



## Houghton Conquest Lower School and Pre-school

### Accessibility Policy (CBC Strategy)

This has been taken from the Central Bedfordshire Accessibility Strategy (Maintained Early Years Settings and Schools).

#### Introduction

Central Bedfordshire believes that every child/young person should be able to access the full curriculum and other opportunities that are provided through their local early years setting/school, and will work with these settings to ensure that reasonable adjustments are made to make this possible.

This Strategy has been written with support from the Central Beds Access Group.

Central Bedfordshire has an Equality and Diversity Strategy which should be read in conjunction with this strategy.

#### Understanding the Context

##### 1. Why is access and inclusion important?

Central Bedfordshire Council has high expectations and aspirations for all of its children and young people, including those with special and additional needs and disabilities.

The council is committed to working with schools and settings, partner agencies such as the health services, children and young people and their parents/carers to remove barriers preventing children with disabilities achieve good outcomes. We promote appropriate inclusive practices, both in our own services and in the schools and settings in our area.

While we will comply with all legislation around equality, access and disability, we will also seek - together with our schools and settings - to go beyond this to make positive inclusion a reality for children and young people.

A strategic and systematic approach to improving access will help the council ensure the availability of provision where it is required, and as early as possible.

##### 2. What is disability?

The Equality Act 2010 defines a disabled person as anyone 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*'. *Substantial* means more than minor or trivial and *long-term* means has lasted or is likely to last longer than 12 months.

The definition is broad and includes physical impairments which include sensory impairments and other less obvious disabilities such as ADHD, autism, dyslexia, and speech and language difficulties. It also includes medical conditions such as diabetes or epilepsy. Some specified medical conditions, HIV, multiple sclerosis and cancer are considered as

disabilities, regardless of their effect.

### **3. Legal duties**

Since 2002, three sets of duties have combined to make up the statutory framework that ensures disabled pupils have equal opportunities to access education.

- The disability discrimination duties in Part 4 of the Disability Discrimination Act (DDA);
- The planning duties in Part 4 of the DDA;
- The special educational needs (SEN) duties in the Education Act 1996 (which includes some but not all disabled children and young people).

Schools had a duty under Part 3 of the DDA 'Provision of Goods and Services' to make sure they are accessible to parents and adult visitors with a disability.

**On 1 October 2010, the Equality Act 2010 replaced all existing equality legislation such as the Race Relations Act, Disability Discrimination Act and Sex Discrimination Act.**

#### **Equality duties**

In addition, the three specific duties on schools – race, disability and gender – to eliminate discrimination and encourage equal opportunities were combined into a single Public Sector Equality Duty. Its aim was to be less bureaucratic and more outcomes focused.

#### **Auxiliary aids**

The Equality Act also extended the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled pupils. Following consultation, this came into force on 1 September 2012.

Further information on the Equality Act requirements can be found in **Appendix 2**.

### **4. Data on disability in Central Bedfordshire**

We have now produced a register of children and young people with a disability, as required by the Aiming High for Disabled Children Programme. However, we recognise this is incomplete as it is based on information provided by parents/carers that have chosen to share it. The expectation within Aiming High is that 3.5 per cent of children and young people should be identified on the register.

Research has shown that the number of children covered by the legal definition of disability is generally underestimated. As part of their disability equality schemes, schools are encouraged to seek information on disability from families and anyone else who uses the premises. This is part of the Public Sector Equality Duty.

### **5. What is the local authority's role in achieving accessibility and equality?**

#### **Partnership between Central Bedfordshire and settings/schools**

The government's expectation is that the council will support and challenge settings/schools to ensure that they meet these responsibilities. Central Bedfordshire works closely with settings/schools to ensure that where responsibilities are shared this is managed strategically.

The council provides and signposts services to support settings/schools in making reasonable adjustments and removing barriers to learning and achievement.

## **Actions the council is taking to meet its legal duties relating to disability**

- We will provide or signpost up-to-date guidance and relevant legislation to our setting/schools on the expectations and requirements around accessibility and equality;
- We will facilitate professional development where required;
- Where physical adaptations are required to make a local authority-maintained nursery school/school accessible that falls outside of any reasonable adjustments that they should be making, the council will manage and administer funding for improved accessibility through the Schools Access Initiative Programme (SAI). **See Appendix 1**
- We will provide and if necessary develop checklists for schools to undertake their own self evaluations on accessibility;
- We will call in and quality assure schools' accessibility plans and equality objectives;
- We will use the accessibility plans and the disability register to predict where adjustments may need to be made;
- The council's current capital programme allows for School Access Initiative funding, and this will be reviewed as appropriate;
- Where it is believed that adjustments may be required, parents/carers will be encouraged to visit schools before making an application. (Note that if the child has an Education, Health, Care Plan (EHCP) of SEND then there is a separate process for admissions); Settings/schools and other partners within the Children's Trust will be encouraged to advise parents to inform any potential future school of their child's accessibility needs;
- All of our new buildings and facilities will be designed to be fully accessible.

## **Appendix 1**

### **What is the Schools Access Initiative (SAI)?**

The Schools Access Initiative (SAI) provides funding to local authority maintained mainstream schools to make them more accessible for disabled children. It can be used to install lifts, stair lifts, ramps and disabled toilets to help physically impaired children; carpeting and acoustic tiling of classrooms to benefit hearing impaired pupils; and blinds and paint schemes to benefit visually impaired children, as well as supporting other capital projects that improve schools' accessibility.

### **Who can apply for Schools Access Initiative funding?**

All local authority maintained mainstream schools are eligible for support from the council.

Where Central Bedfordshire agrees an Education, Health and Care Plan (EHCP) and names a specific school, or academy, for a child resident within the authority, an application for equipment, or adaptations may be considered under the Schools Access Initiative Programme.

Capital funding for voluntary aided schools is delivered through the Local Authority Co-ordinated VA Programme (LCVAP). If voluntary aided schools have an identified need, they should contact the diocese in the first instance.

Academies access capital funding via the Education Funding Agency and applications to the Condition Improvement Fund.

### **Local authority criteria for support**

- When considering applications for the Schools Access Initiative, the local authority will look at the capacity of each school in the area to take advantage of the access improvements, and the availability of accessible provision across the authority, the applying school's SEND policies and their teaching practices and ethos. It may also wish to consider the degree to which facilities may be used by the wider community. Projects should seek to improve local authority maintained mainstream education in one or more of the following ways:
- Enhanced continuation of access across nursery, primary and secondary phases in the local area;
- Reduced home to school travel time for pupils by making a local school accessible;
- Improved physical access to the school. This may include setting down and picking up points, ramps, handrails and lifts, and improvements to escape provisions;
- Improved physical movement around the building, including adaptations for sensory disability such as improved colour schemes, and access to social areas, dining rooms etc;
- Improved access to the national curriculum, including specialist furniture such as desks, rise and fall tables, sinks and ovens, and information and IT equipment — both hardware and software;
- Improved accommodation within the building including toilets for disabled pupils, medical rooms, and soundproofing for pupils with hearing disabilities;
- Projects should contribute to the local authority's overall strategy for increasing access and inclusion for pupils with special educational needs.

## **Guidance to Central Bedfordshire schools**

Schools should carry out an accessibility audit. Frameworks to support this can be found in Appendix 2. This should be reviewed annually by the governing body.

Priority for use of the SAI funding will be given to:

- Improvements where known children are to attend or will be transferring schools in the following year;
- Improvements where it is anticipated adjustments will be required in future years;
- Other improvements to improve accessibility as set out in the Schools school's accessibility plan.

If appropriate, officers will visit schools to assess funding requests.

## **How to apply for Schools Access Initiative funding**

Details will be available via the Schools Portal <http://www.centralbedfordshire.gov.uk/schools-portal/school-management/access.aspx>

## Appendix 2

### Summary of schools' statutory responsibilities under Equality Act and Special Educational Needs legislation

Under Part 4 of the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001) schools and local authorities were required to **not treat disabled students less favourably** without justification, and to make **reasonable adjustments** to ensure they are not disadvantaged compared to their peers. They were also required to **plan strategically** to increase access to schools and the curriculum over time (schools must produce an accessibility plan setting out how they will do this – local authorities produce an accessibility strategy).

Schools' accessibility plans must show how they will improve access for disabled pupils by:

- increasing access to the curriculum;
- making improvements to the physical environment of the school to increase access;
- making written information accessible to pupils in a range of different ways.
- For schools, the reasonable adjustments duty in Part 4 of the DDA did not include:
  - the provision of auxiliary aids and services: this provision is made through SEND statutory duties (see below);
  - physical alterations to buildings: these are made through the planning duties.

The introduction of the Equality Act 2010 and the Public Sector Equality Duty has introduced some changes to this position which are outline below.

### Overview of the Equality Act 2010

- The Equality Act 2010 replaced nine major acts of parliament and almost a hundred sets of regulations which had been introduced over several decades. It provides a single, consolidated source of discrimination law, covering all the types of discrimination that are unlawful. It simplifies the law by getting rid of anomalies and inconsistencies that had developed over time, and it extends protection against discrimination in certain areas.
- As far as schools are concerned there are some changes, but for the most part the effect of the law is the same as it has been in the past in that schools which already comply with the law will not find major differences in what they need to do.

### Schools: who and what the Equality Act applies to

- In England and Wales the Act applies to all maintained and independent schools, including academies, and maintained and non-maintained special schools. In Scotland it applies to schools managed by education authorities, independent schools and schools receiving grants under section 73(c) or (d) of the Education (Scotland) Act.
- The Act makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or potential pupil.

- In relation to admissions;
- in the way it provides education for pupils;
- in the way it provides pupils access to any benefit, facility or service, or by excluding a pupil or subjecting them to any other detriment.

The “responsible body” is the governing body or the local authority for maintained schools in England and Wales, the education authority in the case of maintained schools in Scotland, and the proprietor in the case of independent schools, academies or non-maintained special schools. In practice, anyone acting on behalf of the responsible body – including employees of the school – are liable for their own discriminatory actions, and the responsible body is also liable unless it can show that it has taken all reasonable steps to stop the individual from carrying out the discriminatory action or from doing anything of that kind.

The act deals with the way in which schools treat their pupils and prospective pupils, but not pupils’ interactions. It does not therefore bear directly on issues such as discriminatory bullying by pupils. However, if a school treats bullying which relates to a protected ground less seriously than other forms of bullying then it may be guilty of unlawful discrimination.

The school’s liability not to discriminate, harass or victimise does not end when a pupil has left the school, but applies to subsequent actions such as providing references about former pupils or access to old pupils’ communications and activities.

## **Protected Characteristics**

It is unlawful for a school to discriminate against a pupil or prospective pupil by treating them less favourably because of their

- sex
- race
- disability
- religion or belief
- sexual orientation
- gender reassignment
- pregnancy or maternity

## **Association**

It is also unlawful to discriminate because of the sex, race, disability, religion or belief, sexual orientation or gender reassignment of another person with whom the pupil is associated.

## **Perception**

It is also unlawful to discriminate because of a characteristic which you think a person has, even if you are mistaken.

A person’s age is also a protected characteristic in relation to employment and the Act extends this (except for children) to the provision of goods and services, but this does **not** apply to pupils in schools. Schools therefore remain free to admit and organise children in age groups and to treat pupils in ways appropriate to their age and stage of development without risk of legal challenge, even in the case of pupils over the age of 18.

## **Unlawful behavior**

The Act defines four kinds of unlawful behaviour – direct discrimination; indirect discrimination; harassment and victimisation.

**Direct discrimination** occurs when one person treats another less favourably, because of a protected characteristic, than they treat – or would treat – other people.

**Indirect discrimination** occurs when a “provision, criterion or practice” is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic.

**Harassment** has a specific legal definition in the Act - it is “unwanted conduct, related to a relevant protected characteristic, which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person”. This covers unpleasant and bullying behaviour, but potentially extends to actions which, whether intentionally or unintentionally, cause offence to a person because of a protected characteristic.

For example, if a teacher belittles a pupil and ridicules them in class because of their disability this could lead to a court case alleging unlawful harassment.

**Victimisation** occurs when a person is treated less favourably than they otherwise would have been because of something they have done (a protected act) in connection with the Act. A protected act might involve, for example, making an allegation of discrimination or bringing a case under the Act, or supporting another person’s complaint by giving evidence or information, but it includes anything that is done under or in connection with the Act. Even if what a person did or said was incorrect or misconceived, for example if it was based on a misunderstanding, they are protected against retaliation unless they were acting in bad faith. This is to ensure that people are not afraid to raise genuine concerns about discrimination because of fear of retaliation.

As well as it being unlawful to victimise a person who does a protected act, a child must not be victimised because of something done by their parent or a sibling in relation to the Act.

## **Special provisions for disability**

The law on disability discrimination is different from the rest of the Act in a number of ways. In particular, it works in only one direction – that is to say, it only protects disabled people. This means schools are allowed to treat disabled pupils more favourably than non-disabled pupils, and in some cases are required to do so, by making reasonable adjustments to put them on a more level footing with their non-disabled peers. The definition of what constitutes discrimination is more complex. Provision for disabled pupils is closely connected with the regime for children with special educational needs.

The overriding principle of equality legislation is generally one of equal treatment i.e. you must treat a man as favourably as a woman. However, the provisions relating to disability discrimination are different in that you may, and often must, treat a disabled person more favourably than a person who is not disabled and may have to make changes to your practices to ensure, as far as is reasonably possible, that a disabled person can benefit from what you offer to the same extent that a person without that disability can. So in a school setting the general principle is that you have to treat pupils of different sexes, backgrounds and sexuality equally but you may be required to treat disabled pupils differently. Discrimination is also defined rather differently in relation to disability

## **New provisions relating to disability**

The disability provisions in the Equality Act mainly replicate those in the former Disability Discrimination Act. There are some minor differences as follows:

- Unlike the DDA the Equality Act does not list the types of day-to-day activities which a disabled person must demonstrate that they cannot carry out, thus making the definition of disability less restrictive for disabled people to meet;
- Failure to make a reasonable adjustment can no longer be defended as justified. The fact that it must be reasonable provides the necessary test;
- Direct discrimination against a disabled person can no longer be defended as justified – bringing it into line with the definition of direct discrimination generally;
- Since September 2012 schools and local authorities have a duty to supply auxiliary aids and services as reasonable adjustments where these are not being supplied through special educational needs (SEN) statements (EHCP's) or from other sources. In many cases, this will already be being done.

## **Unlawful behaviour with regard to disabled pupils**

The above text explains the general definitions in the Act of direct discrimination, indirect discrimination, victimisation and harassment. The rather different and more complex provisions that apply in the case of disability are set out here:

**Direct Discrimination:** A school must not treat a disabled pupil less favourably simply because that pupil is disabled – for example having a bar on admitting disabled applicants.

A change for schools in this Act is that there can no longer be justification for direct discrimination in any circumstances. Under the DDA schools could justify some direct discrimination – if was a proportionate means of meeting a legitimate aim. What the change means is that if a school discriminates against a person purely because of his or her disability (even if they are trying to achieve a legitimate aim) then it would be unlawful discrimination as there can be no justification for their actions.

**Indirect Discrimination:** A school must not do something which applies to all pupils but which is more likely to have an adverse effect on disabled pupils only – for example having a rule that all pupils must demonstrate physical fitness levels before being admitted to the school – unless they can show that it is done for a legitimate reason, and is a proportionate way of achieving that legitimate aim.

**Discrimination arising from disability:** A school must not discriminate against a disabled pupil because of something that is a consequence of their disability – for example by not allowing a disabled pupil on crutches outside at break time because it would take too long for them to get out and back. Like indirect discrimination, discrimination arising from disability can potentially be justified.

**Harassment:** A school must not harass a pupil because of their disability – for example, a teacher shouting at the pupil because the disability means they are constantly struggling with class work or unable to concentrate.

**Disability Equality Duty** – schools previously had a statutory duty which required them to take

proactive steps to tackle disability discrimination, and promote equality of opportunity for disabled pupils. Under the Equality Act, this has been replaced by the general equality duty and the new specific duties.

## **The Public Sector Equality Duty**

The Equality Act 2010 introduced a single Public Sector Equality Duty (PSED) (sometimes also referred to as the 'general duty') that applies to public bodies, including maintained schools and academies, and which extends to all protected characteristics race, disability, sex, age, religion or belief, sexual orientation, pregnancy and maternity and gender reassignment. This came into effect in April 2011. It has three main elements and means that in carrying out their functions, public bodies 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;
- foster good relations across all characteristics — between people who share a protected characteristic and people who do not share it.

## **Having “due regard”**

The duty to have “due regard” to equality considerations means that whenever significant decisions are being made or policies developed, thought must be given to the equality implications. The significance of those implications – and the amount of thought that needs to be devoted to them – will vary depending on the nature of the decision

The government has also introduced new specific duties, which are intended to help public authorities to meet their obligations under the PSED

These require schools to:

- (a) publish information demonstrating how they are complying with the Public Sector Equality Duty, and
- (b) prepare and publish equality objectives.

Schools were given until 6 April 2012 to publish their initial information and first set of objectives. They need to update the published information at least annually and to publish objectives at least once every four years.

Further technical guidance relating to the Public Sector Equality Duty can be found here:

[www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSED/ehrc263\\_code\\_england\\_v3.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/ehrc263_code_england_v3.pdf)

## **Reasonable adjustments and when they have to be made**

The duty to make reasonable adjustments applies only to disabled people. For schools the duty is summarised as follows:

- Where something a school does places a disabled pupil at a disadvantage compared to

other pupils then the school must take reasonable steps to try and avoid that disadvantage;

- Schools will be expected to provide an auxiliary aid or service for a disabled pupil when it would be reasonable to do so and if such an aid would improve any substantial disadvantage they face compared to non-disabled pupils;
- Schools are not subject to the other reasonable adjustment duty to make alterations to physical features because this is already considered part of their planning duties.

## **Auxiliary aids and services**

The duty to provide auxiliary aids as part of the reasonable adjustment applies to both schools and local authorities.

Many disabled children will have a special educational need and may need auxiliary aids as part of their SEND provision, and in some circumstances as part of a formal EHCP. These aids may be provided in the school under the SEND route, in which case there will be no need for the school to provide those aids as part of their reasonable adjustment duty.

Schools will have to consider whether to provide auxiliary aids as a reasonable adjustment for disabled children. This will particularly be the case where a disabled child does not have a SEND EHCP or where the EHCP does not provide the auxiliary aid or service.

However, if an auxiliary aid is not provided under the SEND regime, then it should not be assumed that it must be provided as a reasonable adjustment. Similarly, whilst schools and local authorities are under the same reasonable adjustment duty, there should be no assumption that where it is unreasonable for a school to provide an auxiliary aid or service, for example on cost grounds, it would then be reasonable for the local authority to provide it. All decisions depend on the facts of each individual case.

The nature of the aid or service, and perhaps also the existence of local arrangements between schools and local authorities, will help to determine what it would be reasonable for either to provide. For example, where there is a centrally organised visual or hearing impairment service it may be reasonable for the local authority to provide more expensive aids or support through that service but not reasonable for an individual school to have to provide them.

The term “auxiliary aids”, which is found in the Equality Act 2010, covers both auxiliary aids and services but there is no legal definition for what constitutes auxiliary aids and services. Considering the everyday meaning of the words, is, however, helpful. Legal cases have referred to the Oxford English Dictionary definition of auxiliary as “helpful, assistant, affording aid, rendering assistance, giving support or succour” and that auxiliary aids and services “are things or persons which help”. Examples of what may be considered an auxiliary aid include hearing loops, adaptive keyboards and special software. However, the key test is reasonableness and what may be reasonable for one school to provide may not be so for another, given the circumstances of each case.

Some disabled children will need for auxiliary aids not directly related to their educational needs or their participation in school life for example, a hearing aid. It is likely to be considered unreasonable for a school to be expected to provide these auxiliary aids.

## **Making reasonable adjustments**

The EHRC has published guidance on the auxiliary aids duty which includes advice on when it would be reasonable for schools to have to make adjustments and what factors a school should take into account in its assessment of whether or not it would be reasonable to make any particular adjustment. This is available at

[www.equalityhumanrights.com/uploaded\\_files/EqualityAct/rafdp\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/rafdp_final.pdf)

A minor change for schools is that a failure to make a reasonable adjustment cannot now be justified, whereas under the Disability Discrimination Act it could be. However, this change should not have any practical effect due to the application of the reasonableness test – i.e. if an adjustment is reasonable then it should be made and there can be no justification for why it is not made. Schools will not be expected to make adjustments that are not reasonable.

In addition to having a duty to consider reasonable adjustments for particular disabled pupils, schools will also have to consider potential adjustments which may be needed for disabled pupils generally as it is likely that any school will have a disabled pupil at some point. However, schools are not obliged to anticipate and make adjustments for every imaginable disability and need only consider general reasonable adjustments. This could be being prepared to produce large font papers for pupils with a visual impairment even though there are no such pupils currently admitted to the school. Such a strategic and wider view of the school's approach to planning for disabled pupils will also link closely with its planning duties

The Act does not set out what would be a reasonable adjustment or a list of factors to consider in determining what is reasonable. It is up to schools to look at these on a case- by-case basis. Factors a school may consider when assessing the reasonableness of an adjustment could include the financial or other resources required for the adjustment, its effectiveness, its effect on other pupils, health and safety requirements, and whether aids have been made available through the special educational needs route.

Cost will inevitably play a major part in determining what is reasonable and it is more likely to be reasonable for a school with substantial financial resources to have to make an adjustment with a significant cost, than for a school with fewer resources. For example, a small rural primary school may not be able to provide specialised IT equipment for any disabled pupils who may need it, and it may not be reasonable for the school to provide that equipment, whereas a much larger school might reasonably be expected to provide it.

Often, though, adjustments for disabled pupils will involve little or no cost or disruption and are therefore very likely to be reasonable for a school to have to make.

Schools generally will try to ensure that disabled pupils can play as full a part as possible in school life and the reasonable adjustments duty will help support that. However, there will be times when adjustments cannot be made because to do so would have a detrimental effect on other pupils and would therefore not be reasonable. For example, if a school put on a geology field trip which involved climbing and walking over rough ground and after fully considering alternatives to accommodate a disabled pupil in a wheelchair who could not take part it determined that there was no viable alternative or way of enabling the disabled pupil to participate or be involved, it would not have to cancel the trip as originally planned. This is unlikely to constitute direct discrimination or failure to make a reasonable adjustment

The reasonable adjustments duties on schools are intended to complement the accessibility planning duties and the existing SEND EHCP provisions which are part of education legislation, under which local authorities have to provide auxiliary aids to pupils with an EHCP.

## **Schools' duties around accessibility for disabled pupils**

Schools and local authorities need to carry out accessibility planning for disabled pupils. These are the same duties as previously existed under the DDA and have been replicated in the Equality Act 2010.

Schools must implement accessibility plans which are aimed at:

- increasing the extent to which disabled pupils can participate in the curriculum;
- improving the physical environment of schools to enable disabled pupils to take better advantage of education, benefits, facilities and services provided; and
- improving the availability of accessible information to disabled pupils.

Schools should consider the need to provide adequate resources for implementing plans and must regularly review them. An accessibility plan may be a standalone document but may also be published as part of another document such as the school development plan.

Ofsted inspections may include a school's accessibility plan as part of their review.

## **Local authorities' duties around accessibility for disabled pupils**

Local authorities must, for the schools for which they are responsible, prepare an accessibility strategy based on the same principle as the access plans for schools.

Local authorities, in relation to their education functions, are under the same duty - to have accessibility strategies, provide reasonable adjustments for school pupils, with the aim of avoiding disadvantage, and providing auxiliary aids and services.

Guidance on the planning duties, which offers advice to schools and local authorities on how to develop plans and strategies and gives examples on approach, was published in 2002 and can be accessed at:

[www.education.gov.uk/publications/standard/publicationDetail/Page1/LEA%200168%2020\\_02](http://www.education.gov.uk/publications/standard/publicationDetail/Page1/LEA%200168%2020_02)

Further guidance on this and all other areas of disability in schools is available in the Implementing Disability Discrimination Act in Schools and Early Years Settings pack. Although this refers to the repealed DDA, it contains helpful advice for schools in the area of disability and is still currently available at:

<http://webarchive.nationalarchives.gov.uk/20090707073355/teachernet.gov.uk/wholeschool/disability/disabilityandthedda/ddapart0/>

Where a child has special educational needs a school has statutory duties under the Education Act 1996, which include the following from sections 313, 317 and 317A:

- doing its best to ensure that the necessary provision is made for any pupil who has SEND;
- ensuring that where the headteacher or a nominated governor has been informed by a local

authority that a pupil has SEND, those needs are made known to all who are likely to teach him/ her;

- ensuring teachers are aware of the importance of identifying and providing for pupils who have SEND;
- ensuring a pupil with SEND joins in the activities of the school together with other pupils, so far as is reasonably practical and compatible with the child receiving the special educational provision their learning needs call for, the efficient education of the pupils with whom they are educated and the efficient use of resources;
- report to parents on the implementation of the school's policy for pupils with SEND;
- have regard to the SEND Code of Practice when carrying out its duties toward all pupils with SEND;
- ensure that parents are notified of a decision by the school that SEND provision is being made for their child.

The SEND Code of Practice explains there is a continuum of special educational needs and that, where necessary, increasingly specialist expertise should be brought to bear on a child's difficulties. The Code describes this as a graduated approach to addressing children's special educational needs. It suggests that where a child's difficulties are not improved through usual approaches to teaching and learning, staff should decide on additional or different interventions at SEND 1 support.

If little or no progress continues to be made, school staff should consider seeking external support through SEND 2 support. At this stage, external support services (both those provided by the local authority and by other organisations) should be helping to develop ways of helping the child to achieve. The Code is clear that the involvement of such agencies need not be limited to such pupils – outside specialists can play an important part in the very early identification of SEND and in advising schools on effective provision designed to prevent the development of more significant needs.

Where a child with SEND continues to make little progress in response to support provided through SEND 2, the school should consider asking the local authority to undertake a statutory assessment of the child's SEND, as in Chapter 7 of the Code of Practice. As indicated at para 7.21 of the Code, a parent can request such an assessment at any time, which may result in a SEND EHCP being issued for the child. Paragraph of the Code explains that if a local authority does not agree to undertake a statutory assessment, the parents have a right of appeal to at a SEND Tribunal. Similarly, paragraph 8.15 of the Code explains that parents also have a right of appeal if a decision is made not to provide an EHCP, following a statutory assessment.

### **Education Specific Equality Act 2010 employment provisions**

The general provisions on employment apply to schools in their role as employers and this is briefly summarised below. However, schools should consult the EHRC's guidance and Codes of Practice for Employers for more detailed information on the employment provisions of the Act and how they will be affected as an employer (see links at the end of this chapter). In addition, there are some specific employment issues just for schools and a new employment provision on health questioning which will affect schools and these are summarised below.

### **What the Act covers**

All of the protected characteristics, including age, are covered by the employment provisions of the Act.

As an employer, a school must not discriminate against a potential employee in respect of whether to offer a job or the terms on which it offers a job and it must not discriminate against an existing employee in respect of the benefits, facilities and services it offers to its employees including training opportunities, promotion or dismissal.

Harassment against potential or existing employees in relation to any of the protected characteristics is also unlawful, as is victimisation of any person who has done a protected act.

### **Reasonable Adjustments**

Schools as employers are under the same duties to make reasonable adjustments in relation to disability for their employees or potential employees as they are for their pupils. They must make reasonable adjustments to arrangements or practices to alleviate disadvantage and must also take reasonable steps to provide any necessary auxiliary aids and services. They are also under the duty to consider alterations to physical features of the school to prevent disabled people being disadvantaged.

### **Enquiries about health and disability**

A new provision introduced by the Act makes it unlawful for an employer to enquire about the health of an applicant for a job until a job offer has been made, unless the questions are specifically related to an intrinsic function of the work, for example ensuring that applicants for a PE teaching post have the physical capability to carry out the duties.

There are potential implications in relation to establishing teachers' fitness and ability to teach (as required by the Health Standards (England) Regulations 2003). Schools are advised to review their existing practices to ensure they are complying with both the Health Standards Regulations and Section 60 of the Equality Act.

Schools should no longer, as a matter of course, require job applicants to complete a generic and all-encompassing health questionnaire as part of the application procedure. Instead, they should ask any health questions which are necessary to ensure that the applicant can carry out an intrinsic function of the post for which they have applied.

Schools may decide to ask necessary health questions after any job offer. In either case, they should ensure that any health-related questions are targeted, necessary and relevant to the job applied for.

These provisions will also affect recruitment practices under the Safeguarding Children and Safer Recruitment in Education Guidance, Section 4.34 of which advises schools to seek out past sickness records of candidates before interview. In order to ensure compliance with these new provisions, schools are advised not to seek out past sickness records until they have made a conditional job offer.

The duties apply to:

- Recruitment, selection and interview procedures
- Terms and conditions of employment
- Induction, promotion opportunities, transfers, training, professional development and other benefits
- Termination of employment

The duties apply to disabled employees and disabled people who apply for a job:

- Teaching and non-teaching
- Full-time and part-time

- Permanent and temporary/casual staff
- Contract staff: cleaners/supply teachers

The reasonable adjustments duty includes:

- Making changes to an employee's duties, working hours or place of work
- The provision of auxiliary aids and services
- Physical alterations to buildings.

If a disabled person feels that they have been discriminated against they should first seek to resolve the dispute within the workplace, wherever possible. A claim of discrimination is made by application to an employment tribunal.

### **Further information**

Detailed guidance on the employment provisions of the Act can be found in the statutory Code of Practice on employment. This includes examples to illustrate the provisions of the act and, measures that employers could sensibly take to prevent discrimination in the workplace and how employers can plan to avoid discrimination in the future.

[www.equalityhumanrights.com/uploaded\\_files/EqualityAct/employercode.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf)

### **Monitoring and Evaluation**

This policy will be reviewed annually by the Headteacher, staff and Governors.