and then brief reference provided as to where to find details of other policy which touches on this area.

Question 3 Chapter 2 – rights and responsibilities

Are there any areas missing, requiring strengthening or which are not required and could be removed? If yes, please suggest ways in which this section might be improved.

Yes, there are areas where the guidance would be improved:

Children and Young people’s rights: by adding reference to children’s rights to request assessments and challenge decisions in relation to their additional support needs, which will come in to force shortly under the Education (Scotland) Act 2016, and reference to children and young people’s rights under the Equality Act to make disability discrimination claims.

Parents/carers: by referring to rights under additional support needs legislation and under the Equality Act and referring to processes for resolving disputes or challenging decisions.

NHS Boards: by referring to legal duties under the Equality Act which
apply to NHS Boards in meeting healthcare needs; referring to where further information can be obtained on how the public sector equality duty works and what it means in relation to setting policies, planning and delivering healthcare for children and young people in schools – see comments on page 1.

Education authorities: by referring to legal duties under the Equality Act (and Additional Support Needs legislation) – see comments on page 1.

School management team: by explaining that SMT need to be familiar with legal duties under the Equality Act and other legislation, as well as the policy framework in place.

All school staff: after the final sentence which states that it is not expected that teachers will routinely administer medication or support children and young people’s healthcare needs, by adding reference to the legal duty to make reasonable adjustments and its effect -see page 1.

### Question 4 Chapter 3 – NHS Board and education authority agreements and policies

Are there any areas missing, requiring strengthening or which are not required and could be removed? If yes, please suggest ways in which this section might be improved

The Local strategic joint agreements section would be strengthened by making it clear that these agreements should: set out how NHS Boards and education authorities will meet their legal duties, for example under the ASNTS framework and the Equality Act; detail the respective responsibilities to meet healthcare needs and how these will be identified and met.

The policy framework section would be strengthened: by referring to the legal duties under the Equality act – see comments on page 1 above; in the paragraph 69 list of examples of what might be covered, the guidance should make clear that some areas listed *should* (rather than may) be included, for example the importance of planning, given the anticipatory nature of the reasonable adjustment duty, to consider and take action in relation to barriers that impede people with one or more kinds of disability who have healthcare needs, prior to an individual disabled pupil coming to the school; how it is intended to identify and meet the individual needs of pupils and discharge duties under the Equality Act, making clear who has relevant responsibilities; the outcome of assessment of the equality impact of the policy as required under the public sector equality duty, and consideration given to mitigating adverse impact.

The resolving disagreements section should include reference to the rights to be extended to children under the Education (Scotland) Act 2016 as mentioned above.
Question 5 Chapter 4 – Supporting Children and Young People with Healthcare Needs at school level.

Are there any areas missing, requiring strengthening or which are not required and could be removed? If yes, please suggest ways in which this section might be improved

The Role of schools section would be strengthened by including reference to the arrangements schools should make so that parents and pupils (and prospective pupils and parents) are aware of the person in the school who has responsibility for supporting healthcare needs.

Question 6 Chapter 5 - Circumstances where a school may need to make special arrangements for supporting Children and young People with Healthcare Needs

Are there any areas missing, requiring strengthening or which are not required and could be removed? If yes, please suggest ways in which this section might be improved

This chapter would be strengthened by referring in clearer terms to the legal duties under the Equality act – see comments on page 1. This chapter requires an explanation of what will be required under the public sector equality duty – for example in setting its policy on school trips and outdoor learning activities and in the arrangements they make, schools will have to have due regard to the potential adverse impact on disabled pupils and potential pupils and how that might be avoided. Reference can be made to where the duty is further explained in the annex.

In addition, the guidance should emphasise the anticipatory nature of the legal duty to make reasonable adjustments which requires consideration at the planning stage of trips, sporting activities and so on, of the need to take reasonable steps to address the disadvantage of disabled pupils. Reference could be made to further information about the duty in the annex/ EHRC Technical Guidance. Some examples here would be helpful to show how this will help identify the most appropriate facilities and ensure the widest possible participation; it will help avoid barriers that might otherwise arise. For example arranging for a venue which has facilities for meeting healthcare needs (such as fridge to store medicines or accessible toilet facilities); timing trips or activities to allow healthcare needs to be met with minimum disruption.
Annex A and B Guidance on the use of emergency salbutamol inhalers and other condition specific information

N/A

Annex C and D
Other relevant legislation, useful guidance and useful organisations

Do these Annexes provide appropriate supplementary detail. If no, please provide details of additional information which should be included or removed and a brief reason for it.

The Equality Act has been referred to throughout the Guidance and so might be better given a separate Annex rather than fall under the title of “other” relevant legislation.

The Annex has the public sector equality duty as a separate title after the Equality Act title. This could be misleading as it could be taken to suggest that the duty isn’t part of the act. We refer to the general points set out in pages 1 and 2 above.

Annex D would be strengthened by including the EHRC Technical Guidance for schools *Schools technical guidance - Scotland* and the EHRC Technical Guidance on the Public Sector Equality Duty *Technical Guidance on the Public Sector Equality Duty Scotland*

And by including reference to the EHRC in the list of useful organisations with a link to our website [https://www.equalityhumanrights.com](https://www.equalityhumanrights.com) and reference to the *Equality Advisory Support Service (EASS)* which provides information, assistance and support (but not legal advice or representation) to individuals across Britain about discrimination and human rights issues and the applicable law.

Question 9 Paracetemol

N/A

Question 10 Guidance structure

Does the structure help the reader to follow/use the guidance effectively? If no, please explain your answer. Is there anything in the body of the document that you would like moved to an annex or anything in an annex moved to the body of the document.
See comments above at page 1.

Readers might find examples and/or a FAQ section helpful and that would be a useful way for the guidance to promote best practice. These could be used to give specific information about situations which might arise, perhaps relating to some of the most common conditions which pupils might have where they would have healthcare needs in school.

**Question 11 General**

*Is the guidance helpful? If no, please explain your answer.*

See comments above.