

Practical guidance for schools regarding the Equality Act (2010) including the Disability Discrimination Act (2002) and its relevance to the planning and leadership of Offsite Visits

Key Principles

- **The Equality Act sets out the duties on public bodies, including schools, not to discriminate against persons with a protected characteristic.** This Act replaces previous disability discrimination acts and other equality legislation (e.g. Sex Discrimination Act) into one single act, and schools should consider the implications that this may have upon educational visits e.g. the need to avoid arranging residential trips that coincide with religious festivals or holidays.
- A school's duty **not to discriminate** against disabled pupils extends to 'education and associated services' – a term that covers all aspects of school life, including all educational visits and offsite activities.
- Schools must ensure that disabled pupils are given equal educational opportunities (including offsite visits), and are not put **at a substantial disadvantage**– i.e. treated less favourably as a result of their disability.
- **Schools have a duty to be proactive and to “anticipate”** the likely needs of current and future pupils on school visits, and should not respond reactively or retrospectively.
- A school must demonstrate that it has **taken all reasonable steps and undertaken reasonable adjustments** to try and ensure that offsite visits are accessible to all disabled pupils.
- Schools **must not exclude a child** from any associated educational activity, including offsite visits, because of their disability.
- From 1 September 2012 the reasonable adjustments duty for schools and education authorities also includes a duty to provide auxiliary aids and services for disabled pupils. The Equality and Human Rights Commission (EHRC) has produced guidance for schools on this new duty – see the following website for further details:
www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/#Guidance_for_workers
- An example in this guidance is as follows:
A disabled pupil requires assistance with personal care needs such as toileting, washing and dressing. This assistance is provided during the school day by his learning support assistant provided through his statement. The school arranges a residential school trip for his year group. The pupil wishes to attend but is not able to do so unless his personal care needs are met.
Is he at a substantial disadvantage?
Yes he is unable to attend the trip with his peers.
Could the disadvantage be avoided?
The following options could avoid the disadvantage and enable the pupil to attend:
 - ask his learning support assistant to go on the trip and provide support beyond the normal school day.
 - liaise with social services to see if any support can be provided by them discussing with the pupil and his parents ways they think the support could be provided, such as a family member going on the trip to provide the overnight support.**Is it reasonable for the school to take these steps?**
These steps are all potentially reasonable depending on the circumstances. If it is not possible for the school to find a reasonable means of enabling the pupil to attend then it should consider whether there is an alternative equivalent trip that could be organised for that year group that the disabled pupil would be able to participate in.

Frequently Asked Questions

1. In what ways might a disabled child be placed at a “substantial disadvantage” on a school visit?

Consider issues such as:

- 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 who is a wheelchair user, organises a visit to a residential centre. There is only one wheelchair accessible bedroom available, which has a single bed and is on the ground floor. No lift is available to the first floor where all the other pupils are in shared bedrooms. All of the centre's showers are on the first floor, so a bowl of water, flannel and towel will be left in the bedroom for the child's use.

The facilities for this pupil are not of similar standard to the other pupils, and the proposed arrangements might cause the disabled pupil to lose some dignity and to miss out on sharing a bedroom with friends, hence putting the pupil at a "substantial disadvantage". The school should have identified the child's needs and assessed the centre's facilities before booking. If wheelchair access at the centre was not acceptable, the school should have explored alternative options.

2. How can a school "anticipate" the needs of disabled children on future school visits?

Schools should not wait until a disabled child seeks admission or is admitted as a pupil to consider what reasonable adjustments it might make generally to meet the needs of disabled pupils with regard to educational visits. Anticipatory changes may be prompted by thinking about the potential needs of disabled children who might come to the school in the foreseeable future.

Schools might consider the following anticipatory steps:

- Review the school's policy/practice with regards to educational visits;
- Devise a list of common impairments, and identify the potential adjustments required to enable participation in educational visits;
- Provide staff training in disability awareness, correct handling and moving techniques, and how to administer medicines and care to young people during visits.
- Research residential centres that are fully accessible, and have the facilities, equipment and training to include disabled guests fully.

If schools are aware of a particular disabled pupil who will be coming to the school, discussions with parents/carers and with pupils themselves well in advance of their arrival will be important in establishing more precisely the nature of the adjustments that may be needed to participate fully in future school visits.

Example:

The school's existing minibuses might not allow easy wheelchair access.

The school should research those companies that hire wheelchair accessible minibuses and coaches. Consideration should be given to improving this when the school next updates its fleet. Additional staff training may also be required in the loading, securing and unloading wheelchairs, and for assisting with the transfer of wheelchair users onto minibus seats, where appropriate.

Example:

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.

As early as possible, the head teacher should research the girl's condition and liaise closely with the child's mother and others with expert knowledge about her likely needs in school and when on offsite visits. Staff training should be arranged to ensure that all relevant staff have the knowledge and confidence to enable the girl to access and participate fully on outdoor visits.

3. What "reasonable adjustments" might be necessary when organising a school visit?

Reasonable adjustments might be necessary with regard to the planning of the transport (e.g. a coach with a lift access), the choice of venue or accommodation (e.g. wheelchair accessible shower facilities), staff supervision (e.g. extra or specialist staffing might be necessary) or the programme and location of activities (e.g. mountain walking might need to be changed to orienteering using forest tracks). Equipment or clothing might also need to be modified.

Visit organisers should give plenty of time to discuss any concerns or uncertainties about the inclusion of a disabled child on a visit with all those involved, including the child themselves and their parents/carers. Beware of making assumptions about a child's needs or abilities.

It is important that all relevant staff are made aware of each child's needs, and that they have the expertise and knowledge to provide the care, support and supervision necessary. Particular consideration should be given to additional staffing (or parental) support that might be required.

Most "difficulties" are usually surmountable - it often only requires the commitment and determination of staff, and a little additional imagination and lateral thinking, to ensure that activities are adapted to be inclusive and accessible for all. It might be necessary to discuss compromises that are acceptable to all. Where there is a will there is usually a way!

The Acts do not define "reasonable" – this depends upon individual cases. However, schools/establishments should take account of the:

- Need to maintain academic or other standards
- Cost and practicality of making a particular adjustment
- Financial and staffing resources available
- Aids and services provided by the Statement of Special Educational Needs
- Health and safety requirements
- The safety and welfare of others in the group (including the staff)

Example 1

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 visit leaders should consult carefully with the boy, his parents, and others with expert knowledge – and then liaise with the outdoor centre manager regarding the activity programme. An inspection visit by the visit organisers (and possibly the child/parents as well) may be particularly helpful to establish the accessibility and suitability of the centre's activities. It is important that all relevant personnel (e.g. activity instructors) are suitably trained and fully briefed about the child's needs. It might be agreed that the pupil cannot participate fully in all the activities on offer, but an adapted programme will enable him to participate to some degree. This might be considered to be an acceptable compromise and a reasonable adjustment.

Example 2

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 boy 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 that would enable the pupil to still go on the trip, it is likely to be acting lawfully as it has done all that it reasonably could to include the pupil. Nevertheless, the school should try to make alternative provision so that the pupil still has the opportunity to improve his/her Italian in an interesting and enjoyable way.

4. What issues should be considered when planning an educational visit for a group that includes a disabled child?

1. What is the most suitable venue to enable ALL members of the group to participate and achieve the desired learning outcomes?
2. Have all relevant parties (child, parents/guardians, SENCO, doctor/nurse, teaching and support staff) been consulted regarding the child's needs and their requirements in order to participate?
3. Has consideration been given to the reasonable adjustments (e.g. staffing, transport, activities, equipment) and additional costs that may be necessary for the child to participate fully in the visit?
4. Are there any health and safety issues for the young person in accessing the proposed visit? Are these included in the risk assessment of the activity/visit? Is a separate risk assessment necessary?
5. Can any concerns regarding the safety and accessibility of the activity be addressed by reasonable adjustments, such as:
 - careful timetabling/modifications to the itinerary
 - preparing the pupil prior to the visit
 - specialised transport
 - additional, or targeted, adult support
 - liaison with health professionals in the locality of the trip/visit
 - limiting distances to be walked
 - liaising with establishments, e.g. museums, regarding toilet facilities, ramps, quiet/withdrawal areas etc.
 - staff with necessary training in disability and /or medical needs to support the young person during the visit
 - preparation of materials prior to the visit in appropriate formats

5. What specific issues should be considered when inspecting the accessibility of a residential activity centre?

This will depend upon what impairments (e.g. hearing? vision? mobility?) are involved, but the following checklist might be helpful:

- **Entrance and corridors**
(e.g. w/c access, steps, gradients, lifts, signage, width of corridors, flooring/carpets, lighting, banisters and rails)
- **Bedrooms and sleeping arrangements**
(e.g. location/access, location of staff, bunks/beds, windows, balconies, door locks and handles, bed height, plastic sheeting, door closures, fire escape routes/procedures, space, storage space, overnight supervision, security, communication – loudspeaker systems)
- **Toilets and washroom/showers**
(e.g. space, access, seating, independence/assistance with toileting/showering, door locks/privacy, emergency pull cord, supports)
- **Dining room and eating arrangements**
(e.g. diets, menus, medication, space, access, seating, flooring, table height, cutlery, collecting meals, clearing tables, washing up, hot drinks/meals, signage, shop arrangements)
- **Lounge**
(e.g. space, access, seating, flooring, table height, signage, indoor games, open fires, hearing loops)
- **Games Room**
(e.g. space, access, seating, flooring, table heights, signage, involvement/inclusion, supervision arrangements)

- **Gardens and Grounds**
(e.g. space, access, pathway surfaces/widths, gradients, seating, flooring, table height, playground equipment involvement/inclusion, signage, games, supervision, access to car parks and roads/traffic)
- **Activities**
(e.g. parent/child consent, instructors aware of special needs, waterproofs, clothing, training/experience/attitudes of staff/instructors, equipment, staffing support, locations/accessibility, involvement/inclusion, length/timing of activities, drying room, weather conditions, plan B alternatives)
- **Transport to activities**
(e.g. mode of transport, wheelchair access/loading/securing, space, lifting/handling, staff/pupil seating, seat belts, emergency/evacuation procedures)

6. What ifafter careful and thorough consideration, participation for all pupils in the visit cannot be ensured?

Schools need to be able to demonstrate clearly why that is the case, or they may be acting unlawfully. Important factors will include:

- all reasonable measures have been considered/taken to support the disabled young person's participation in the event.
- there is no alternative activity that would meet the requirements of the educational visit as well as enabling all young people to participate.
- disabled young people who are disadvantaged because their needs prevent participation in an event have been fully consulted (as well as their parents/carers) and all reasonable steps have been explored.
- the visit must take place despite the disadvantage to a young person because, for the visit not to take place, would disadvantage all young people.
- alternative activities have been discussed and offered to those young people who are unable to participate in the visit/trip.
- there is a reason which is both material to the circumstances of the case and substantial which amounts to the justification of a young person with a disability not participating in a particular educational visit.
- there is no blanket ban on a young person with a disability participating in activities.

All of the above should have been considered **BEFORE** any arrangements are finalised and bookings/deposits paid and letters sent to parents.

If parents think that their child has been discriminated against, they have a right of redress by making a claim of disability discrimination to the SEN and Disability Tribunal (SENDIST). If the Tribunal finds that a school has discriminated unlawfully against a disabled pupil it can order any remedy that it sees fit, except financial compensation. SENDIST might order:

- Disability training for staff.
- Meeting between an LA officer, parents, the pupil and the school to review what reasonable adjustments should be made.
- The review or alteration of school policies.
- Additional tuition to compensate for missed lessons.
- A formal written apology to a child.

It is important that schools realise that whereas an appeal to SENDIST against a decision made regarding a pupil's Special Educational Needs is an appeal against the LA and must be defended by the LA, **appeal against disability discrimination is against the school's 'responsible body'** and therefore must be defended by them not the LA.

It would be advisable to check with the LA legal department if you decide that the disabled child cannot be included for any reason.

Case Studies

Example 1

Daniel is in Yr 5 in our school. He has a diagnosis of ADHD and takes medication. His mother is finding it difficult to manage his behaviour in the home. We have a Behaviour Policy that rewards children who behave appropriately with 'Golden Time' activities. The policy stipulates that children who receive five or more red cards (given for inappropriate behaviour) in one school year will not be permitted to join our summer visit to 'Funland'. Daniel has six red cards therefore can we legitimately exclude him from the visit?

Daniel is likely to be disabled within the definition of the DDA as he has a mental impairment that has an adverse effect on his ability to concentrate, learn or understand. His underlying impairment results in Daniel having behavioural difficulties.

Schools must keep their policies, practices and procedures under continuous review to ensure that disabled pupils are not placed at a substantial disadvantage in comparison to their non-disabled peers.

In this example it may be that the behaviour that led to Daniel receiving a red card was related to his disability. The school will need to ensure that all incidents are thoroughly recorded and evidence that there were no reasonable steps that the school could have taken to avoid the incidents taking place. Steps the school could take include:

- Staff training on ADHD and management of pupils with this disability
- Meet with parents, Daniel and others to agree a Care Plan to include rewards and sanctions
- Review of the Behaviour Policy to evaluate its suitability for pupils with disabilities. Evidence from disability discrimination claims shows that a blanket policy is the most likely way for a school to discriminate against a disabled child.

If the school cannot evidence reasonable steps such as those listed above they are unlikely to be able to justify excluding Daniel from the visit. They may feel that they can justify on health & safety grounds because of Daniel's unpredictable behaviour. To justify this decision the school would need to carry out a Risk Assessment, discuss this with the parent and explore any reasonable steps. For example the school may be able to allocate a member of staff to supervise Daniel or a family member may be willing to volunteer to support Daniel on the visit.

Example 2

Our Yr 9 pupils are going on a visit to Stratford-upon-Avon to watch a performance of 'Macbeth'. Laura is a pupil in this yr group. She has moderate learning difficulties and mild mobility difficulties. The English Dept do not feel that it is appropriate to take Laura on the visit because she will not understand the play and it will be difficult for her to sit comfortably and quietly because she will be bored throughout the performance. Shall we suggest to Laura's parents that she does not join the visit?

It is important that the school make arrangements to meet with Laura's parents to discuss the teaching of Shakespeare Plays, and in particular Macbeth, to Laura and about the suitability of the visit. This should be well in advance of the date to enable careful planning. The school could make

contact with their local special school and the School Improvement Service for advice on differentiation of the KS3 English curriculum.

The school should not make an assumption that Laura will not understand the play. This is not a material reason to justify her exclusion from the visit and would likely to be unlawful (See Example 5.17B DDA Code of Practice for Schools)

Example 3

Charlotte has Cerebral Palsy and uses a wheelchair. She is in yr 8 at our school and has expressed an interest in our Yr 8 summer residential camping trip. The site we use is basically a farmer's field. We do not see how we can meet her needs so would we be justified to say 'no'?

The duty on schools to make reasonable adjustments to ensure that a disabled pupil does not receive less favourable treatment is anticipatory. Secondary school's should anticipate that children with physical disabilities will join their school and should be reviewing policies, practices and procedures to ensure that they do not discriminate against disabled pupils.

The school should adopt proactive as against reactive approaches and should ask themselves 'How can we ensure our residential visit meets the needs of all our pupils?' rather than 'How can we make our visit fit Charlotte?' The LA Educational Visits Consultant, Taff Bowles, can provide invaluable information, advice and support to help schools plan accessible visits.

The following examples are taken from the Disability Rights Commission Code of Practice for Schools.

Example 1

A pupil with **Tourette's Syndrome** is stopped from going on a school visit because he has used abusive language in class. The school has a policy of banning pupils from trips and after-school activities if they swear or are abusive to staff.

The reason for not allowing the pupil to go on the school visit is his use of abusive language. His involuntary swearing is a symptom of his Tourette's Syndrome. This is less favourable treatment for a reason that relates to the pupil's disability.

The comparison has to be made with others who had not used abusive language. In this case, the pupil who used abusive language, which is directly related to his disability, was treated less favourably than pupils who had not used abusive language. So, for a reason that relates to his disability, this boy is being treated less favourably than another child to whom that reason does not apply.

Is the less favourable treatment justified? In this case the school might argue that the inclusion of the disabled pupil on the visit would make the maintenance of discipline impossible. This may constitute a material and substantial reason. However, the school would need to have considered the extent to which the disabled pupil's behaviour could have been managed. It would also need to have considered whether reasonable adjustments could have been made to its policies and procedures before it could attempt to justify less favourable treatment.

Example 2

Some pupils from a special school are going to the theatre. The school does not offer the trip to a pupil with **learning difficulties** on the basis that he would not understand the play. Is this less favourable treatment for a reason related to the pupil's disability?

The reason for not offering the boy the opportunity to go on the trip is his limited understanding which is directly related to his disability.

Is it less favourable treatment than someone gets if the reason does not apply to him or her?

The treatment that he was to receive has to be compared with the treatment that other pupils would receive who did not have limited understanding. They were being offered the trip.

Is it justified? The reason for not offering the trip was an assumption that the boy would not understand the play. This was a general assumption and not a material reason. This is likely to be unlawful discrimination.

Example 3

A pupil with **cerebral palsy** who uses a wheelchair is on a trip with her class to an outdoor activity centre.

The teachers arrange to take the class on a 12-mile hike over difficult terrain but, having carried out a risk assessment, they decide that the pupil who uses a wheelchair will be unable to accompany her class, for health and safety reasons.

Is the less favourable treatment for a reason that is related to the pupil's disability?

This is less favourable treatment for a reason that relates to the pupil's cerebral palsy, namely the use of a wheelchair.

Is it less favourable treatment than someone gets if the reason does not apply to him or her?

The treatment that she was to receive then has to be compared with the treatment that the others would receive who did not use a wheelchair. They were being offered the opportunity to go on the hike whereas this pupil was being denied it.

Is it justified?

The school is likely to be able to justify the less favourable treatment for a material and substantial reason: a risk assessment, carried out in relation to this particular pupil in the particular setting in which she would have to travel, indicated that the health and safety of the pupil, and her classmates, could be jeopardised if she were to attempt the hike. This is likely to be lawful.

Example 4

A secondary school takes pupils to an outdoor education centre each year. The school can benefit from a reduced rate if they book with the same centre for three years. The school checks with the centre before booking to ensure that if they were to take disabled pupils as part of a group they would be able to access the facilities of the centre. This is likely to be a reasonable step that the school should take.

Example 5

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 went through the following considerations:

It was not practicable to take the disabled pupil without a host to go;

The school considered cancelling the trip, but if the other pupils did not go they would 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 factors and, whilst it has not been able to identify a reasonable adjustment that would enable the pupil to go on the trip, it is likely to be acting lawfully.

Nevertheless, the school should try to 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 has an interesting and enjoyable experience.

Example 6

The parents of a nine-year-old boy with **epilepsy** ask the head teacher to keep confidential the existence of and the nature of their child's disability. Their son's medication has been effective in reducing the number of fits that he has and he is unlikely to have a fit in school. However, on seeking professional advice the head teacher is told that it would be unsafe for the boy to go swimming without informing the staff at the pool. The parents do not want them to be told. The head teacher decides that the safety of the child dictates that he should not go swimming unless staff at the pool can be told. This is likely to be lawful.

Example 7

A school will only agree to a disabled pupil coming on a field trip if the parents sign an agreement stating that they do not hold the school responsible for making any adjustments which may be necessary to ensure that the pupil benefits from the planned activities on the trip and will not take any action if the pupil is excluded from activities. It is likely that the agreement is not legally binding.