



What should a school do
if a pupil has a disability?

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This booklet aims to explain what schools should do for a pupil with a disability, by law.

What is a disability?

Under the law (the Equality Act 2010) to be considered as having a disability, a child or young person must have:

A **physical** or **mental impairment** that has a **substantial** and **long-term** adverse effect on their ability to carry out **normal day-to-day activities**.

A more in-depth explanation of the legal definition of disability is available in the booklet, 'Disability: what the law says'.

All leaflets are available from the Physical and Medical Needs Service.

Why is it important to have a legal definition of disability?

Disability is a protected characteristic under the Equality Act. This means that a child or young person is protected against discrimination in school arising from their disability.

There are other protected characteristics including sex, race, religion or belief, sexual orientation, gender reassignment and pregnancy or maternity. However, this leaflet concentrates on what schools should do for disabled children and young people.

How are disabled pupils protected by the Equality Act?

The Equality Act 2010 says that schools must not discriminate against, harass or victimise a pupil or a potential pupil with a disability in terms of:

- their admission to the school;
- how it provides education for pupils;
- access to any benefit, facility or service; or
- by excluding a pupil or subjecting them to any other detriment.

The law applies to all aspects of school life so it includes lunchtimes, clubs, activities and school trips.

Unlike the rest of the Equality Act which focuses upon treating people equally, the law on disability is different. It protects disabled people but not those who are not disabled.

This means that schools are allowed to treat disabled pupils more favourably than pupils without a disability, and in some cases they are required to do so.

What is meant by discrimination?

The Equality Act calls discriminatory behaviour prohibited conduct. This means it is against the law. There are different types of prohibited conduct that apply to all children with a protected characteristic, including:

- Direct discrimination;
- Indirect discrimination;
- Harassment; and
- Victimisation.

In addition, the following forms of prohibited conduct apply to disabled pupils:

- Discrimination arising from a disability; and
- A failure to make a reasonable adjustment.

Further details about the types of prohibited conduct are provided in the sections below.

What is direct discrimination?

Direct discrimination is where a pupil is treated less favourably than another pupil because they are disabled. For example:

A school plans a trip to a natural history museum. A girl with Down's syndrome is excluded from the trip as the school believes she will not be able to participate in the activities provided by the museum for school groups. This is likely to be unlawful direct disability discrimination.

Schools are not allowed to justify direct discrimination in any circumstances.

What is indirect discrimination?

Indirect discrimination is where a rule is put in place, or there is a way of doing things that puts disabled pupils at a disadvantage compared with pupils who are not disabled, when this can not be justified. For example:

A primary school has a healthy snacks policy. A pupil with diabetes is told she cannot eat her high calorie snack in the playground at break time and is told to sit outside the head teacher's office instead.

What is harassment?

Harassment is behaviour that violates someone's dignity or which is hostile, degrading, humiliating or offensive to someone with a disability; e.g. a teacher shouting at a pupil because his disability means that he is constantly struggling with class-work or unable to concentrate.



What is victimisation?

Victimisation is where someone is treated unfavourably because they have taken (or might be taking) action under the Equality Act or where they are supporting somebody who is doing so.

What is discrimination arising from a disability?

Discrimination arising from a disability is where a disabled person is treated unfavourably because of something arising from their disability, when this cannot be justified. For example:

A boy with ADHD is excluded for his behaviour including refusing to sit at his desk, distracting other pupils by talking and running around during classes. The pupil has been cautioned previously and the school does not see any other option than to exclude him. This is likely to be unlawful discrimination as he was excluded for behaviour which is related to his disability. It is unlikely to be a proportionate means of achieving a legitimate aim as no other efforts were made to support the pupil to manage his behaviour.

Can discrimination be justified in some circumstances?

In certain circumstances, schools can justify indirect discrimination or discrimination arising from a disability, where they can show that this was done for a legitimate reason and where it was a proportionate way of achieving that legitimate aim.

This means that the school must have a very good reason for doing something in a certain way and that they have investigated but have not been able to find another, less discriminatory way to achieve something.

A legitimate aim might be something that ensures the:

- wellbeing and dignity of pupils;
- fair exercise of power; and/or
- maintenance of academic and behavioural standards.

What are 'reasonable adjustments'?

Where something a school does might put a disabled pupil at a disadvantage, the school must

take reasonable steps to avoid that disadvantage. This is called the reasonable adjustments duty.

Reasonable adjustments are positive actions that help a disabled pupil to fully participate in all aspects of school life.

Schools need to think in advance about what disabled pupils might require and what adjustments might need to be made for them.

Most reasonable adjustments are inexpensive and might just involve changes in how schools do things. The following are some examples of reasonable adjustments:

- Adjusting a timetable to provide pupils with learning difficulties more time to learn and practice new skills;
- Allowing a pupil with a visual impairment to sit at the back of a classroom to accommodate her field of vision;
- Providing pupils with dyslexia a card to indicate to teachers that they may need extra time to complete written tasks;
- Giving a pupil with learning difficulties, who can be disruptive, time out of class to work with her support worker and the use of positive rewards on a daily basis for good behaviour rather than punishments such as detention.

Parents and pupils can often help schools in thinking about what disadvantage

might arise in school and what reasonable adjustments may work best.

Does a school have to provide aids or services for a disabled pupil?

The reasonable adjustments duty also includes a duty for schools and local authorities to provide auxiliary aids and services for disabled pupils.

An auxiliary aid or service is something or someone that provides help or support, for example, a piece of equipment or support from a member of staff.

Schools are only expected to provide an auxiliary aid or service where this would remove or reduce a substantial disadvantage faced by a disabled pupil and where it is reasonable to do so.

Schools are not able to justify not making a reasonable adjustment; if it is reasonable, a school should make the adjustment.

Factors that a school may consider when assessing if an adjustment is reasonable might include:

- the financial or other resources required for the adjustment;
- the effectiveness of the adjustment;
- the effect of the adjustment on other pupils; and
- health and safety requirements.

Some disabled pupils may also have special educational needs and might access an auxiliary aid or service

through their Education, Health and Care Plan, or Statement.

Do schools have to make adaptations to the building for a disabled pupil?

Altering a school building is not a reasonable adjustment; schools already have to consider this as part of their planning duties.

All schools must have an accessibility plan which sets out how they will:

- increase access to the curriculum for disabled pupils;
- improve the physical environment of the school to increase access for disabled pupils; and
- make written information more accessible to disabled pupils by providing information in a range of different ways.

Do schools have any other duties under the Equality Act?

The Equality Act also introduced a Public Sector Equality Duty which applies to schools as well as other public bodies. Under this duty, schools are required to have due regard to the need to:

- eliminate discrimination and other conduct that is prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and

- foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

What can you do if you have concerns about discrimination?

If a parent or carer thinks their child may have been discriminated against, they can discuss this with the head teacher or principal of the school. This can usually resolve any issues quickly.

However, parents or carers can also:

- speak to the responsible body of the school, e.g. the governing body of a maintained school or the academy trust if the school is an academy;
- follow the school's written complaints procedure; and
- contact the Special Educational Needs and Disability Information, Advice and Support Service (SENDIASS) for help;

If the above actions don't resolve the issue, parents or carers can contact the local authority for further advice.

In exceptional cases, parents or carers may want to make a claim for unlawful discrimination through the First-tier Tribunal (SEN and Disability), often known as SENDIST.

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