


Distribution

Headteachers of all Schools

Chairs of all Governing Bodies

action

This document needs your **action** as detailed below:

ACTION	Title	Disability Discrimination Act – application to schools		
	Summary of contents	Briefing Papers Suggested planning process Planning Checklists		
	Associated documents	1. DDA Code of Practice 2. Esinet: http://www.norfolkesinet.org.uk/pages/viewpage.asp?unqid=774		
	Date	January 2003		
	Summary of action required	1. Schools must by law act in a way which does not discriminate against present or future disabled pupils 2. By 1 st April 2003, schools must have in place a written Accessibility Plan		
	To be completed by	Written plan by 1 st April 2003 and continuing		
	LEA Contacts	Matters related to potential discrimination: Paul Hoey Curriculum: Steve Lord Buildings: Stephen Edwards Special Needs: Karen Taylor		01603 223471 01603 433276 01603 224456 01603 410242
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	Norfolk Self Review reference	1. How effective is the school in developing pupils' attitudes, values and personal development? 2. How good are curricular and other opportunities? 3. How well does the school care for its pupils? 4. How well is the school led and managed? 5. How well does the school use its resources?		
	Document reference	MI 29/03		

This Management Information sheet may be found on ESINET at the following address:

<http://www.esinet.norfolk.gov.uk/cadmin/misheet/>

Other relevant Internet links are given as footnotes.

Disability Discrimination Act

1. Introduction-

Schools and LEAs have been given new legal duties under recent amendments to the Disability Discrimination Act. For schools these duties are:

- To act in a way which does not discriminate against current or prospective disabled pupils.
- To prepare and, by **1st April 2003**, publish a plan to increase the accessibility of the school for disabled pupils.

The LEA must also prepare, publish and implement a plan of its own to improve the accessibility of school buildings for disabled pupils.

Schools have already received guidance on their new duties ('Accessible schools – Summary Guidance DfES 10th June 2002 ref DfES/0462/2002')¹. This LEA guidance reinforces the details of the DfES document.

The key actions for schools to carry out are:

ACTIONS	SUPPORT AVAILABLE	WHEN
1. To ensure awareness of the new requirements across the school	<ul style="list-style-type: none">• ESINET link²• Through current cycle of suitability audits• Briefing meetings – details attached	Now and continuing
2. To carry out baseline audits of current accessibility of your school	Two audit tools attached	By end Feb
3. To use the audits to derive an accessibility plan	DfES model ¹ (go to last page of this Internet document)	March
4. To ensure Governors agree the plan	Governor Support Service	By 1 st April
5. To integrate the plan into existing plans, including budget plans	RDA and School Support Team visits	As part of school's own planning timetable
6. To report on the Accessibility Plan in the next Governors' Annual Report to parents	Governor Support Service advice on required content	Autumn term 2003

The rest of this MI sheet will help you take the necessary action steps. We will be consulting in due course on the LEA's Accessibility Plan.

¹ http://www.dfes.gov.uk/sen/documents/DDA_ACCESSIBLE_SCHOOLS.doc

² <http://www.norfolkesinet.org.uk/pages/pagej036.asp?z=z&next=showcat&unqcat=1169>

2. The Governing Body Has Two Duties Under The DDA:

a. The duty not to discriminate against current or future disabled pupils

In order to be meeting this duty, schools will need to demonstrate that they are taking action to prevent discrimination and applying it in all areas of school life. The legislative basis and examples of how this might be seen in practice are set out in the attached document headed 'Disability discrimination' also at the Esinet link

<http://www.norfolkesinet.org.uk/pages/pagej036.asp?z=z&next=showcat&uniqucat=1169>

b. The duty to plan to improve accessibility to pupils

The law requires schools to plan for three aspects:

- Increasing access for disabled pupils to the school curriculum.
- Improving access to the physical environment of schools.
- Improving the delivery of written information to disabled pupils.

3. Action Steps to Fulfil These Duties

The following action steps provide further clarification of the numbered Actions in the table on the previous page and will enable you to comply with all aspects of both duties.

Action step 1: Read the attached document headed Disability Discrimination and apply the Awareness Audit tool (attached) to your school. Complete this by the end of February 2003 and repeat as part of the annual review and planning cycle.

Plan into your own schedule time to read the DDA Code of Practice if you have not already done so; encourage your senior managers and key Governors to do so also and to review policy and practice.

Action step 2: Apply the Accessibility audit tool (attached).

Action step 3: Identify the priority actions in the light of both audit results and prepare a draft action plan (with resource implications) for approval by Governors.

Action step 4: Report to Governors on the outcome and on your proposals for priority actions, together with the resource implications. You should ensure that there is a Governors meeting timetabled towards the end of March 2003.

Action step 5: Incorporate your plan into existing school plans.

Action step 6: Provide, or ensure that the Governing Body provides, a text on the school's Accessibility Plan for the 2003 Annual Report to Parents.

From this point onwards you can review and amend your Accessibility Plan on the same timeline as your School Development Plan.

4. **Improving Access To The Curriculum for Disabled Pupils**

Schools are responsible for providing a broad and balanced curriculum for all pupils and have responsibility for planning to increase access to the curriculum for disabled pupils. You already provide additional provision to enable pupils with learning difficulties to access the curriculum through the SEN framework and this will cover many but not all disabled pupils. Indeed access should be considered at a 'whole school' level in focussing on this part of the duty and you should consider the needs of the full range of disabled pupils and also prospective pupils.

In addition, the curriculum covers not only teaching and learning but also the wider curriculum of the school such as participation in after school clubs, leisure, sporting and cultural activities or school visits.

Many of you and your colleagues will already be well on the way to developing full curriculum access for all pupils by using and referring to the following key documents. However, all schools will now need to demonstrate that they are taking action as a result of using them. These actions will appear in your Accessibility Plan and/or be incorporated into your School Development Plan.

- The ***Index for Inclusion (Revised 2002): Developing Learning and Participation in Schools*** published by the Centre for Studies on Inclusive Education to guide schools through a process of inclusive school development.
- The National Curriculum 2000 documents incorporating a statement on ***Inclusion: Providing Effective Learning Opportunities for All Children*** to which all maintained schools must have regard. This covers classroom organisation and teaching and learning.
- ***Evaluating Educational Inclusion***: Guidance for Inspectors and Schools, published by Ofsted. (<http://www.ofsted.gov.uk/publications/docs/459.pdf>).

In addition the following documents give more detailed illustrations of what constitutes 'less favourable treatment' and 'reasonable steps' as defined in the Special Educational Needs and Disability Act 2001.

- ***Disability Rights Commission: Code of Practice for Schools*** (<http://www.drc.gb.org/drc/documents/Schools%20Part%201.pdf>) This explores what does and does not constitute discriminatory practice more specifically with clear examples.
- ***Inclusive Schooling***: DfES Guidance Nov. 2001. (Ref: DfES/0774/2001). Practical advice on the operation of the statutory framework for inclusion.
- ***Educating for Equality***: Disability Rights Commission Education Website (<http://www.drc-gb.org/drc/Campaigns/Page431.asp>)

5. Improving the Delivery of Written Information to Disabled Pupils

This will involve planning to make written information that is normally provided by your school to pupils available to disabled pupils. Examples might include handouts, timetables, textbooks and information about school events. The information should take account of pupils' disabilities and pupils' and parents' preferred formats and be made available within a reasonable time frame. Illustrative examples would include braille, audiotape, large print or pictorial formats.

6. Briefing meetings for schools

Four meetings (4.00 – 6.00 p.m.) have been arranged by the LEA to provide training for schools and governors in meeting their new duties under the DDA.

Dates and locations are:

13th March Bell Hotel, Thetford

18th March Norwich Professional Development Centre

19th March West Norfolk Professional Development Centre

24th March Imperial Hotel, Great Yarmouth

Full details and joining instructions will be sent out at the beginning of February, but please pencil in one of these dates in your diary now.

AWARENESS AUDIT TOOL

What sort of action might schools take to prevent discrimination against disabled pupils or prospective pupils?

This checklist assesses the current position and identifies priority actions for development.

	Comment	Action Planned
Is the "responsible body" aware of their duties under the Disability Discrimination Act?		
Do senior members of staff know about the Act's requirements and take their responsibilities under the Act seriously?		
Are all staff aware of the new duties, including managers, teaching staff, learning support assistants, catering staff, caretakers and others involved in providing or supporting learning?		
Will the policies covering admissions, education and associated services, and exclusions not put disabled children at a substantial disadvantage?		
Has the school begun reviewing its policies, procedures and practices to ensure that it will not discriminate against disabled pupils or prospective pupils?		
Has the school begun the process of making "reasonable adjustments" in order to comply with the new law?		

Has the school held training on the new law and/or broader issues of disability equality?		
Are there enough procedures in place to ensure that discrimination by staff will be picked up on and dealt with properly'?		
Do the school's general plans take account of the need to make "reasonable adjustments"?		
Has the school an adequate and accessible internal complaints procedure?		

ACCESSIBILITY AUDIT TOOL	Fully in place	Partially in place	Under consideration	Not yet considered	
Disability Awareness Training	1	2	3	4	Action Required
Do you provide disability awareness training to enable all staff to understand and recognise disability issues?					
Do you have arrangements for teachers and teaching assistants to have the necessary training to teach and support disabled pupils, if required?					
Curriculum Delivery	1	2	3	4	Action Required
Do all staff seek to remove all barriers to learning and participation?					
Is teaching appropriately differentiated to meet individual needs?					
Are all pupils encouraged to take part in music, drama and physical activities?					
Do staff provide alternative ways of giving access to experience or understanding for disabled pupils who cannot engage in particular activities?					
Do all staff recognise, understand and allow for the additional effort necessary for pupils with certain disabilities to be fully included in the curriculum?					
Do all staff recognise and allow for the additional time required by some disabled pupils to use equipment in practical work?					
Do you provide access to appropriate technology for students with disabilities?					
Are school visits, including overseas visits, made accessible to all pupils irrespective of attainment or disability?					

Use of Alternative Formats for those who need it	1	2	3	4	Action Required
Do you have arrangements to provide information in simple language, symbols, large print, on audiotape or in Braille for those who may have difficult with standard formats?					
Do you have facilities to produce written information in different formats?					
Do you ensure that information is presented to staff, pupils and parents in a way that is user friendly to all?					
Is furniture and equipment selected, adjusted and located appropriately?					
Do you ensure that all school staff are familiar with technology and practices developed to assist people with disabilities?					
Accessing the Building	1	2	3	4	Action Required
Are pathways and routes logical and well signed?					
Do you have emergency and evacuation procedures to alert all users?					
Are car park spaces reserved for disabled people near the main entrance?					
Are there any barriers to easy movement around the site and to the main entrance?					
Is the main entrance accessible by all?					
Do ramps have handrails?					
Could a wheelchair user get through the principal door unaided?					
If no, is an alternative wheelchair accessible entrance provided?					

The Building	1	2	3	4	Action Required
Are all areas accessible to all?					
Do doorways, stairs, toilets, showers allow for disabled access?					
Do furniture layouts allow easy movement for those with disabilities?					
Are quiet rooms/calming rooms available to those who need them?					
Is appropriate furniture and equipment provided to meet the needs of individuals?					
Could the décor cause confusion for those with visual impairments?					
Has the acoustics and effect of noisy equipment been considered?					
Are non-visual guides provided to assist people to use the building e.g. tactile door signs					

Disability Discrimination - Guidance

The legislation described below aims to ensure that children with disabilities have equal opportunities to benefit from the educational opportunities on offer to all other children. Schools need to be aware that should parents believe this not to be the case they can appeal against what they consider to be discriminatory decisions taken by the school or LEA. Thus schools will need to become increasingly aware of the legislative requirements.

Further advice and guidance is from your School Support Team contacts (Norfolk Psychological Service).

Introduction

The Special Educational Needs and Disability Act (SENDA) 2001 amends the Disability Discrimination Act 1995 and introduces new legal duties for schools relating to all pupils or prospective pupils with disabilities.

In September 2002, it became unlawful for any school to discriminate against disabled pupils (current or prospective), and parents will have means of redress via the new SEN and Disability Tribunals and via admissions and exclusions appeal panels.

These new duties sit alongside the Special Educational Needs Framework and new planning duties which require LEAs to develop strategies and schools to develop plans to improve accessibility for disabled pupils over time.

Together, these changes in the law and regulation are designed to provide a stronger legal framework to underpin the inclusive practice that many schools are already working towards. Schools that are committed to and striving for equal opportunities and inclusion are unlikely to face difficulties in meeting the new duties. Ofsted will be inspecting schools compliance with the new duties from September 2002.

A Code of Practice has been produced by the Disability Rights Commission including a wide range of helpful examples to illustrate the new duties. All schools will have received a copy of the Code.

Who has rights under the new law?

The Disability Discrimination Act 1995 (DDA) 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”.

This definition covers pupils with physical (including sensory), intellectual or mental impairments. The definition is broad and might include children with a learning disability, sensory impairment, severe dyslexia, diabetes or epilepsy, pupils who are incontinent, or who have AIDS, severe disfigurements or

progressive conditions like Muscular Dystrophy. The definition will also include children with behavioural difficulties resulting from a specific medical condition, e.g. ADHD.

How is this different from “Special Educational Needs”?

The Education Act 1996 says “a child has special educational needs if he or she has a learning difficulty which calls for special educational provision”. This definition includes disabled children needing any special educational provision. However, not all children who are defined as having a disability under the DDA will have special educational needs. For example, a child with severe asthma may not be identified as having special educational needs, but may well be defined as having a disability under the DDA.

The New Duties

What does the new law cover?

From September 2002, it will be against the law for schools to discriminate in:

- admissions;
- education and associated services;
- exclusions.

Admissions

Responsible bodies must not discriminate against a disabled person:

- in the way they decide who can get into the school. This includes any criteria when it is over-subscribed, and the way it operates those criteria;
- Governors of Foundation and V.A. schools who are their own admission authorities must ensure that their admission arrangements do not discriminate against a disabled person. This includes ensuring that the school sets criteria which do not discriminate against any person and that if the school is over-subscribed, these rules are applied equally to all pupils seeking a place at the school. Schools must not refuse or deliberately not accept an application for a disabled child for admission to the school because of their disability;
- by refusing or deliberately not accepting an application for a disabled child for admission to the school.

Education and associated services

The Act covers all education and associated services for pupils and prospective pupils - in essence, all aspects of school life, including extra-curricular activities and school trips.

Exclusions

It is against the law to discriminate against a disabled pupil by excluding him or her from the school because of their disability. This applies to exclusions whether they are permanent or fixed-term.

Who is responsible for the new duties?

All schools are covered, including independent schools and pupil referral units. The “responsible body” for a school is ultimately liable and responsible for the actions of all employees and anyone working with the authority of the school.

Responsible bodies

<i>Type of school</i>	Responsible body
Maintained school	The governing body, in general
Pupil referral unit	The local education authority
Maintained nursery	The local education authority
Independent school	The proprietor
Special school that is not maintained by a local education authority	The proprietor

How does the Act define “discrimination”?

The DDA makes it unlawful to:

- treat disabled pupils less favourably for a reason relating to disability;
- fail to take “reasonable steps” to ensure that disabled pupils or prospective pupils are not placed at a substantial disadvantage compared to their non-disabled peers.

1. Less favourable treatment

If a school treats a disabled pupil or prospective pupil less favourably than another because of his or her disability without justification, they may be breaking the law.

Example 1

Parents who want their daughter with epilepsy admitted to a primary school are told that the school cannot take her unless she stops having fits. This is likely to be deemed less favourable treatment for a reason related to the child’s disability and might therefore be against the law.

Example 2:

A disabled boy is admitted to a secondary school. The school want him to have all his lessons in a separate room in case other children are frightened by his muscle spasms and involuntary noises. This is likely to be deemed less favourable treatment for a reason related to his disability and might be against the law.

Justification for less favourable treatment

In some cases, the school can treat a disabled pupil "less favourably" if it can provide justification that is both material and substantial to the particular case.

Example 1:

A pupil with cerebral palsy who uses a wheelchair is on a trip with her school to an outdoor centre. The teachers arrange for the school children to go on a 12-mile hike over difficult terrain, but having carried out a risk assessment, they decide that the disabled pupil cannot go on the hike for health and safety reasons. In this particular case, the school may be able to justify the less favourable treatment for a material and substantial reason, although they are likely to be expected to arrange an alternative activity for the disabled pupil as a reasonable adjustment.

Less favourable treatment can also be justified if it is the result of a permitted form of selection.

Example 2:

A child with learning difficulties applies to attend a school that selects its intake on the basis of academic ability. She fails the schools entrance exam. Even though the reason for her performance in the exam was for a reason related to her disability, because the school has applied objective criteria, the less favourable treatment is likely to be justified.

2. Reasonable Adjustment

Schools can also be found to have discriminated where they have failed to take "reasonable steps" which leads to disabled pupils and prospective pupils being placed at a "substantial disadvantage" compared to non-disabled pupils.

Example 1:

A deaf pupil who lip-reads is at a disadvantage because teachers continue speaking while facing away from him to write on a whiteboard.

Example 2:

A pupil with severe dyslexia is told she cannot have lesson notes from her teacher, and that she should be taking notes during lessons "like everyone else".

Justification for failing to take "reasonable steps"

Not taking "reasonable steps" to avoid putting pupils at a substantial disadvantage can only be justified if there is a reason which is both material and substantial to the particular case.

What is "reasonable"?

The Act does not define "reasonable" - this depends on individual cases and will be a matter for the Tribunal and/or appeal panels to decide. However, schools can take account of the:

- need to maintain academic and other standards;
- money available;
- practicalities of making the particular adjustment;
- health and safety of the disabled pupil and others;
- interests of other pupils.

What is a "substantial disadvantage"

The school needs to take account of how it might cause substantial disadvantage through, for example:.

- the time and effort that the disabled child might need to expend;
- the inconvenience, indignity or discomfort a disabled child might suffer;
- the loss of opportunity or lack of progress that a disabled child may make compared to other non-disabled children.

Knowing that a pupil has a disability

Information shared between parents, pupils and teachers may help the responsible body to avoid less favourable treatment. All reasonable steps should be taken to find out whether prospective or existing pupils have a disability. All pupils, or their parents, may be asked upon admission of the pupil, whether they have a disability and how the school can ensure that they are not discriminated against. Some parents may wish to keep the information confidential. In such cases, a governing body may be less well placed to meet its duties. Where a school could not have known that a child had a disability, and the child is discriminated against, the school can assert this "lack of knowledge" in its defence.

Making school buildings and the curriculum more accessible

SENDA introduces new planning duties, requiring LEAs to draw up accessibility strategies and schools to draw up accessibility plans to improve access over time. Their plans must state:

- improvements in access to the curriculum;
- physical improvements to increase access;
- improvements in the provision of information in a range of formats for disabled pupils and their families.

The Schools Access Initiative (SAI) is investing £70 million nationally in 2002-3 and a further £100 million the following year. Schools should consider how they might improve physical access to school buildings during general modernisation and refurbishment work and ensure that new buildings are accessible - this will frequently be cheaper and more effective than adapting new buildings at a later stage. Additionally, schools should consider how they use the buildings available to them. For example, could all subject -specific classrooms such as those for sciences, ICT and art, be on the ground floor? Schools also have duties under Part III of the DDA where they offer any service to the public, including adjustments to improve physical access from 2004, and they have duties to employees under Part 2 of the DDA.

Redress and conciliation

Parents can claim that their child has been discriminated against on the grounds of their disability. Most claims of disability discrimination concerning admissions, exclusions and in education and associated services will be heard by Special Educational Needs and Disability Tribunals (SENDIST). Exclusion Appeal Claims Panels will hear cases relating to permanent exclusions. Admission appeal panels will hear claims relating to admittance refusals to maintained schools and City Academies.

The Disability Rights Commission will provide an independent conciliation service for disputes arising from schools' duties under the Act. The time limit for applying to the SENDIST is extended by two months if the claim is first brought to conciliation.