

Disability Equality Schemes Guidance for schools

LSES

Inclusion SEN Team

CONTENTS

1. Introduction	3
2. What are Disability Equality Schemes?	4
3. Who do Disability Equality Schemes apply to?	5
4. What are Disability Equality Schemes intended to achieve?	7
5. How can schools go about implementing Disability Equality Schemes?	8 - 11
6. Appendices	
Appendix 1 Statutory Background	12 - 14
Appendix 2 Glossary and Terms	15 - 17
Appendix 3 Reasonable Adjustments; Substantial Disadvantage; Anticipatory Duty.	18 - 21
Useful Contacts	22

1. Introduction

Disability Equality Schemes

By 4th December in 2006 secondary schools **must** produce and publish a Disability Equality Scheme. Primary schools, special schools and short stay schools/PRU's have until 3rd December 2007 to produce and publish their scheme.

This guidance is designed to give a concise overview of what schools are expected to do. It does not replace other guidance that has been published centrally by the Department for Education and Skills or the Disability Rights Commission and schools should read this guidance in conjunction with these publications.

Things that schools should take particular note of are marked ® as recommended for particular attention.



Please see the back cover for useful contacts

2. What are Disability Equality Schemes?

The Disability Equality Scheme results from the Disability Discrimination Act of 2005 (DDA 2005) and previous legislation (See Appendix 1). Disability Equality Schemes require schools to have a more proactive approach to including disabled people in all aspects of school and community life. They cover the rights of pupils, parents, carers, employees, governors and staff and more than ever before these schemes are about making a difference to the lives and experiences of all disabled children; young people and adults.

Secondary schools and colleges are required to have a Disability Equality Scheme published by 4th December 2006 and for primary, special and short stay schools by 3rd December 2007. As there is a very short timescale for secondary schools it is not envisaged that they will be required to have perfect provision in place by 4th December 2006, but rather to show how they are developing practice over time.

No template for a scheme is included in this guidance as schools already have policies and plans, such as inclusion policies and accessibility plan, in place that support the Disability Equality Scheme. To make the scheme effective it is important that it links to other school plans for building; refurbishment; curriculum development; ongoing policy review and so on.

® The Disability Equality Scheme must contain:

- A statement of how disabled people have been **involved** in developing the scheme.
- The action that the school is going to take to implement the scheme.
- Arrangements for gathering information about performance of **the school** disability equality.
- Arrangements for assessing the impact of the activities of the **school** on disability equality and improving these when necessary.
- Details of how the school is going to use the information gathered, in particular in reviewing the effectiveness of its action plan and preparing subsequent schemes.

® When drawing up the Disability Equality Scheme schools have to take account of **Six Duties**. These are;

1. Promote equality of opportunity between disabled persons and other persons
2. Eliminate discrimination that is unlawful under the Act
3. Eliminate harassment of disabled persons that is related to their disabilities
4. Promote positive attitudes towards disabled persons
5. Encourage participation by disabled persons in public life; and
6. Take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons.

Therefore the scheme should describe how the school will promote these duties and develop their culture; ethos and provision in relation to disability.

For more information: Use the "Code of Practice" and "Specific Guidance for Schools" from the DRC website under publications (See Useful Contacts on the back page of this document)

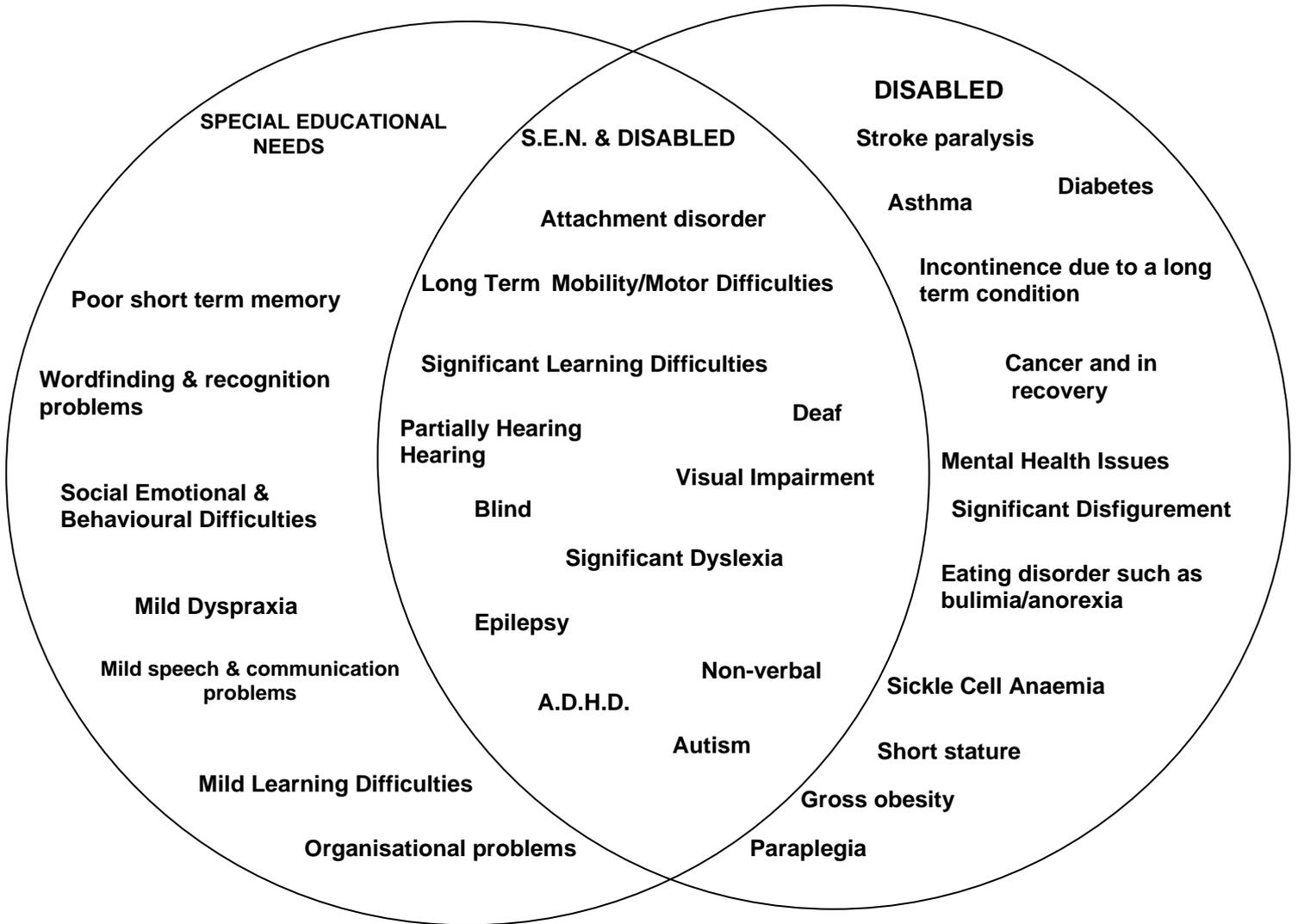
3. To whom do Disability Equality Schemes apply?

A disabled person under the Act is a person with a physical or mental impairment which has a **substantial, long-term and adverse** affect on their ability to carry out normal day-to-day activities (See Appendix 2). It also includes people with cancer, HIV, multiple sclerosis from the point of diagnosis and also people with a severe disfigurement.

® This definition may include pupils with a statement for SEN but there may be disabled pupils who do not have a statement and would not require additional educational support but have rights under the new legislation.

Equally not all pupils with SEN have a disability recognised under the requirements of the Act.

The following gives some indication as to possible differences between SEN and DDA definitions of disability for children and young people. However each individual case needs to be judged on the impact on the day to day life of the person (See Appendix 2)



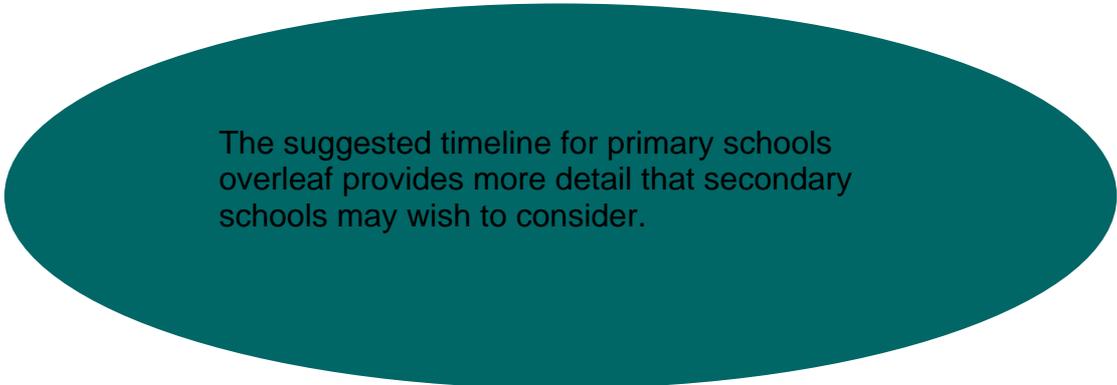
4. What are Disability Equality Schemes intended to achieve?

- To ensure that schools meet the statutory requirement to make **reasonable adjustments for disabled children and young people** (See Appendix 3) to facilitate full participation in the life and opportunities of the school.
- To ensure children, young people, school staff, parents and governors who have rights under the DDA 1995 and 2005 are not put at a disadvantage.
- To enable disabled members of the school community – both actual and anticipatory – to be respected and included as equals.
- To encourage a more positive attitude towards disability throughout society
- To enable all learners to reach their full potential by reducing barriers to learning.
- To promote greater knowledge and understanding of disability amongst **all** learners
- To place emphasis on equality for disabled members of the school community
- To encourage strategic and reflective planning in relation to disabled stakeholders
- To support development of the Every Child Matters (ECM) agenda
- To inform School Self Evaluation (SSE) and meet Ofsted requirements

5. How can schools go about implementing Disability Equality Schemes?

At the time of writing this guidance in October 2006, the DRC Guidance for Schools was not available. This reduces the available time for secondary schools to put a scheme in place. However, the following are the essential actions that secondary schools should take.

- **Identify a SLT lead to take responsibility for ensuring that the DES is produced; carried through; reviewed and reported upon. Collect information from DfES / DCR**
- **Identify a group of parents, staff, members of the school community and pupils, including pupils with rights under the DDA 2005 and plan a schedule of meetings to work on the Scheme.**
- **Audit current provision against the six key duties (see P4) and set up a rolling programme of curriculum and policy review. Prioritise the actions that the school will take.**
- **Plan the actions the school will take and identify how this will be reviewed and reported upon. Take the Scheme to governors.**
- **Publish the Scheme.**



The suggested timeline for primary schools overleaf provides more detail that secondary schools may wish to consider.



Suggested Timeline for Action in Primary, Special and Short Stay Schools

September October	Identify a group, including pupils, with rights under DDA 2005, staff, parents, governors, members of the community; to be involved in developing the scheme.
November	Plan a schedule of meetings over the course of the following months when this group can meet together. Plan the audit of current provision against the six key duties set out in page 4 of this document.
December	Arrange to gather information about the performance of the school on disability equality. E.g. pupil achievement, employment and retention etc.
January	Plan a rolling programme of curriculum and policy review to assess the impact of school policies, procedures and practices on disability equality.
February March April	Review policies and practices in relation to disability equality.
May	Incorporate priorities for action into the school development planning cycle.
June	Write the Scheme outlining what will be done and how the school will implement, review and evaluate Disability Equality over the coming three years.
September	Share draft Scheme with all staff, school council.
October	Present draft Scheme to Governing Body.
November	Amend Scheme if required.
December	Publish Scheme.

Where should schools start?

Identify a member of the Senior Leadership Team (SLT) to take the lead. Identify a group including pupils with rights under DDA 2005, staff, parents, governors, members of community (with rights under DDA 2005) to be involved in developing the scheme. Audit current provision against the six key

duties set out on page 4 of this document. Arrange a group meeting(s) to work on the scheme.

What do we do next?

- Arrange to gather information about the performance of the school on disability equality e.g. pupil achievement, employment and retention etc.
- Plan the actions the school will take.
- Arrange to assess the impact of school policies, procedures and practices on disability equality – this should be on a rolling programme and can coincide with the school's ongoing review.
- Detail how the school will use this information to review the effectiveness of its action, report on this and prepare the next plan – (every three years).
- Identify an annual review/reporting process/mechanism.

® *What should be covered in the scheme?*

- Achievement of pupils
- Ensuring positive representations of disability in the curriculum
- Teaching and learning
- Developing a voice for disabled pupils, staff and parents
- Removing barriers, physical communication and curriculum
- Lettings and use by community
- Elimination of harassment and bullying
- Employing, promoting and training disabled staff
- Monitoring
- Assessment
- Governance and relations with parents
- Breaks, lunchtimes, after school and trips
- How the school involved disabled people
- Making the school more accessible – links with School Accessibility Plan

Is this linked to other School Improvement Planning?

This scheme should be embedded into the school's usual improvement planning cycle and be routinely included in all self evaluation activities e.g. Ofsted Self Evaluation Form. Ofsted have been charged with monitoring the implementation of the school's Disability Equality Scheme.

® *How does this relate to my accessibility plan?*

The Disability Equality Scheme does not replace the school accessibility plan. **HOWEVER** the accessibility plan will provide the foundation for a number of aspects of the Disability Equality Scheme on which the school can build.

6. Appendices

Appendix 1

Statutory Background

Regulations made under the Disability Discrimination Act 2005 (DDA) place specific duties on schools and local authorities, to develop a **disability equality scheme (DES)**. Local authorities and secondary schools are required to publish their disability equality scheme by 4 December 2006, primary schools and special schools by 3 December 2007.

Ofsted will evaluate and report on **disability equality schemes** and they should feature in the school SEF. Discrimination is not about physical access alone. It also relates to; opportunities; curriculum; achievement and progress against individual bench marks; and the full life of the school such as educational visits. Schools that already have **accessibility plans** in place will find the implementation of their **disability equality schemes** easier as the two should “piggy back” each other.

Since 2002, three sets of duties have combined to provide the statutory framework that underpins equality of opportunity for disabled pupils in accessing school education:

- the disability discrimination duties in Part 4 of the DDA;
- the planning duties in Part 4 of the DDA;
- The Special Educational Needs (SEN) Duties in the Education Act 1996

Together the three sets of duties are designed to ensure access to education and the inclusion of disabled pupils in every aspect of school life. They focus on the removal of barriers to the progress of disabled pupils and underpin what many schools are already putting in to practice. Each set of duties provides an important element:

- the disability discrimination duties provide protection from discrimination;
- the planning duties provide for improvements to increase access, over time; and
- the SEN framework provides auxiliary aids and services.

1) Disability Discrimination Duties in Part 4 of the DDA

It is unlawful for schools to discriminate against disabled pupils. A school discriminates if:

- it treats a disabled pupil or **prospective** pupil **less favourably** than another for a reason related to their disability and without justification;
- it fails, without justification, to take **reasonable steps** to avoid placing disabled pupils at a substantial disadvantage. This duty is often known as the 'reasonable adjustments' duty. (see Appendix 3)

2) Planning Duties in Part 4 of the DDA

Schools are required to develop **accessibility plans**, to improve access to school education for disabled pupils.

The plans are required to show how, over time, access to the school will be increased by:

- improving access to the curriculum for disabled pupils;
- making improvements to the physical environment of the school to increase access to education and associated services;
- making written information accessible in a range of different ways for disabled pupils, where it is provided in writing for pupils who are not disabled. The legislation requires the provision of information in alternative formats to be made within a reasonable period of time and taking into account the views expressed by pupils, or by their parents, about their preferred means of communication.

Accessibility plans were required to be in writing and to have in the first instance, run for three years, from 1 April 2003 to 31 March 2006 renewable every three years thereafter. During the three-year period, plans and strategies should have been kept under review and, if necessary, revised.

Schools are required to report annually on their accessibility plans, and on other aspects of their DDA and SEN duties. With the removal of the requirement on the governing body to publish an annual report to parents, the school is required to make this report in the school prospectus.

Ofsted should inspect the quality of school plans. Where this is done appropriately Ofsted expects to see the three key elements of the planning duties addressed in plans and strategies. The Secretary of State has powers to instruct schools to draw up a plan if they do not have one, or to order improvements if this should be necessary.

The Disability Discrimination Act 2005

The DDA 2005 places a duty to promote disability equality on all public bodies, including schools and local authorities. This requires them to have due regard to the need to;

- eliminate unlawful disability related discrimination;
- eliminate harassment related to a disability;
- promote equality of opportunity between disabled people and other people;
- promote positive attitudes towards disabled people;
- encourage participation by disabled people in public life; and
- **Ⓡtake steps to take account of disabled people's disabilities even where that involves treating disabled people more favourably than other people.**

The duties apply in respect of disabled pupils, disabled staff and disabled people who use services provided by schools and local authorities.

Regulations made under the DDA 2005 place specific duties on schools and local authorities, to develop a disability equality scheme to support the implementation of the general duty set out above. **Local authorities and secondary schools are required to publish their disability equality scheme by 4 December 2006, primary schools and special schools by 3 December 2007.**

Appendix 2

Glossary and Terms

The **disability equality scheme** covers all those employed by the school; parents/carers as well as pupils. The concept of disability is wider than one may expect. It is not synonymous with SEN although some SEN children, young people and adults also have disabilities as defined under the DDA. For planning purposes and for the avoidance of discrimination, it may be helpful for schools to think of more pupils with SEN being included in the definition of disability rather than fewer: it is likely that many of the pupils who have SEN and a statement or who are at *School Action Plus*, or *Early Years Action Plus*, will also be disabled.

The Disability Discrimination Act 1995 (DDA1995) defines a disabled person as someone who has:

‘a physical or mental impairment which has a **substantial** and **long-term adverse effect** on his or her ability to carry out **normal day-to-day activities**.’

Appendix 1 of the Disability Rights Commission’s *Code of Practice for Schools: Disability Discrimination Act 1995: Part 4* provides a more detailed account of the definition of disability. To understand the definition, and its breadth, it is important to understand a number of key terms used in the definition:

a) Impairment

In the DDA definition:

- ‘*physical impairment*’ includes sensory impairment;
- ‘*mental impairment*’ includes learning difficulties and an impairment resulting from or consisting of a mental illness.

The definition can include a wide range of impairments, including **hidden impairments** such as dyslexia, autism, speech and language impairments, Attention Deficit Hyperactivity Disorder (ADHD).

An impairment does not necessarily of itself mean that a pupil is disabled. It is the **effect on the pupil’s ability to carry out normal day-to-day activities** that has to be considered.

b) Normal day-to-day activity

The test of whether an impairment affects normal day-to-day activity is whether it affects one or more of the following:

- mobility;
- manual dexterity;
- physical co-ordination;
- continence;
- ability to lift, carry or otherwise move everyday objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand;
- perception of risk of physical danger.

To date the definition of disability has been tested mainly in relation to adult services. A child's ability to memorise, concentrate, learn, speak, move is central to their education. An impairment that has a long-term and substantial effect on a child's ability to do these things may amount to a disability.

c) Long-term and substantial

"Long-term" is defined in the DDA as having lasted or being likely to last 12 months or more. Clearly this rules out conditions such as a broken limb which is likely to mend within that time. *'Substantial'* means *'more than minor or trivial'* but it may helpfully be thought of as meaning *'having some substance.'* The combined effect of these two terms is to lower the threshold of what may count as a disability, thus including more people in the definition.

Nevertheless, *"Long-term"* also includes people with a terminal illness where it is likely that the person will not survive for 12 months

d) Disfigurements

Pupils with severe disfigurements are covered by the DDA and do not need to prove that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

e) Progressive conditions

Progressive conditions are conditions that are likely to change and develop over time.

Pupils who have progressive conditions are included in the definition and are likely to be covered as soon as there is some effect on their ability to carry out normal day-to-day activities, and before there is a substantial effect. Changes to the DDA, brought in by the Disability Discrimination Act 2005, specifically bring people with cancer, multiple sclerosis and HIV infection within the

definition of disability as soon as they have the condition and before there is necessarily any effect on their ability to carry out normal day-to-day activities.

f) Diagnosis

The existence of an impairment or condition should not be confused with whether a child has been given an official diagnosis. A particular condition exists, whether or not it has been officially diagnosed.

g) SEN

It is often thought that special educational needs broadly equates to learning difficulties. In fact the definition includes more children than those who have 'learning difficulties' in the commonly accepted sense. This is because the definition of learning difficulties in the legislation includes children who have a disability and who need something additional or different to be provided for them. So, for example, a child with a visual impairment who needs materials to be provided in an enlarged font is defined in the legislation as having a learning difficulty even if they are not behind in their learning.

Appendix 3

Reasonable Adjustments; Substantial Disadvantage; Anticipatory Duty

The Disability Discrimination Act 1995 (DDA 1995) requires schools and local authorities to make **reasonable adjustments** to ensure that disabled pupils are not put at a **substantial disadvantage** and are able to access the same opportunities as their non disabled peers. In addition to ensuring access to the curriculum; access to information and access to the physical environment, schools must ensure that pupils who have rights under the disability legislation are not discriminated against during breaks; lunchtimes and school clubs; performances; educational visits; through adjustments to behaviour for learning; or, when meeting medical and personal care needs. The principles for making reasonable adjustments in these areas are the same and outlined below.

Following the implementation of The Special Educational Needs and Disability Act 2001 (SENDA) a significant consequence for schools is the requirement for all schools to have an **accessibility plan**. The **accessibility plan** is one way in which schools can ensure that they meet their duties so that:

- **reasonable adjustments** are made by the school in respect of current/prospective pupils with disabilities;
- pupils with disabilities are not put at a **substantial disadvantage**; i.e. schools are not to treat pupils less favourably as a result of their disability;
- schools **anticipate** the likely needs of current pupils at the school and those who may attend the school in the future.

Reasonable adjustments meet the statutory requirements when they:

- act to prevent disabled pupils being placed at a substantial disadvantage;
- are aimed at all disabled pupils;
- are anticipatory;
- enable pupils to participate in education and “associated services”.

When deciding if a reasonable adjustment is necessary to avoid placing disabled pupils at a substantial disadvantage, schools need to consider the potential impact on disabled pupils in terms of:

- time and effort;
- inconvenience;
- indignity or discomfort;
- loss of opportunity;
- diminished progress.

Schools should be making reasonable adjustments for disabled pupils at different levels of school life:

- for the individual disabled pupil;
- in their practices and procedures;
- in their policies.

To make reasonable adjustments schools will need to:

- plan ahead;
- identify potential barriers;
- work collaboratively with disabled pupils, their parents and others;
- identify practical solutions through a problem solving approach;
- ensure that staff have the necessary skills;
- monitor the effects of adjustments on a pupil's progress.

Schools will know they are succeeding in making reasonable adjustments when disabled pupils can wherever possible participate fully in school life:

- in the classroom;
- in the 'school curriculum';
- at breaks, lunchtime and beyond the school day;

And when:

- disabled pupils feel part of the life of the school;
- disabled pupils are included by their peers in all parts of school life;
- parents feel their disabled child is part of the life of the school;
- staff feel confident in working with disabled pupils.

Reasonable Adjustments

Whilst it is not possible to give examples that cover all aspects of the reasonable adjustments duty the following may assist in understanding what schools could do. One aspect of school life – Educational Visits, have been used for the following examples;

a) A boy with a spinal injury who uses a wheelchair wants to attend an outdoor education visit. The teachers are concerned as they do not know which activities he is capable of undertaking. The boy might be at a substantial disadvantage if he is not included in the visit. The physiotherapist and the LA Educational Visits Adviser are asked to advise and help the school to adjust the activities appropriately. Whilst a judgment is made that the pupil cannot undertake all the activities on offer a full and varied programme of activities is agreed for him which is also open to other pupils. This is considered to be a **reasonable adjustment**.

b) An exchange trip is offered to pupils studying Italian in a secondary school. Accessible transport arrangements are made and a suitable host is identified who can accommodate a pupil who uses a wheelchair. At the last minute the Italian host drops out.

The school considers the following options:

- it is not practicable to take the disabled pupil without a host to go to;
- the school considers cancelling the trip, but if the other pupils do not go they will lose the opportunity of improving their Italian.

In the interests of other pupils the school decides to go ahead with the trip. The school has considered the relevant factors and, whilst it has not been able to identify a reasonable adjustment which would enable the pupil to go on the trip, it is likely to be acting lawfully. Nevertheless the school should try and make an alternative provision available to the disabled pupil so that he/she does have access to an opportunity to improve his/her Italian and, hopefully, also has an interesting and enjoyable experience

Substantial Disadvantage

Schools must also ensure that when included in an outdoor visit a pupil is not put at a **substantial disadvantage**. This means that the school must take account of a number of factors to ensure that a pupil is not put at a **substantial disadvantage**.

These factors may include:

- the time and effort that might need to be expended by a disabled child;
- the inconvenience, indignity or discomfort a disabled child might suffer;
- the loss of opportunity or the diminished progress that a disabled child may make in comparison with his or her peers who are not disabled.

Example:

A school with a physically disabled pupil fails to negotiate appropriate transport with a specialist lift for a visit. This causes the pupil to have to be lifted onto the bus and also to negotiate their way down the bus. This is likely to cause the disabled pupil to lose some dignity and also to exert additional effort so putting the pupil at a substantial disadvantage. This may be unlawful.

Anticipatory Duty

It is essential that schools review their policies, practices and procedures, as a matter of course, to ensure that they do not discriminate against disabled children. It means that a school should not wait until a disabled child seeks admission to the school or is admitted as a pupil to consider what reasonable adjustments it might make generally to meet the needs of disabled pupils.

Anticipatory changes may be prompted by thinking about groups of children or individual children who might come to the school.

Examples:

- a) a secondary school takes pupils to an outdoor education centre each year. The school can benefit from a reduced rate if it books with the same centre for three years. The school should check with the centre before booking to ensure that if it was to take disabled pupils as part of a group they would be able to access the facilities of the centre. If access is not possible the school should explore other venues with regard to access and activities for pupils with disabilities which could be used in the future. This is likely to be a reasonable step that the school could take as part of its **anticipatory duty**.

- b) a small rural primary school has little experience of taking disabled pupils on outdoor visits. The school is going to admit a five-year old girl with a rare syndrome involving moderate learning difficulties, poor muscle tone, and speech and language difficulties. The head teacher consults the child's mother and a local voluntary organisation and devises a series of short training events for staff. The training enhances staff knowledge and confidence so that the girl will be able to access outdoor visits when she is admitted to the school. This is likely to be a **reasonable step** to take to prevent the pupil from being placed at a **substantial disadvantage**.

For all schools, discussions with parents/carers and pupils themselves will be important in informing the responsible body more precisely about the nature of the adjustments which may be needed in anticipation of a particular pupil being admitted. However, it should be noted that there is no obligation on pupils and parents to share such information about a child's disability. If information is shared, schools are clearly in a better position to make appropriate adjustments on behalf of the individual pupil.

USEFUL CONTACTS

Where can I get help, support and advice?

➤ LSES

- school adviser
- area or phase team leader:

North	South	East	Secondary	Inclusion (SEN) Team
Jean Lang 01524 585686	Steve Belbin 01772 531536	Bill Haykin 01254 220530	Phil Wood 01772 531658	Elizabeth Scott 01772 532710

➤ **Governor Services** – Joy Bellis 01772 531637

➤ **County Secretary and Solicitor's Group** – David Croall 01772 530849

➤ **Disability Rights Commission (DRC)** Helpline by voice, text, fax, post, website.

Textphone 08457 622 644 Fax 08457 778 878

Telephone 08457 622 633 Website www.drc-gb.org

Address DRC Helpline, Freepost, MID02164, Stratford-upon-Avon, CV37 9BR

➤ **Department for Education and Skills** *“Implementing the Disability Discrimination Act in schools and early years settings”*
ref: 0160-2006 DOC-EN

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