

The Equality Act (2010)

A GUIDE FOR THOSE WORKING WITH LEARNERS WITH SENSORY IMPAIRMENT

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1. INTRODUCTION

- 1.1 This document has been produced by a working group of the National Sensory Impairment Partnership (NatSIP).
- 1.2 The aim is to provide guidance, which all schools need to have in meeting the needs of learners with sensory impairment¹, with regard to the responsibilities and implications of the equality legislation and the new revised public sector duty.
- 1.3 In all aspects of curriculum and environmental access for learners with sensory impairment, schools should seek advice from their Local Authority Sensory Impairment Support Service.

2. OVERVIEW IN RELATION TO DISABILITY

- 2.1 The Equality Act 2010 defines disability as *‘a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities’*.
- 2.2 The Equality Act 2010 replaces all pre-existing anti-discrimination laws with a single Act. It therefore replaces the Disability Discrimination Acts (DDA) 1995 and 2005.
- 2.3 Public Sector Duties within the Equality Act 2010 give all public bodies, including schools, legal responsibilities to demonstrate that they are taking steps not just to eliminate discrimination but to actively promote equality. Schools are allowed to treat disabled learners more favourably than non-disabled learners and in some cases are required to do so, by making reasonable adjustments to put them on an equal footing with learners without disabilities.
- 2.4 The Equality Act 2010 applies to all maintained and independent schools, including Academies, Free schools, maintained and non-maintained special schools.
- 2.5 The Equality Act 2010 makes it unlawful for a school to discriminate against, harass or victimise a learner or potential learner in relation to:
 - Admissions
 - Exclusions
 - Educational provision re curriculum and environmental access
 - Educational provision re extra-curricular activities
 - Educational provision re access to any benefit, facility or service

¹ SI refers to those children who have a vision, hearing or multi-sensory impairment.
NatSIP Equality Act 2010 – SI guide 2012

- 2.6 Schools are advised to regularly review all their policies to ensure that they are not inadvertently discriminating.

3. UNLAWFUL DISCRIMINATION

3.1 Unlawful behaviour

The Equality Act 2010 defines four kinds of unlawful behaviour:

3.1.1 Direct Discrimination

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

3.1.2 Indirect discrimination

This occurs when there is a policy or practice that applies to everyone, but will disadvantage someone with a disability. For example, a school policy where learners are not allowed to write in pen until Key Stage 2 would disadvantage a learner with a vision impairment who struggles to see work in pencil.

3.1.3 Harassment

This is *‘unwanted conduct which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person’*. This covers unpleasant and bullying behaviour, but also actions which, whether carried out intentionally or unintentionally, cause offence to a person because they have a disability.

3.1.4 Victimisation

It is unlawful for a school to victimise learners (present, future and past) and their parents who make complaints. For example, if a former learner with a vision impairment asks for a reference from the school to be sent via email rather than hard copy and the school refuses to send an email version, this is likely to be viewed as an unlawful failure to make a reasonable adjustment.

3.2 False allegations

Persons making false allegations or complaints would not be protected under this section.

4. KEY DUTIES IN RELATION TO LEARNERS WITH SENSORY IMPAIRMENT

4.1 Admissions

Schools cannot discriminate against disabled learners with regard to admissions. Any entrance tests and exams must be accessible to learners with sensory impairment e.g. undertaking reasonable adjustments to ensure an entrance exam is in an accessible format, such as enlarged font for a learner with a vision impairment or providing a live-voice speaker for a deaf pupil taking an oral presentation exam.

(N.B. Some schools may have legal selective admission arrangements, for example grammar schools, and are not affected by the Equality Act 2010 legislation regarding disability discrimination. However all reasonable adjustments should still be available including extra time etc as referred to above. In other words it is legal to select by ability but not to prevent a candidate showing what their ability is eg a deaf student needing extra time.)

4.2 Exclusions

Schools cannot exclude a learner on the grounds of their disability. However they can exclude a learner with a disability who may have transgressed with regard to acceptable behaviour that is not directly as a result of their disability.

4.3 Provision of education, facilities and services

Schools cannot discriminate against learners with a disability in relation to any aspect of education, such as curriculum access, environmental access, lunch/break arrangements, after school activities, school trips, timetabling, homework, etc

Equally schools cannot discriminate against learners with a disability in relation to any training, maintenance etc that may be required in support of auxiliary aids to support curriculum access such as radio aids, Brailnotes etc **(N.B. The DfE has yet to publish the outcome of the consultation on the duty to provide auxiliary aids. An addition to this document will be made when that is published.)**

5. REASONABLE ADJUSTMENTS

5.1 The duty for schools to make reasonable adjustments only applies to learners with a disability and can be summarised as follows:

- Where something a school does places a learner with a disability at a disadvantage compared to other learners, then the school must take reasonable steps to try to overcome that disadvantage

- Schools will be expected to provide an auxiliary aid or service for a learner with a disability when it would be reasonable to do so and if such an aid would alleviate any substantial disadvantage that the learner faces in comparison to learners without a disability. **(N.B. The DfE has yet to publish the outcome of the consultation on the duty to provide auxiliary aids.)**

5.2 The reasonable adjustments duty is anticipatory, so a school will have to consider general, reasonable, potential adjustments, which may be needed for learners with a disability, as it is likely that any school will have such learners at some point.

5.3 The Equality Act 2010 does not set out what would be a reasonable adjustment, but many effective and practicable adjustments for learners with sensory impairment can be achieved at little or no cost without compromising quality.

5.4 A failure to make a reasonable adjustment cannot be justified. However, schools will not be expected to make adjustments that are not reasonable. Guidance produced by the Equality and Human Rights Commission (EHRC) includes factors that should be taken into account.
www.equalityhumanrights.com

5.5 The duty to make reasonable adjustments applies to the learning environment which covers everything that schools provide for learners, not just curriculum access, and includes all school activities such as extra-curricular and leisure activities, work experience, after school and homework clubs, sports activities and school trips. These are considered in s5.6 – s5.10 below:

5.6 The Curriculum

5.6.1 Content

The content of the curriculum is not covered by the Equality Act 2010. Schools are not restricted in the range of issues, ideas and materials used in the school syllabus.

5.6.2 Delivery

The way in which the curriculum is delivered is covered by the Equality Act 2010. It must be delivered in such a way that learners with a disability are not subject to disadvantage and discrimination. For example, using DVDs with subtitles or with the provision of a transcript or sign support for a learner who is deaf would be a reasonable adjustment in a lesson to facilitate curriculum access.

5.6.3 Reasonable adjustments

Reasonable adjustments required by learners with sensory impairment will vary depending on a range of factors including degree of impairment, age,

mode of communication, speech, language and communication levels and the impact of any additional needs.

Learners with sensory impairment should be assessed by a qualified teacher of the vision impaired (QTVI), teacher of the deaf (ToD) or teacher of multi-sensory impairment (QTMSI) who will be able to identify the curriculum access needs of individual learners. They will provide information and advice on the adjustments required for learners with sensory impairment so that schools can meet their duties under the Equality Act 2010.

	Examples of reasonable adjustments
The curriculum	<ul style="list-style-type: none"> ▪ Provide opportunities for lip-reading ▪ Provide suitable acoustic environment ▪ Use subtitles for DVDs or internet/TV clips ▪ Modify language of written material ▪ Use a live speaker for material presented via CD/tape ▪ Provide written materials in accessible format: large print or Braille ▪ Print out interactive whiteboard presentations in large print ▪ Ensure appropriate seating position of student ▪ Use modified teaching strategies

5.7 Assessments and exams

5.7.1 Reasonable adjustments

Reasonable adjustments must be made for learners with disabilities for both internal assessments and public exams and assessments, such as SATs, Year 1 Phonic Check, GCSEs etc.

	Examples of reasonable adjustments
Assessments and exams	<p>Ensure appropriate JCQ Access arrangements are applied for and in place in line with learner requirements. These could include:</p> <ul style="list-style-type: none"> ▪ Modified language papers ▪ Accessible formats such as enlarged, modified or Braille papers ▪ Live speakers ▪ Amanuensis/scribe ▪ Oral language modifiers; BSL interpreters ▪ Appropriate positioning in the exam hall ▪ Use of specialist equipment ▪ Ensuring a glare free environment with good lighting ▪ Facilitation of extra time and/or rest breaks

5.8 The extended curriculum and wider participation

5.8.1 The reasonable adjustments duty will support access to all areas of school life for learners with disabilities.

5.8.2 Risk assessments

Sensory specific risk assessments that are carried out in relation to extended curriculum activities should include a consideration of the reasonable adjustment requirements of individual learners. However, the caveat can be applied that if the adjustments were to have a detrimental effect on other learners, it would be acceptable not to make them. In the same way, if school premises are used for activities, e.g. holiday clubs, that are provided by organisations not connected to the school, then the school would not be responsible for the activities provided.

5.8.3 Reasonable adjustments

N.B. Although this guidance focuses on learners with sensory impairment, schools should also make reasonable adjustments for any parents/carers who may have sensory impairments to ensure access and participation in areas such as parent consultation, assemblies, excursion meetings, IEP meetings, Annual Review meetings etc.

	Examples of reasonable adjustments
The extended curriculum	<ul style="list-style-type: none">▪ Use a buddy system to ensure safety as advised▪ Use an agreed visual prompt when starting a race or a match e.g. a coloured flag▪ Arrange theatre visits when there is a signed and/or captioned performance▪ Arrange theatre visits when there is an audio described performance and/or a touch tour
Wider participation	<ul style="list-style-type: none">▪ Include learners with sensory impairment on the school council and/or ask their views on issues that are discussed at school council▪ Run a lunchtime/after school signing club or Braille club. Make sure after school clubs are accessible to all▪ Arrange transport to pick up learners after the end of a school club rather than at the end of the normal school day to enable participation in after school clubs

5.9 Work experience

5.9.1 Reasonable adjustments

Schools/Connexions/Careers services need to ensure they support learners with disabilities with regard to finding accessible work-placements.

Examples of reasonable adjustments	
Work experience	<ul style="list-style-type: none">▪ Put in place effective communication systems with work experience providers to ensure learners are supported appropriately whilst they are on placement▪ Ensure a pre-work experience visit takes place to enable bespoke risk assessment▪ Provide the work experience placement with a strategy sheet for the individual learner

5.10 The physical environment and accessibility

5.10.1 Schools and local authorities are obliged, under the Equality Act 2010, to carry out accessibility planning for learners with a disability (as was the case under the DDA).

5.10.2 Schools must implement accessibility plans, which are aimed at:

- increasing the extent to which learners with a disability can participate in the curriculum
- improving the physical environment of schools to enable learners with a disability to take better advantage of education, benefits, facilities and services provided
- improving the availability of accessible information to learners with a disability

5.10.3 An accessibility plan may be a stand-alone document but may also be published as part of the school development plan. OFSTED inspections may include a school's accessibility plan as part of their review.

5.10.4 Further advice on how to adapt the physical environment to meet the needs of learners with SI can be found by contacting the Local Authority Sensory Impairment Support Service.

	Examples of reasonable adjustments
The physical environment	<ul style="list-style-type: none"> ▪ Ensuring acoustic treatment of teaching areas and halls ▪ Using Sound field systems where appropriate ▪ Using contrasting colours to highlight door frames, pillars and steps ▪ Ensuring appropriate lighting in all student areas ▪ Providing suitable storage for bags and coats to prevent floor obstructions ▪ Removing trip hazards e.g. floor mats that are not flush with the floor level ▪ Having appropriate signage e.g. large print or Braille

6. DISPUTES

- 6.1 It is in the best interests of all to resolve any issue without resort to law. Defending a claim can be lengthy, expensive, damaging of reputation and, not least, distressing for those involved.
- 6.2 Local authorities must have an accessible complaints procedure and schools should make both learners with disabilities and their families aware of it.
- 6.3 It is preferable that schools/local authorities are prepared to make reasonable adjustments and to offer to put right anything that has been proven to be discriminatory.
- 6.4 Many local authorities offer a mediation service and this should be used where disputes arise. The Equalities Mediation Service, funded by the Equality and Human Rights Commission, is available to complainants (but not to schools).
- 6.5 Specialist tribunals will hear cases of contravention. For details of the tribunal process please refer to the:
- Equality and Human Rights Commission www.equalityhumanrights.com
 - Special Educational Needs and Disability Tribunal (SENDT) www.sendist.gov.uk
- 6.6 What happens if the Public Sector Equality Duty is not considered?
If a public authority fails to give due regard to the duty, it could be challenged through a judicial review made by an individual, a union or NGO or by the Equality and Human Rights Commission (EHRC).

7. ORGANISATIONS THAT CAN HELP

BATOD

www.batod.org.uk

DFE

www.education.gov.uk

Equality and Human Rights Commission

www.equalityhumanrights.com

National Blind Children's Society

www.nbcs.org.uk

National Deaf Children's Society

www.ndcs.org.uk

NatSIP

www.natsip.org.uk

Royal National Institute for the Blind

www.rnib.org.uk

Special Educational Needs and Disability Tribunal (SENDT)

www.sendist.gov.uk

Sense

www.sense.org.uk/children

VIEW

www.viewweb.org.uk

This NatSIP document is intended to be a brief guide only and will be updated.

A Guide for those working with learners with sensory impairment in Early Years and FE/HE will follow in the future.

Detailed advice regarding reasonable adjustments, specific to the needs of individual learners, should be sought from the Local Authority Sensory Impairment Support Service in the first instance.

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8. Some principles and examples, drawn from case law

The following examples came from work with Richard Rieser, World of Inclusion Ltd.

Taking account of disabled people's disabilities:

The Equality Duty also explicitly recognises that disabled people's needs may be different from those of non-disabled people.

Public bodies should therefore take account of disabled people's impairments when making decisions about policies or services..

This might mean making reasonable adjustments or treating disabled people better than non-disabled people in order to meet their needs

1. Principles drawn from case law that it is essential to fulfil to meet the Equality Duty:

Compliance with the Equality Duty involves a conscious approach and state of mind.

Timeliness – the Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.

Real consideration – consideration of the three aims of the Equality Duty must form an integral part of the decision-making process. The Equality Duty is not a matter of box-ticking; it must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.

Sufficient information – the decision maker must consider what information he or she has and what further information may be needed in order to give proper consideration to the Equality Duty

2. Principles drawn from case law that it is essential to fulfil to meet the Equality Duty

No delegation – public bodies are responsible for ensuring that any third parties which exercise functions on their behalf are capable of complying with the Equality Duty, are required to comply with it, and that they do so in practice. It is a duty that cannot be delegated.

Review – public bodies must have regard to the aims of the Equality Duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The Equality Duty is a continuing duty.

Demonstrating compliance with the Equality Duty:

There is no explicit requirement to refer to the Equality Duty in recording the process of consideration but it is good practice to do so.

Keeping a record of how decisions were reached will help public bodies demonstrate that they considered the aims of the Equality Duty