

TECHNICAL GUIDANCE

Reasonable Adjustments for Disabled Pupils

Guidance for Schools in England

Schools and education authorities have had a duty to provide reasonable adjustments for disabled pupils since 2002: originally, under the Disability Discrimination Act 1995 (the DDA 1995); and, from October 2010, under the Equality Act 2010. This guide will help school leaders and education authorities understand and comply with the reasonable adjustment duty, it will also help disabled pupils and their parents understand the duty.

From 1 September 2012, the reasonable adjustments duty for schools and education authorities includes a duty to provide auxiliary aids and services for disabled pupils. The decision to bring this duty into force was taken by the Department for Education after a public consultation, with a positive response to its introduction without additional regulation from the majority of respondents.

The duty to provide auxiliary aids is not a new one, and already applies in other contexts such as employment, service provision, and further and higher education. This chapter explains how the requirement to include auxiliary aids and services within the reasonable adjustments duty works in schools and local authorities.

The focus of this guide is on the practical implementation of the reasonable adjustment duty in schools. It includes case studies showing how the duty can be applied in contexts which will be familiar to teachers.

The guide also gives answers to frequently asked questions about the reasonable adjustments duty.

Who is this guide for?

This guide is for education authorities, governing bodies, head teachers, special educational needs co-ordinators (SENCOs) and staff at all primary and secondary schools (including academies and free schools), pupil referral units (PRUs), and independent schools, as well as for parents and disabled pupils.

Throughout this kind the term 'school' is used to refer to both schools and local authorities.

What is the reasonable adjustments duty?

The duty is ‘to take such steps as it is reasonable to have to take to avoid the substantial disadvantage’ to a disabled person caused by a provision, criterion or practice applied by or on behalf of a school, or by the absence of an auxiliary aid or service.

In the Equality Act 2010 as a whole, there are three elements to the reasonable adjustments duty that relate to:

- Provisions, criteria and practices
- Auxiliary aids and services
- Physical features

The physical features element does not apply to schools in relation to disabled pupils; instead, they have a duty to plan better access for disabled pupils generally, including in relation to the physical environment of the school.

The duty to make reasonable adjustments in relation to provisions, criteria and practices is not a new duty for schools and is the same as the duty under the DDA 1995. The new element of the duty for schools is the provision of auxiliary aids and services for disabled pupils.

Many of the reasonable adjustments that schools are already making for disabled pupils undoubtedly include the use of some auxiliary aids, such as coloured overlays for dyslexic pupils, pen grips, adapted PE equipment, adapted keyboards and computer software.

The duty to make reasonable adjustments requires a school to take positive steps to ensure that disabled pupils can fully participate in the education provided by the school, and that they can enjoy the other benefits, facilities and services that the school provides for pupils.

Many reasonable adjustments are inexpensive and will often involve a change in practice rather than the provision of expensive pieces of equipment or additional staff.

A school’s duty to make reasonable adjustments is an anticipatory one owed to disabled pupils generally, and therefore schools need to think in advance about what disabled pupils might require and what adjustments might need to be made for them.

Who does the duty apply to?

The reasonable adjustments duty is owed to disabled pupils, as defined in the Equality Act 2010.

The Act says that a pupil has a disability if he or she has a physical or mental impairment that has a long-term and substantial adverse effect on his or her ability to carry out normal day-to-day activities. Physical or mental impairment includes sensory impairments such as those affecting sight or hearing.

The definition of disability is explained in more detail in Chapter 5 of the *Technical guidance for schools in England*. This and more guidance on the definition of disability is available online at www.equalityhumanrights.com.

Some disabled pupils will also have special educational needs (SEN) and may be receiving support via school-based SEN provision or have a statement of SEN or an education, health and care plan (EHC plan). The fact that a disabled pupil has SEN, an SEN statement or EHC plan does not take away a school's duty to make reasonable adjustments for that pupil.

In practice, of course, many disabled pupils who also have an SEN statement or EHC plan will receive all of the support they need through the SEN framework and there will be nothing extra that the school has to do. However, some disabled pupils will not have SEN and some disabled pupils with SEN will still need reasonable adjustments to be made for them, in addition to any support that they receive through the SEN framework.

What is meant by 'substantial disadvantage'?

The reasonable adjustments duty is triggered only where there is a need to avoid 'substantial disadvantage'. 'Substantial' is defined as being anything more than minor or trivial. Whether a disabled pupil is at a substantial disadvantage or not will depend on the individual situation.

Example — A disabled pupil with severe manual dexterity difficulties finds it difficult to write large amounts of text by hand and so this takes him considerably longer than other pupils. In a lesson in which large amounts of text are being copied from the board, he would be at a substantial disadvantage. However, in a lesson in which there is no

handwriting required, he would not be at a substantial disadvantage in relation to his difficulties with handwriting.

The pupil must be at a substantial disadvantage in comparison with non-disabled pupils. In most cases, this will be obvious.

Example — A visually impaired pupil who can see material only in 16pt font or larger will be at a substantial disadvantage compared to non-disabled pupils if materials are provided in smaller print.

In other cases, it will not be so obvious, but it will be no less a substantial disadvantage.

Example — A pupil with chronic fatigue syndrome finds it harder to concentrate in lessons in the afternoon as a result of an increase in her tiredness.

What does the duty cover?

The phrases ‘provision, criterion and practice’ and ‘auxiliary aids and services’ are not defined in the Act. The duty in relation to provisions, criteria and practices covers the way in which a school operates on a daily basis, including its decisions and actions.

Example — A school uniform policy would fall within this element of the reasonable adjustments duty and a school may be required to make adjustments to this policy for disabled pupils with an allergy to synthetic materials who need to wear cotton clothing.

The duty in relation to the provision of auxiliary aids and services generally means anything that constitutes additional support or assistance for a disabled pupil, such as a piece of equipment or support from a member of staff.

Example — Providing a pupil who is a wheelchair user with a support assistant to push him or her around school would be an auxiliary service. Providing a step so that a pupil with restricted growth syndrome can reach the desks in the science lab would be an example of providing an auxiliary aid.

What is meant by ‘reasonable’ steps

The duty to make reasonable adjustments requires schools to take what are referred to in the Act as ‘reasonable steps’ to make adjustments.

The Act does not say what is ‘reasonable’. This allows flexibility for different sets of circumstances so that, for example, what is reasonable in one set of circumstances may not be reasonable in another.

The crux of the reasonable adjustments duty is not whether something is an auxiliary aid or whether it is an adjustment to a practice, but whether it is something that is **reasonable** for the school to have to do. It is not possible for a school to justify a failure to make a reasonable adjustment; the question is only whether or not the adjustment is reasonable.

While it is not possible to say what will or will not be reasonable in any particular situation, some of the factors that are likely to be taken into account in deciding what it is or is not reasonable for a school or a local education authority to have to do are set out below. These factors are based on those that tribunals and courts have already taken into account when considering reasonable adjustments under the equivalent provisions in the DDA 1995.

The purpose of taking the steps is to ensure that disabled pupils are not placed at a substantial disadvantage compared to non-disabled pupils. The duty to make reasonable adjustments equates to ensuring that steps are taken to provide the best possible education for disabled pupils.

If, having considered the issue thoroughly, there are genuinely no steps that it would be reasonable for a school to take to make its education, benefits, facilities or services more accessible, the school is unlikely to be in breach of the law if it makes no changes. It is unlikely, though, that there will be nothing that a school will be able to do for a pupil in such a situation.

Where a school or local authority decides that there are no reasonable steps that it can take, it is important that it sets out its reasons for this decision so that, if it is challenged by the child's parents, it can explain to them and, if necessary, a tribunal why it has acted in the way that it has.

Factors to be taken into account

Without intending to be exhaustive, the following are some of the factors that are likely to be taken into account when considering what adjustments it is reasonable for a school to have to make:

- The extent to which special educational provision will be provided to the disabled pupil under Part 3 of the Children and Families Act 2014
- The resources of the school and the availability of financial or other assistance
- The financial and other costs of making the adjustment
- The extent to which taking any particular step would be effective in overcoming the substantial disadvantage suffered by a disabled pupil
- The practicability of the adjustment
- The effect of the disability on the individual
- Health and safety requirements
- The need to maintain academic, musical, sporting and other standards
- The interests of other pupils and prospective pupils

The extent to which special educational provision will be provided to the disabled pupil under Part 3 of the Children and Families Act 2014

There is a significant overlap between those pupils who are disabled and those who have SEN.

Many disabled pupils may receive support in school through the SEN framework. In some cases, the substantial disadvantage that they experience may be overcome by support received under the SEN framework and so there will be no obligation under the Act for the school or local authority to make reasonable adjustments.

Example — A disabled pupil has an EHC plan and attends a maintained mainstream secondary school. Through her EHC plan, she receives two hours a week of specialist teaching and uses an electronic notetaker in lessons. Because the support that she requires is provided through her EHC plan, the school does not therefore have to make

reasonable adjustments by providing these auxiliary aids and services for her.

In other cases, a disabled pupil may need reasonable adjustments to be made in addition to the special educational provision that he or she is receiving.

Example — An infant school disabled pupil with attention deficit hyperactivity disorder (ADHD) receives some individual teaching assistant support through the SEN framework. He is diagnosed with severe asthma and needs assistance with his nebuliser. Although this is not a special educational need, his asthma is likely to be a disability for the purpose of the Act and so a failure to provide a reasonable adjustment will place him at a substantial disadvantage. The school trains his teaching assistant and she provides him with the assistance that he needs. This would be a reasonable adjustment for the school to make.

Some disabled pupils are not classified as having SEN, but if they are disabled and are suffering a substantial disadvantage, they may still need reasonable adjustments to be made.

Example — A disabled pupil at an infant school has diabetes, and requires daily support with reading blood sugar levels and insulin injections. He is not classified as having SEN and therefore receives no support through the SEN framework. He is, however, disabled and therefore, if the lack of daily support places him at a substantial disadvantage, the school would be under a duty to make the adjustment of providing the support, if it would be reasonable to do so.

There will be some instances in which a disabled pupil is provided with support from another agency. In these cases, it would not be reasonable to expect the school to duplicate this support.

The resources of the school and the availability of financial or other assistance

It is more likely to be reasonable for a school with substantial financial resources to make an adjustment with a significant cost than for a school with fewer resources.

The resources available to the school as a whole in practice – such as its staffing levels – should be taken into account, as well as other calls on those resources. The reasonableness of an adjustment will depend not only on the resources available in practice for the adjustment, but also on all other relevant factors (such as effectiveness and practicability). It may also be relevant to consider what other similar schools spend on adjustments.

Example — A disabled pupil with cerebral palsy uses a manual wheelchair occasionally, but not every day. The wheelchair that he normally uses is being repaired and so he is having difficulties moving around the school. The school has a wheelchair that it allows him to use in school until his is repaired. This is a reasonable adjustment for the school to make because the school already has this resource available to it. However, if the school did not have a wheelchair, it would not be expected to purchase one for the pupil as a reasonable adjustment.

If a disabled pupil has a particular piece of special or adapted equipment that he or she is prepared to use while at school, it may be reasonable for the school to allow the use of the equipment.

The financial and other costs of making the adjustment

If an adjustment costs little or nothing to implement, it is likely to be reasonable to do so unless some other factor (such as practicability or effectiveness) makes it unreasonable. The costs to be taken into account include those of staff and other resources. The significance of the cost of a step may depend in part on what the school might otherwise spend in the circumstances and also on what other schools, in similar situations, might spend.

In assessing the likely costs of making an adjustment, the availability of external funding should be taken into account. The latter is most likely to be significant when funding is available through the SEN framework.

The effectiveness of the step in avoiding the disadvantage

Schools need to think carefully about what adjustments can be made to avoid the disadvantage experienced by the individual disabled pupil. Even pupils with the same disability might need different adjustments to overcome the disadvantage. It is important not to make assumptions about a disabled pupil's needs, because this may lead a school to provide a completely ineffective adjustment.

Example — A school admits a disabled pupil who is deaf and decides, without consulting the pupil, to install an induction loop in all teaching rooms – but the pupil does not use a hearing aid and so is unable to benefit from the induction loop. The pupil reads lips and so a reasonable adjustment would have been to tell all staff to ensure that they face the pupil when speaking to him.

It is unlikely to be reasonable for a school to have to make an adjustment involving little benefit in reducing the disadvantage experienced by the disabled pupil, even if the pupil requests this. If this is the only possibility, however, of avoiding the disadvantage and there is a prospect of it having some positive effect, then it may be reasonable for the school to have to take the step.

Where, however, there are other reasonable steps that a school could take, it is unlikely that a school will discharge its reasonable adjustments duty if the adjustment made provides little benefit to the pupil.

However, if an adjustment, when taken alone, is of marginal benefit but may be one of several adjustments that, if grouped together, would be effective in overcoming the disadvantage, in that case, it would be reasonable for the school to make the adjustment.

Example — A disabled pupil with chronic fatigue syndrome finds moving around a large three-floor secondary school very tiring and, despite the school adjusting the timetable and location of classes to minimise the amount that she has to move around the school, she is still too exhausted to complete the school day. The school then makes further adjustments, giving her a ‘buddy’ to carry her books for her, using a dictaphone to record those lessons that she misses and establishing a policy that she will not be penalised for arriving at lessons late. These adjustments enable her to attend more lessons and to be less disadvantaged when she does miss lessons.

It will usually be a matter of discussing with the pupil, and those who know him or her, what those needs are and what is likely to be most effective.

The practicability of the adjustment

It is more likely to be reasonable for a school to have to make an adjustment that is easy than one that is difficult, although in some circumstances it may be reasonable to have to make an adjustment, even if it is difficult.

Examples —

- A visually impaired child requires printed handouts to be prepared in 16 pt font or larger. This can easily be accommodated by ensuring that fonts are reset to this size prior to any documentation being printed.
- A pupil who is a wheelchair user is unable to access classes on the first floor. A reasonable adjustment would be for the school to rearrange the timetabling and location of classes so that all of her classes are on the ground floor. Although this may be difficult, it does not mean it is not a reasonable adjustment for the school to make. If specialist facilities such as science labs are available only on the first floor, then it may not be possible to move classes that require the use of the specialist equipment to a different classroom; in this case, the school will need to consider what other adjustments it could make to enable the disabled pupil to access learning opportunities equivalent to those of her peers.

The effect of the disability on the individual

The effect of a disability on a particular pupil will affect the adjustments that it is reasonable for a school to make.

Example —

- A disabled pupil with dyslexia finds it very difficult to read text typed on white paper. The school provides handouts on yellow paper for her. This would be a reasonable adjustment for this pupil.
- Another disabled pupil with dyslexia finds it difficult to read text on **any** colour of paper without a plastic overlay sheet. The school provides the pupil with a plastic overlay sheet to use in all lessons. This would be a reasonable adjustment for this pupil.

Health and safety requirements

The Act does not override health and safety legislation. If making a particular adjustment would increase the risks to the health and safety of any person (including the disabled pupil in question), then this is a relevant factor in deciding whether it is reasonable to make that adjustment.

However, as with the approach to any question of health and safety, and risk assessment, schools are not required to eliminate all risk. Suitable and sufficient risk assessments should be used to help the school to determine where risks are likely to arise and what action can be taken to minimise those risks. Risk assessments should be specific to the individual pupil and the activities in question. Proportionate risk management relevant to the disability should be an ongoing process throughout a disabled pupil's time at the school.

There might be instances in which, although an adjustment could be made, it would not be reasonable to do so because it would endanger the health and safety either of the disabled pupil or of other people. There might be other instances in which schools could make anticipatory reasonable adjustments in line with health and safety legislation, ensuring compliance with, and not infringing, that legislation.

Health and safety issues must not be used inappropriately to avoid making a reasonable adjustment. Schools should avoid making uninformed assumptions about health and safety risks.

Examples —

- A disabled pupil with a stair-climbing wheelchair applies to a large secondary school with several flights of stairs. The school prevents him from using the stair-climbing wheelchair in the school because it thinks that it will be dangerous. However, after carrying out a risk assessment and finding out more about the wheelchair, the school realises that it does not present a significant health and safety risk, and therefore that it would be reasonable for the school to allow him to use it.
- A disabled pupil who attends a mainstream school has a tracheostomy, which needs monitoring, and he needs occasional intervention to clear his airways. The school carries out a risk assessment, and identifies that he needs to have a member of staff who is able to provide the necessary monitoring and intervention with him at all times. The school has several support staff who are trained

and contractually obliged to administer medication to pupils. The school arranges for these staff and any others who volunteer to be trained in tracheostomy care, and then timetables the trained staff so that one is always able to monitor the pupil. All staff are trained in identifying when the pupil needs intervention and are provided with radio microphones, so that they can summon assistance from another member of staff if necessary. These are reasonable adjustments for the school to make in response to the risk assessment.

- A disabled pupil with epilepsy applies to be admitted to his local primary school. His parents speak to the head teacher and express their concern that someone at the school needs to be trained to provide the necessary medical support if the pupil has a seizure in school. The head teacher carries out a risk assessment, and seeks advice from the local authority and from another school in the area with a pupil with epilepsy. She identifies that the risks decrease the more members of staff are trained and able to assist in the case of a seizure. The head teacher decides to provide training to all staff, teaching and non-teaching, as part of an Inset day; then, after the training has been undertaken, she asks staff to volunteer to agree to support the pupil and to administer the necessary medication. The head teacher also puts in place an individual healthcare plan for the pupil, which includes instructions on how the medication is to be administered, and the need for a second adult to witness the dosage and administration of the medication. Although no individual member of staff is required to undertake the training, by offering it to all staff it is possible to maximise the number of people who can assist, to raise staff awareness generally and to minimise the health risk for the pupil. This could be a reasonable adjustment for the school to make.

The need to maintain academic, musical, sporting and other standards

The reasonable adjustments duty does not prevent a school from choosing its best footballers, singers or mathematicians where a consideration of standards is relevant, for example in an inter-school competition. However, it should not be assumed that a consideration of standards will mean that a disabled pupil will be barred from an activity.

Example — A school regularly takes part in football matches with other local schools and selects its best footballers to play in the team. A pupil who is a wheelchair user is very keen on sport, but not able to play football at the necessary standard to be chosen for the team. The school is not required, as a reasonable adjustment, to select him for the team, because it is permitted to select only the best football players.

The interests of other pupils and prospective pupils

Ordinarily, the interests of other pupils regarding the reasonable adjustments required by a disabled pupil will be irrelevant. However, there are limited circumstances in which the provision of a particular reasonable adjustment for a disabled pupil will disadvantage other pupils. This is relevant only where the adjustment results in significant disadvantage for other pupils. In such a case, it may not be reasonable to expect the school to make the adjustment.

Example — A disabled pupil has a skin condition that is aggravated by cold and his parents ask that his classroom is kept at a very hot temperature. However, this would mean that the other pupils in the class would be uncomfortably hot. The school may not be expected to keep the classroom at the requested temperature, but it could take other steps, such as raising the classroom temperature to a level that is still comfortable for other pupils, placing the pupil in the hottest part of the room, such as by a radiator, and relaxing the school uniform policy to allow him to wear warmer and more comfortable clothing.

There will, however, be other instances in which there is a duty to make an adjustment despite some inconvenience to others. In deciding what adjustments are reasonable, it is important to weigh the level of inconvenience to others against the substantial disadvantage faced by the disabled pupil.

Examples —

- A primary school plans a school trip to a local history museum in its town to undertake some activities. One of the pupils in the class is deaf and, because the museum does not have a hearing loop installed, she will be unable to participate in the trip. The school

decides to change the trip and attend a museum in a neighbouring town, which has a hearing loop. Although this will cause some inconvenience to the other pupils because the travel time to and from school is longer, the school decides that this is a reasonable adjustment to make given the substantial disadvantage faced by the disabled pupil if she is unable to attend the trip.

- A secondary school takes its year 7 pupils on a week-long outdoor activity course every year. The school always goes to the same place, which offers a wide range of exciting activities in which the pupils can participate. This year, one of the year 7 disabled pupils has to have kidney dialysis on a daily basis, so needs to be able to return home every day. In deciding on what adjustment to make for the disabled pupil, the school considers cancelling the trip and seeking an alternative, such as day trips closer to the school. The school weighs up whether denying pupils the opportunity to attend the week-long trip is reasonable and decides to stick with the planned trip to the outdoor activities centre so that pupils do not miss out on this valuable residential experience, and are not required to travel to and from activities each day. But, to minimise the disadvantage faced by the disabled pupil, the school arrange for transport from his home to attend the centre for day visits on three days of the week, so that the pupil has the benefit of being able to participate in the activities with his peers. If the school had not made this adjustment, he would not have been able to participate at all. This is likely to be a reasonable step for the school to have to take. It is unlikely to be reasonable for the school to have to alter its decision to undertake the week-long activities course.

Charging for providing reasonable adjustments

It is unlawful for a school to charge a pupil for making a reasonable adjustment in any circumstances, whatever the financial cost to the school and however the school is funded. However, as set out on page 6, the cost of an adjustment is one of the factors to be taken into account when considering whether or not the adjustment is reasonable.

Example — An independent school provides a dyslexic disabled pupil with overlay sheets to assist him in reading text, along with weekly sessions with a specialist teacher. The school adds the cost of these adjustments to the pupil's school fees. This would be discrimination.

Frequently asked questions (FAQs)

Auxiliary aids

Q: What has changed since September 2012?

A: Schools and local authorities now have additional obligations towards disabled pupils to provide what are called 'auxiliary aids and services' to overcome disadvantages that these pupils experience in schools.

Q: Is that not something with which the SEN framework deals?

A: Many disabled children will have statements of SEN or EHC plans and auxiliary aids that are necessary as part of their SEN provision will be provided through the statement or EHC plan. In these cases, the schools will be under no obligation to duplicate that support. The great majority of children with SEN do not have statements or EHC plans, however, and that will include disabled children who require auxiliary aids or services to prevent them being at a substantial disadvantage. Many schools will already be doing this and so it will add little or nothing to their existing regime. But it is important that all staff know about these new obligations.

Q: What if we do not have the money or resources to do this?

A: The Act obliges schools to make only 'reasonable' adjustments. Cost and resources are factors that are taken into account in determining what is 'reasonable'. It is important to document carefully any decisions taken on reasonable adjustments, so that they can be justified to parents and/or a tribunal.

Q: What sort of things might we have to do?

A: Schools may have to provide a disabled pupil with:

- A piece of equipment
- Assistance from a sign language interpreter, lip-speaker or deaf-blind communicator

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- Extra staff assistance
- An electronic or manual notetaking service
- Induction loop or infrared broadcast system
- Videophones
- Audiovisual fire alarms
- Readers for people with visual impairments
- Assistance with guiding
- An adapted keyboard
- Specialised computer software

Q: If a school provides a disabled pupil with a piece of equipment, whose responsibility is it to ensure that the equipment is looked after and is repaired when necessary?

A: The reasonable adjustments duty includes making sure that the reasonable adjustment provided actually works, so the school would be responsible for the maintenance and repair of the piece of equipment. However, schools may want to work with other schools in their local area or with the local authority to share resources both in terms of equipment, and the maintenance and repair of equipment.

Q: Are individual schools expected to meet the cost of auxiliary aids and services if they already pay into a central local authority budget to meet such costs?

A: Centrally organised and funded aids and services are often the most effective and efficient way of meeting the needs of disabled children. In some situations, individual schools pay an amount into a local authority 'pot' set up to meet the cost of access needs and are able to draw on that pot for such needs; or a local authority may provide auxiliary aids and services out of funds that it would otherwise pass on to schools for such aids and services. It is unlikely, in these circumstances, to be reasonable for an individual school to pay any more in providing additional aids and services.

Q: A pupil needs a hearing aid when at school, but also when not at school. Should the school be providing the hearing aid for the child to use all of the time?

A: The school's duty is to avoid the substantial disadvantage experienced by the disabled pupil while he or she is accessing the education and other benefits, facilities and services that the school provides to pupils. A school is not required to provide anything that the pupil requires outside of education - but there may be circumstances in which the school allows the pupil to use a piece of

equipment provided by it in other circumstances. For example, where a school has provided a pupil with an MP3 player in order to record lesson notes, it may then allow the pupil to use that MP3 player when attending a holiday club.

Q: Can a school charge disabled pupils or their parents for the additional cost of providing auxiliary aids?

A: No. The Act prohibits schools from passing on the cost of reasonable adjustments to the disabled pupil or his or her parents.

Q: It can be difficult to include disabled pupils on residential school trips. Would it be better to cancel such trips to ensure that disabled pupils are not discriminated against?

A: The Act does not require a school to cancel school trips or any other activities arranged for pupils, but it does require a school to look at ways in which to ensure that disabled pupils are given the same opportunities to participate as other pupils. This might include considering alternative trips to those previously arranged by the school, providing additional assistance to enable the disabled pupil to attend or allowing the disabled pupil to attend for only some of the trip. By working with disabled pupils and their parents, who will have experience of taking their children on trips and outings, and learning from the experiences of other schools, schools are likely to be able to come up with solutions that mean that everyone is able to benefit from the trip or activity.

Other issues

Q: If a school does not know that a pupil is disabled, is it still required to make reasonable adjustments?

A: In the majority of cases, schools will be aware of a child's disability for a number of reasons, such as the arrangements for the assessment of and the provision of special educational needs through the SEN framework. In many cases, parents will volunteer information about their child's disability. It may not be immediately obvious that a child is disabled. Underachievement and unexplained behaviour may, in some cases, indicate an underlying disability that has not yet been identified.

The duty to make reasonable adjustments is an anticipatory duty. This means that it requires consideration of, and action in relation to, barriers that impede people with one or more kinds of disability prior to an individual disabled pupil seeking to access the school. Schools should therefore not wait until a disabled person approaches them before they give consideration to their duty to make

reasonable adjustments, and should anticipate the requirements of disabled pupils and the adjustments that may have to be made for them.

Q: If a pupil asks a school to keep his or her disability confidential, does this mean that a school does not have to make any adjustments?

A: Disabled pupils and their parents have a right to request that a pupil's disability be treated as confidential. In this case, what is reasonable for the school to do must be consistent with the request for confidentiality. The school still has a duty to make reasonable adjustments, but might make different adjustments from those that it would have made if there had not been a confidentiality request.

Q: Does the duty apply to independent schools?

A: The duty applies to all schools in England irrespective of how they are funded or managed.

Case studies

Example — A child with a recent diagnosis of dyslexia and Asperger's syndrome attends an independent school, and has been refused a statutory assessment by his local authority. His parents believe that he needs some one-to-one support and specialist teaching, because he is falling behind his peers.

Q: Is he at a substantial disadvantage?

A: Because he is falling behind with his schoolwork, this may be an indication that the pupil is at a substantial disadvantage. If the school doubts that he is at a substantial disadvantage, then it could carry out or arrange an assessment to obtain more information about any disadvantage that he is experiencing (and about the steps that could be taken to avoid any substantial disadvantage).

Q: Could the disadvantage be avoided?

A: If the assessment shows that the pupil is at a substantial disadvantage compared to non-disabled pupils, some one-to-one support and specialist teaching could help the school to avoid the disadvantage. If it suggests that he is not at a substantial disadvantage, then the school is not required to make any reasonable adjustments.

Q: Is it reasonable for the school to take these steps?

A: This will depend on the resources available to the school and the other factors listed above. If the school feels that this is support that should be provided by the local authority through an EHC plan, then the school could advise the parents of this and of how to request a statutory assessment. The school can also request that the local authority carries out a statutory assessment.

Example — A disabled pupil requires assistance with personal care needs, such as toileting, washing and dressing. This assistance is provided during the school day by a learning support assistant provided through his EHC plan. 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.

Q: Is he at a substantial disadvantage?

A: Yes: he is unable to attend the trip with his peers. This means that he is missing out on an additional valuable learning experience available to non-disabled pupils in his class.

Q: Could the disadvantage be avoided?

A: The following options could avoid the disadvantage and enable the pupil to attend:

- asking his learning support assistant to go on the trip and provide support beyond the normal school day;
- liaising with social services to see if any support can be provided by them; and
- discussing with the pupil and his parents ways in which they think the support could be provided, such as a family member going on the trip to provide the overnight support.

Q: Is it reasonable for the school to take these steps?

A: 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 in which the disabled pupil would be able to participate.

Example — A pupil with physical difficulties starts at a primary school partway through the school year, having recently moved to the UK from abroad. His parents request that the local authority carry out a statutory assessment, because they think that he will need an EHC plan. It is likely that any additional support that he needs will be provided through an EHC plan, but in the meantime, until the statutory assessment process is completed and an EHC plan issued, the pupil is struggling to access education, because he is unable to move around the school without assistance and needs help with writing, and with lifting and moving books and other learning materials.

Q: Is he at a substantial disadvantage?

A: Yes. He is unable to access education in the same way as his peers.

Q: Could the disadvantage be avoided by the provision of an auxiliary aid or service?

A: Yes – by means of individual and specialist support.

Q: Is it reasonable for the school to take this step?

A: Although support would ultimately be provided through his EHC plan, it is likely to be reasonable for the school to put in place at least some support to enable the pupil to access education in the meantime.

Example — A child with Asperger's syndrome attends a school and is provided with transport in the form of a school bus that stops near to her home and then goes to the school. She wants to attend an afterschool activity and, although there is a bus that she could catch home, she would need to change buses and is not familiar with the route.

Q: Is she at a substantial disadvantage?

A: Yes. She cannot attend the afterschool activity.

Q: Could the disadvantage be avoided by the provision of an auxiliary aid or service?

A: Yes – by providing individual transport. Alternatively, the school could support the pupil to develop her independent travelling skills, which might include someone escorting her on the bus the first few times or practising the route with her.

Q: Is it reasonable for the school to take this step?

A: There are specific arrangements in place for transporting disabled learners to and from school, but this is not part of the Equality Act 2010. The reasonable adjustments duty on after-school activity providers, where they are operating independently from the school, does not include transport to and from the premises. The law regarding provision of transport for education purposes falls on the local authority to provide transport to and from school during the compulsory part of the school day, which ensures that disabled children are able to attend school.

There may be some flexibility where the after school provision is provided for, or commissioned by, the school, hence is a benefit, facility or service provided by the school, and this could include the support described above. Also, in circumstances where transport is being provided for non-disabled learners for after-school activities, such transport must be fully accessible for disabled learners as well. The transport provider may well charge for this transport, but is not allowed to charge more for disabled learners.

Contacts

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ISBN 978-1-84206-537-2