

# Disabled Children and the Equality Act 2010:

What Early Years providers need to know and do, including responsibilities to disabled children under the Children and Families Act 2014



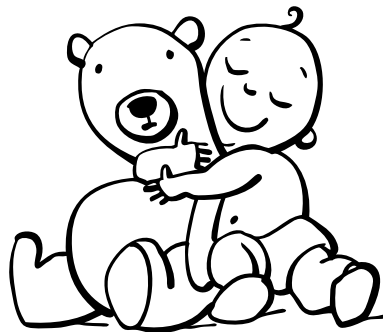
*Philippa Stobbs*  
*Council for Disabled Children*  
*March 2015*



# Contents

1. Introduction .....	4
2. Early Years Foundation Stage.....	6
3. The Children and Families Act 2014.....	7
4. What this booklet does do and doesn't do.....	9
5. The Equality Act 2010.....	10
6. Protected characteristics.....	11
7. Prohibited conduct.....	12
8. How the Equality Act 2010 applies to different settings.....	12
9. Early years settings that are schools, Part 6 of the Equality Act 2010.....	13
10. Early years settings that are not schools, Part 3 of the Act.....	14
11. Considerations for responsible bodies Parts 3 & 6 of the Act .....	15
12. Which children count as disabled?.....	16
13. What is discrimination?.....	18
14. Direct discrimination .....	19
15. Indirect discrimination.....	20
16. Discrimination arising from disability.....	21
17. Justification .....	22
18. Harrassment .....	23
19. Victimisation .....	23
20. What are reasonable adjustments? .....	23
21. Reasonable adjustments, 3 key requirements.....	28
22. What is 'reasonable'?.....	30

23. Accessibility planning for schools .....	31
24. What happens if a disabled child is discriminated against?.....	32
25. Publishing information for parents and carers.....	33
26. Information, advice and support for children and their parents.....	33
27. All providers have wider responsibilities too.....	34
28. What is the public sector equality duty? .....	34
29. Why are these general duties important?.....	36
30. Getting it right and avoiding discrimination.....	37
31. Conclusion.....	40
References.....	41



# 1. Introduction

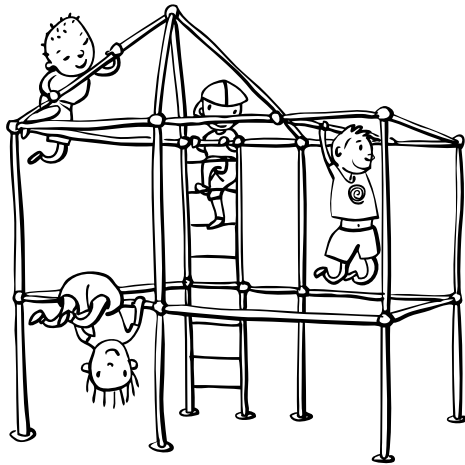
Many early years settings have been covered by disability discrimination duties since the Disability Discrimination Act 1995 (DDA) was first implemented. The Special Educational Needs and Disability Act 2001 extended the DDA to include education and, from this point onwards, early years settings constituted as schools were also covered. In a series of changes between 2010 and 2012, the Equality Act 2010 (EqA) replaced the DDA.

The context in which EqA duties apply has changed, with changes to the Early Years Foundation Stage (EYFS) in 2012 and 2014, and to the special educational needs (SEN) framework in the Children and Families Act 2014 (CFA). The context has changed, but EqA duties themselves have not changed.

This booklet sets the disability discrimination duties in the context of duties to all young children, set out in EYFS, and duties to disabled children, set out in CFA. It provides a short guide to what early years professionals need to know and do in order to address inequalities and to ensure they do not discriminate against disabled children.

The requirements of EqA sit alongside other requirements on early years providers, in particular:

- the requirements set out in the The Statutory Framework for the Early Years Foundation Stage<sup>i</sup>;
- the requirements in the Children and Families Act 2014 and the Special Educational Needs and Disability Code of Practice<sup>ii</sup>.



## 2. Early Years Foundation Stage

Early Years Foundation Stage (EYFS) provides a framework that brings together the *learning and development requirements*<sup>1</sup> and the *safeguarding and welfare requirements* and sets the standards that all early years providers must meet to ensure that children learn and develop well and keep healthy and safe<sup>iii</sup>. These requirements have a legal basis in section 39(1) of the Childcare Act 2006 and apply to all early years providers: maintained schools; non-maintained schools; independent schools; all providers on the Early Years Register; and all providers registered with an early years childminder agency. The Early Learning Goals form part of the *learning and development requirements* of the EYFS. In 2012, the government published new simplified Early Learning Goals which were introduced in September 2012 and EYFS was further revised in 2014<sup>iv</sup>. The revised EYFS has applied to early years providers since September 2014.

EYFS is based on a set of guiding principles and, amongst other objectives, seeks to provide:

*“equality of opportunity and anti-discriminatory practices, ensuring that every child is included and supported.”*

EYFS sets out an inclusive approach, designed to be responsive to individual needs and all providers must make information

---

<sup>1</sup> Throughout this booklet italics are used for the title of, or quotations from, a publication or to indicate that a term or expression has a particular meaning which is defined in legislation or guidance. Many of these terms or expressions are explained in this booklet.

available to parents and carers on how the setting supports disabled children and children with SEN. It focuses on delivering improved outcomes for all children and closing the achievement gap between disadvantaged children and others. As part of a commitment to close gaps in achievement, the government is giving priority to disadvantaged children and disabled children in accessing free early years education from the age of two.

### 3. The Children and Families Act 2014

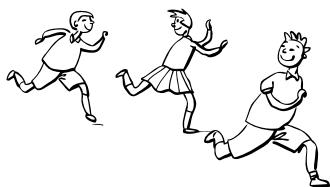
The Children and Families Act 2014 (CFA) changes the SEN framework and brings in responsibilities for local authorities (LAs) that apply to disabled children as well as those with SEN. In particular, LAs must have regard to a set of principles including recognising the importance of: the views, wishes and feelings of children and their parents; their full participation in decision-making; information and support to enable them to participate in decision-making; and of support to achieve the best possible educational and other outcomes.

LAs must identify disabled children as well as those with SEN; must commission services jointly with other agencies; must integrate services where it will promote well-being or improve quality of services; must publish a local offer of services; must provide information and advice; must keep services under review; and must both co-operate with, and seek the co-operation of, local partners. All of these duties apply equally to disabled children, and their parents, and to those with SEN.

These duties apply to LAs but, *local partners* are required to co-operate with the LA in fulfilling these duties. *Local partners* includes a wide range of different bodies but, in early years, this includes schools, academies and anyone else who makes provision for a child who has SEN. This will include the vast majority of, if not all, early years providers.

In particular, providers can anticipate the need to co-operate with the LA in identifying disabled children; in ensuring that parents of disabled children know about the information and support available locally and about the range of services available to disabled children through the local offer. They can also anticipate being expected to co-operate with the LA in meeting high standards of participation; respect for the views, wishes and feelings of disabled children and their parents; and in securing the best possible educational and other outcomes.

Guidance on CFA is provided in the *Special Educational Needs and Disability Code of Practice*<sup>v</sup> (the Code) which came into force in September 2014. All providers of relevant early years education must *have regard to* the Code. That means that whenever they are taking decisions they must give consideration to what the Code says; they cannot ignore it; and they must be able to demonstrate in their arrangements for children with SEN or disabilities that they are fulfilling their statutory duties to have regard to the Code.





## 4. What this booklet does do and doesn't do

This booklet explains the Equality Act 2010 (EqA) within this general context. The focus is primarily on how the EqA duties apply to disabled children in early years settings in England. It shows how EqA applies to different types of provider and how settings can comply with the legislation. It offers examples of how the duties work and suggests some simple approaches that may help to ensure that disabled children are not discriminated against. It draws on the good practice that already exists in many early years settings.

The booklet focuses on the way EqA duties apply to the childcare and education provided in early years settings. It recognises, and provides a read across to, but does not attempt to summarise the SEN duties. These are explained in the Code, particularly in Chapter 5, which provides guidance on the SEN responsibilities of early years settings that are in receipt of government grant.

The booklet does not go into the detail of other groups of children who are protected under EqA, nor does it cover other duties on early years providers such as employers' duties to staff, including disabled staff. Throughout this guide there are reminders of these wider duties, as they apply to other groups of children and to other people, such as employees. There is more detail on employers' duties in the statutory Code of Practice published by the Equality and Human Rights Commission<sup>vi</sup>, and in an accessible guide published by ACAS<sup>vii</sup>.

## 5. The Equality Act 2010

By the time EqA was introduced, early years providers had become familiar with the duties in the DDA. Whilst the overall design of the disability discrimination duties in EqA is rather different, most of the duties have broadly similar practical implications for early years providers. If providers were meeting their duties under the earlier legislation they will probably have found that they needed to make few changes in order to meet the requirements in EqA.

Most of the duties are familiar, some of the concepts are different. The duties apply to nine different aspects of equalities and to most aspects of our national life.

As with the DDA, different duties apply to schools, which are covered by Part 6 of EqA, and to other early years settings, which are covered by Part 3 of EqA. The purpose of this booklet is to bring together all the duties that apply to young disabled children and to provide a short and accessible guide to these duties for early years providers.

**Checkpoint:** EqA replaced nine different Acts of Parliament and almost a hundred different sets of regulations.

EqA brought all the equality duties together in a single legal framework. It extended the duties to include protection from discrimination for new groups of people. It removed some anomalies and inconsistencies between the different pre-existing equality duties; some of the changes to the disability duties came about because of the consolidation of all these duties.

However, disability is treated differently in important respects, most notably in that for most groups, equality is rooted in equal treatment, but for disabled people, and for disabled children, settings may, and often must, treat them more favourably.

Checkpoint: There are two important terms in EqA:

- *protected characteristics*; and
- *prohibited conduct*.

It is important to become familiar with these terms and what they mean.

## 6. Protected characteristics

Under EQA, the *protected characteristics* are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy or maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

Of these, age, and marriage and civil partnership do not apply to duties towards young disabled children, though they do apply to employment duties and wider duties under EqA.

## 7. Prohibited conduct

*Prohibited conduct* is the general term applied to discriminatory behaviour that is unlawful under EqA. The different forms of *prohibited conduct* are summarised and explained below.

## 8. How the Equality Act 2010 applies to different settings

EqA applies to all early years settings: to schools and pre-schools, to mainstream and to special, to children's centres, to private, voluntary, independent and state-maintained settings, to individual child-minders and to networks of accredited childminders. The duties cover all providers of early education and childcare whether or not they are in receipt of government funding.

However, there are differences in the way the duties apply to schools and to other settings. The practicalities of which settings are covered by which part of EqA are explained in the next two sections (sections 9 and 10) and, where there are differences, in subsequent sections.



## 9. Early years settings that are schools, Part 6 of the Equality Act 2010

Early years settings that are constituted as schools are covered by Part 6 of EqA. Part 6 applies to all schools: private or state-maintained, mainstream or special.

The duties in Part 6 of EqA cover discrimination in:

- admissions;
- the provision of education;
- access to any *benefit, facility or service*;
- exclusion or *other forms of detriment*, that is: other forms of disadvantage.

As with the DDA, the duties cover not just teaching and learning, but lunchtimes, activities, trips, in effect: the whole life of the school.

It is the *responsible body* for the school who has responsibility for the duties in EqA. For a maintained school the *responsible body* is the governing body, for an independent school it is the *proprietor*, that is the owner, the governing body, the management group or the trustees. For an academy, it is usually the Academy Trust. Where the local authority has responsibility for admissions, for example admissions to maintained schools, or where the local authority provides Portage, or other home visiting services, it is the local authority that is the responsible body.

## 10. Early years settings that are not schools, Part 3 of the Act

Early years settings that are not constituted as schools are covered by Part 3 of EqA. Part 3 covers *services and public functions* and includes early years provision in: family centres, children's centres, pre-schools and play-groups, individual childminders, networks of accredited childminders and other private, voluntary and statutory provision that is not established as a school. The duties apply whether the services are provided free or in return for payment.

The duties in Part 3 of EqA cover:

- refusal to provide a service;
- the terms on which the service is provided, for example: offering a lower standard of service or offering a service on worse terms to a disabled child;
- stopping the provision of a service; or
- subjecting someone to any other detriment, that is: other forms of disadvantage.

The *responsible body*: it is the individual or the organisation that provides the service who has responsibility for the duties in Part 3 of EqA. This applies whether they are in the private, public or voluntary sector. For a pre-school, playgroup or other voluntary group it is likely to be the management group for the particular setting or the organisation responsible for the service; for provision run by a local authority it is the local authority; for an individual childminder it is the childminder him or herself; for childminders working with an agency, it

is likely to be both those who are responsible for the agency and individual childminders in relation to their respective responsibilities.

## 11. Considerations for responsible bodies Parts 3 & 6 of the Act

It is important to recognise that, though the provider or the *responsible body* is responsible for ensuring that disabled children are not discriminated against, anyone working in a setting could expose it to a claim of discrimination: a volunteer or a member of staff, a manager or a trainee, a teacher, an assistant or an administrator. It follows that it will be important that the *responsible body* makes sure that those working in a setting, whether paid or unpaid, understand the duties towards disabled children and know about the *reasonable adjustments* that need to be made for particular children.

Whilst the institutional responsibilities lie with the *responsible body*, qualified teachers working in early years settings, whether or not they are schools, have individual professional responsibilities under the Teacher Standards<sup>viii</sup>. They *must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities*. These explicitly include duties under EqA.



## 12. Which children count as disabled?

The definition of disability in EqA is the same as the definition in the DDA. The definition is broad. EqA says that a person has a disability if they have:

*a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.*

*A physical or mental impairment* includes learning difficulties, mental health conditions, medical conditions and hidden impairments such as specific learning difficulties, autism, and speech, language and communication impairments.

In deciding whether a child is disabled, it is the effect of an impairment that has to be considered. If the impairment has a *substantial* and *long-term* effect on a child's ability to carry out normal day-to-day activities it may amount to a disability. *Substantial* is defined as being *more than minor or trivial*; *long-term* as *a year or more*. These terms set a relatively low threshold and cover more children than many imagine. Recent work carried out by the Office of National Statistics<sup>ix</sup> for the Office of Disability Issues, estimated that about 9 percent of children aged 11 to 16 may be disabled. The percentage may be lower for younger children.

The Office for Disability Issues provides guidance<sup>x</sup> on a range of issues to be taken into account in deciding who may be covered by the definition of disability. Ultimately, if a claim of discrimination is made, the decision, about whether or not



a child is disabled, is taken by the Tribunal, for children in a school, or by the courts for children in early years settings that are not schools.

### **Checkpoint: disability and special educational needs**

Though the definitions of disability and special educational needs (SEN) are covered by different legislation, in practice there is a significant overlap. In particular, children with more significant SEN, including those who have a statement, or an Education Health and Care plan (EHCP), are more likely to be covered by EqA. This likelihood is not because they have a statement or EHCP but because they are more likely to meet the definition in EqA.

Research by Bath and Bristol Universities<sup>xi</sup> estimates that about a quarter of disabled children do not have SEN. Children who have a range of health conditions, for example: epilepsy, diabetes or more severe forms of asthma and eczema, are likely to be covered by the definition of disability but may not have a special educational need.

The onus is on the provider to find out whether a child is disabled. If a claim of discrimination were made, it would be no defence that the provider did not know that a child was disabled, unless the provider can show that they took reasonable steps to find out. Asking is an obvious way of finding out, so is careful observation of a child's development, learning and behaviour. When settings are asking questions, it is important to ask in such a way as to encourage parents to share information. If parents think that information might be used against their child, rather than to support them, they may be reluctant to share information.

**Checkpoint:** some people have a relatively restricted view of what counts as a disability. They consider people with a sensory or physical impairment to be disabled but may not be aware that the definition of disability is much wider than that. The risk for settings is that in underestimating the number of children who may be covered by the legislation, they may inadvertently discriminate against a disabled child.

The progress check at age two is an important opportunity to share any emerging concerns about a child's development. It is important to consider whether any delay may indicate SEN or a disability. When a child turns five, the EYFS profile provides another opportunity to check learning and development. It can be used to determine whether there may be an underlying, unmet or unidentified learning difficulty or disability. The child's parent or carer should participate in this review.

### 13. What is discrimination?

EqA sets out the four main forms of prohibited conduct that apply to children who share protected *characteristics*. These are:

- *direct discrimination;*
- *indirect discrimination;*
- *harassment;* and
- *victimisation.*

In addition, the following forms of prohibited conduct apply to disabled children, and to disabled people in other contexts:

- *discrimination arising from a disability;*
- a failure to make *reasonable adjustments.*

## 14. Direct discrimination

Direct discrimination is treating a disabled child less *favourably* because they are disabled.

**Example 1:** A playgroup leaves a child behind when the rest of her group goes to the park to see a puppet show. The girl has learning difficulties and the staff consider that there is no point in taking her as she will not understand the show.

**Example 2:** A nursery school refuses admission to a child with a facial disfigurement. Staff are concerned that other children and their parents might be upset.

In the first example, it is because of the child's disability that the staff decide she will not go on the trip, in the second it is because of the child's disability that the school refuses admission. In both cases, this is likely to be *direct discrimination*. Under EqA, there is no *justification* for direct discrimination.



## 15. Indirect discrimination

Indirect discrimination is applying a *provision, criterion or practice* that puts, or would put, a disabled child at a disadvantage compared with another child who is not disabled.

**Example 3:** A pre-school has a healthy snacks policy and does not allow children to eat high calorie snacks between meals. This would put a child with diabetes, who needs a carefully timed intake of calories, at a disadvantage.

**Example 4:** An independent nursery requires all children to attend every day in the period before a planned trip to a museum. Two young children, one with a medical condition and one who is recovering from cancer treatment, have been absent during the run up to the visit. They are excluded from the visit.

A *blanket policy* is a policy that is applied in the same way to all children. A blanket policy may put disabled children at a particular disadvantage: if the *healthy snacks policy* was applied in the same way to all children, only the girl with diabetes would be placed at a disadvantage; the attendance policy was applied in the same way to all children and the children with a medical condition were excluded from the visit. If an individual child is affected by these policies and is placed, or would be placed at a disadvantage, these examples may amount to *indirect discrimination*.



## 16. Discrimination arising from disability

Discrimination arising from disability is treating a disabled child unfavourably because of something *arising in consequence of their disability*.

**Example 5:** A mother seeks admission to a nursery school for her son who has Hirschprung's disease. The school says that they could not admit him until he is toilet trained. That is their policy for all children. Hirschprung's disease may lead to the late establishment of bowel control. The refusal to admit the boy may be discrimination arising from disability.

**Example 6:** A young boy with autism collects his sandwich box for his lunch and then has to queue for a drink. He is anxious and agitated in the queue and when another boy teases him he turns round and bites him. It is a severe bite and the young boy with autism is excluded from the setting. The boy is excluded because he bit the other child.

The question is whether biting the other child was linked to the nature of his disability. Some of the features of his autism are that:

- he finds it difficult to be so close to the other children;
- he does not understand the purpose of a queue;
- he does not know how to cope with the taunt from the other boy.

It is possible that his reaction is related to the nature of his autism and the exclusion may be discrimination arising from disability.

## 17. Justification

In example 6, above, the behaviour that led to the exclusion may have arisen from the nature of the child's impairment. In this case though the setting may be able to justify the exclusion if it was a *proportionate means of achieving a legitimate aim*, for example that the exclusion was a *proportionate means* of protecting the well-being of other children in the setting.

The EHRC Code of Practice indicates that:

- a *legitimate aim* may include such aims as ensuring the wellbeing and dignity of children, the fair exercise of power, and the maintenance of academic and behavioural standards;
- *proportionate means appropriate and necessary*. It would need to be shown that the same legitimate aim could not be achieved by a less discriminatory means.

Under EqA there may be justification for actions that would otherwise amount to *indirect discrimination or to discrimination arising from a disability*, if what a setting did was a *proportionate means of achieving a legitimate aim*. However, settings must think ahead when they are planning their policies and must plan and make *reasonable adjustments* so that disabled children are not at a *substantial disadvantage*, see below.



## 18. Harassment

Harassment is behaviour which *violates the dignity* of a disabled child, or creates an *intimidating, hostile, degrading, humiliating or offensive environment* for them. Harassment would include bullying, mocking or belittling a disabled child. Harassment is prohibited conduct under EqA.

## 19. Victimisation

Many parents are reluctant to challenge an early years setting that their child attends, not least because they worry that it will in some way affect how their child is treated. The legislation protects people who are taking any action under EqA: parents who may be making a claim, a child who may be reporting an incident, the parent of another child who might be providing evidence of what happened. These are all *protected* acts under EqA.

## 20. What are reasonable adjustments?

Where something a setting does might put a disabled child at a *substantial disadvantage* compared with other children who are not disabled, settings must take reasonable steps to avoid that disadvantage. This is usually referred to as the *reasonable adjustments* duty.

The duty is anticipatory: it requires settings to think ahead and consider what adjustments they may need to make so that disabled children can be included in the life of the setting as

fully as possible. Settings can often avoid *indirect discrimination and discrimination arising in consequence of a disability* by thinking ahead, planning and making reasonable adjustments.

**In example 6, above:** there may be reasonable adjustments that the setting could have made. Reasonable adjustments in this situation might have been:

- putting the drinks ready on the table before lunch, at least for the boy with autism, in order to avoid the queuing;
- asking his parents about ways of reducing or avoiding anxiety for the boy;
- giving the boy a safe place to go to when he does get too anxious;
- training staff in understanding the nature of his autism.

If the setting had done all these things and the incident had still occurred, the exclusion may have been justified, but if they had not done any of these things they may not be able to justify the unfavourable treatment of the disabled boy.

It is good practice to involve parents and children themselves in planning *reasonable adjustments*. Parents and children are often best placed to help settings think about what disadvantage might arise and what reasonable adjustments may work best.

The following are some further examples of adjustments that have been made for disabled children to ensure that they can join in the life of the setting as fully as possible.





**Example 7:** Two children with a hearing impairment are going to be admitted to a children's centre. The centre:

- arranges training for staff in the appropriate use of radio aids;
- draws up guidance for staff in the light of the training. This includes guidance on the use of radio microphones, the transfer of microphones to other children at group times, and checking that the children's aids are set correctly for different activities;
- changes the location of the book corner. The rooms in this centre have large windows down one side. Staff decide to change the location of the book corner so that, at story times and at other times when the children come together as a group, the natural light illuminates the face, mouth and gestures of the staff talking to the children;
- pays particular attention to having visual prompts to hand when they are planning activities with the children and using puppets and other props at story times.

**Example 8:** A childminder is going to provide for a child with a physical impairment. The child uses a standing frame for parts of the day. The childminder thinks that it may be unsafe to let the child go in and out of the house and it may be difficult for her to play on some of the outdoor toys.

At an early visit the childminder invites the parents to look at the question of access and at the outdoor toys that are available. Between them they assess the risks involved in getting up and down the steps to the outside area and they consider which equipment may help the child by encouraging particular activities and which might present a risk.

They agree a plan and the parents seek the views of the occupational therapist at their next visit. When the child starts the placement, the childminder knows how the child can get in and out and which equipment she should be encouraged to use.

**Example 9:** A child with an egg allergy is going to be admitted to a nursery class in a primary school. The school:

- implements an individual healthcare plan agreed with nursing staff and including special meal-time arrangements which will be supervised by named staff;
- arranges for a nurse to come in and train staff;
- extends their insurance to indemnify staff who volunteer to administer emergency medication.

**Example 10:** A pre-school checks its policies, including its admissions policy, and makes some changes to ensure that conditions in the policy do not discriminate against disabled children.

Sometimes settings may need to call on specialist advice to inform the planning of *reasonable adjustments* but most reasonable adjustments consist of adjustments to policies and practices, cost little or nothing and are relatively easy to implement once staff recognise the need for adjustments and see the benefits for disabled children. The essence of *reasonable adjustments* is that they anticipate where disadvantage may arise and are put in place to prevent that happening.

The duty to make *reasonable adjustments* is a continuing duty. This means that it is not a one-off, or once and forever duty; adjustments need to be kept under review. Over time, adjustments may need to be changed; new and different adjustments may need to be made to make sure disabled children are not at a *substantial disadvantage* compared with other children who are not disabled.

EYFS requires all providers to promote the good health of children attending the setting and to have and implement a policy and procedures for administering medicines. In addition, under CFA, schools, are required to make arrangements for supporting pupils at the school with medical conditions. In 2014, the DfE published statutory guidance, *Supporting pupils at school with medical conditions*<sup>xii</sup>. The guidance is clear that schools should ensure that children with medical conditions can access the same opportunities at school as any other child. It recognises that children with medical conditions may be disabled. This guidance supports schools, and other providers, in understanding what may be considered reasonable adjustments for this group of children.

Whatever reasonable adjustments are made, it is never lawful to charge for a reasonable adjustment. Settings must do what it is reasonable to do and are not expected to do anything unreasonable. So, under EqA there is no justification for failing to make a *reasonable adjustment*.

There are many creative and inspiring examples of *reasonable adjustments* on the three DVDs in a publication from the Department for Education, *Implementing the Disability Discrimination Act in Schools and Early Years Settings*<sup>xiii</sup>. The examples were identified and recorded before the introduction of EqA, so references are to the DDA. However, the examples are just as relevant under EqA.

**Checkpoint:** under EqA, there is no justification for failing to make a reasonable adjustment.

## 21. Reasonable adjustments, 3 key requirements

The reasonable adjustments duty includes three key requirements:

- to make adjustments to any provision, criterion or practice
- to make alterations to physical features
- to provide auxiliary aids and services

Early years settings that are not schools are required to meet all three of the requirements under the reasonable adjustments duty. Early years settings that are schools are required to meet the first and the third requirements; the duty to alter physical features does not apply to schools, but schools have *accessibility planning* duties, see below, that do not apply to other providers.

### **Adjustments to any provision, criterion or practice – all settings**

The first requirement applies in the same way to all settings. The examples discussed above relate to adjustments to provisions, criteria and practices, that is, the way settings organise themselves, deploy resources, and the day-to-day practices that they follow.

### **Physical alterations – settings that are not schools**

Providers that are not schools have a duty to make physical alterations as part of the reasonable adjustments duty. This might involve removing a physical feature, altering it, or finding a reasonable way of avoiding it. This last might include using a different entrance, providing a portable ramp, or changing round the use of rooms inside a building. The concept of

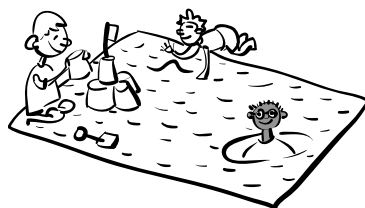
*reasonableness* still applies to such arrangements. Even where providers use rented premises, they may have responsibility for making physical alterations, but, depending on the use of the rest of the building and on the use of the building at other times, the landlord may also have responsibilities. Again, providers have to do what it is *reasonable* to do.

### **Auxiliary aids and services – all settings**

Since 2012, all providers have been required to make reasonable adjustments that include the provision of auxiliary aids and services.

In meeting this requirement providers will need to draw on their own resources. However, whilst the legislation is clear about the direct duty on providers, in practical terms providers may be able to draw on the SEN framework for support beyond that which providers might reasonably be expected to make themselves. Support may be available through the local authority, the Area Special Educational Needs Coordinator (SENCO) and other services provided in the early years by the local authority and local health agencies. LAs must publish a *local offer* that includes information about services that can provide support in early years settings.

All adjustments are covered by the concept of *reasonableness*. This is discussed in the next section.



## 22. What is 'reasonable'?

The concept of *reasonableness* takes into account a number of factors: costs and available resources, health and safety, the interests of other children and other considerations such as practicability. So, for example: the cost of taking a particular step can be taken into account alongside a consideration of the practicability of making a particular adjustment and the resources available to the setting. Settings can take these considerations into account when they plan what they may need to do for disabled children.

### **Costs and resources**

The cost of making a particular adjustment may be seen in the light of the resources available to the setting, so that an individual childminder or a small setting with a small budget may not be expected to make adjustments that might be expected of a larger setting with a larger budget.

### **Health and safety**

For any adjustment that may have health and safety implications' a setting would be well advised to carry out a risk assessment with a view to eliminating or minimising the risks involved. A setting should write down what risks they have identified and how these will be managed. Where difficult issues arise it may be important to get a view from outside the setting. Health and safety considerations should not be seen as automatic barriers to disabled children. Instead they should help to determine how to include disabled children safely in the life of the setting. Ultimately, these considerations do not relieve the setting of identifying reasonable adjustments.

They do affect decisions about which reasonable adjustment should be made.

## 23. Accessibility planning for schools

For schools, the reasonable adjustments duty does not include the requirement to make physical alterations to buildings. Requirements in relation to adapting the physical environment are covered by a different part of the legislation: the accessibility planning duties. These require schools to develop plans to improve accessibility for disabled children over time. There are similar duties on local authorities.

Accessibility plans must show how schools are going to make improvements in three areas:

- improvements in access to the curriculum;
- physical improvements to increase access to the buildings;
- improvements in the provision of information in different formats for disabled children.

Accessibility plans must be in writing and must be implemented. They must be reviewed and revised as necessary. New accessibility plans have to be published every three years. New plans are due in April 2015, 2018 and so on. The Department for Education provides guidance on accessibility planning<sup>xiv</sup> and the materials in *Implementing the Disability Discrimination Act in Schools and Early Years Settings*<sup>xv</sup> include template plans and examples of how schools meet the accessibility planning duty. Ofsted can inspect school accessibility plans and local authority accessibility strategies.

## 24. What happens if a disabled child is discriminated against?

If a parent thinks that their child may have been discriminated against, they can make a claim of disability discrimination.

Where a school may have discriminated, a claim is made by the parent of a disabled child, to the First-tier Tribunal (SEN and Disability), or in certain cases to a local admissions appeal panel. Note that since September 2012, claims of discrimination in all types of exclusion have been heard by the Tribunal. If the Tribunal determines that there has been unlawful discrimination, it can order any remedy it sees fit, but no financial compensation is available.

Where services are covered by Part 3 of the EqA, that is providers other than schools, a claim of discrimination is heard in the County Court and, if the Court determines that there has been unlawful discrimination, the remedies available include financial compensation.

Parents need to bring a claim within six months of the discrimination. Where discrimination has extended over a period of time, the six months is timed from the last instance of discrimination. Parents have longer to bring the claim if they seek conciliation.





## 25. Publishing information for parents and carers

As part of their responsibilities under the EYFS, all providers must make information available to parents and carers on how the setting supports children with special educational needs and disabilities. Over and above this, early years settings that are schools must publish information about their SEN policies and this includes key information about aspects of schools' duties to disabled children:

- information about the admission of disabled children;
- the steps taken to prevent disabled children from being treated less favourably than other children;
- the facilities provided to assist access to the school by disabled children; and
- the school's accessibility plan.

## 26. Information, advice and support for children and their parents

Duties in CFA require LAs to make information, advice and support available. Since September 2014, the requirements have included the provision of information, advice and support for: children as well as parents; disabled children and their parents, as well as those with SEN; and information, advice and support on health and social care provision, as well as education.

LAs must draw these services to the attention of parents; schools must provide contact details for support services for parents, including details of the local Information, Advice and

Support Service, formerly known as the parent partnership service. All providers will want to make sure that parents know about these services and have access to the information, advice and support that they provide.

## 27. All providers have wider responsibilities too

In addition to their responsibilities to individual disabled children, all providers in receipt of government funding have more general duties under the public sector equality duty.

## 28. What is the public sector equality duty?

The Public Sector Equality Duty is a general duty that applies to public bodies and to everyone who exercises public functions. In effect this means all providers in receipt of government funding. It requires such providers to have *due regard* to the need to:

- eliminate discrimination, harassment, victimisation and other *prohibited conduct*;
- improve equality of opportunity; and
- foster good relations between different groups of people: those who share a *protected characteristic* and those who do not.

Having *due regard* to the need to improve equality of opportunity involves having due regard to the need to remove or minimise disadvantage, meet the needs of children who share *protected characteristics* and encourage their participation in public life and, in an early years setting, in the life of the setting. Fostering

good relations includes having *due regard* to the need to tackle prejudice and promote understanding.

The Public Sector Equality Duty replaces the Disability Equality Duty and similar duties in respect of race and gender. It extends the approach to other characteristics protected under the EQA.

**Checkpoint:** the general duty, set out above, applies to public bodies and to everyone who exercises public functions. In effect this means all providers in receipt of government funding. The specific duties set out below only apply to maintained schools and academies.

### Specific duties

Specific duties sit under the general requirements described above. Regulations require maintained schools and academies to publish information to *demonstrate their compliance* with the general duty. This information must be published annually.



Schools must also prepare and publish objectives to achieve the core aims of the general duty: to eliminate discrimination, increase equality of opportunity and foster good relations. Objectives must be specific and measurable. New objectives must be published within four years.

**Example 11:** a school collects information that shows that young disabled children are less likely to attend wrap-around care before and after the hours of funded nursery education. The school sets an objective of doubling the take-up of wraparound care by disabled children.

**Example 12:** an analysis of attendance data shows that disabled children have higher rates of absenteeism. The school sets an objective to halve absenteeism amongst disabled children over four years.

To achieve these objectives, the school will need to put in place specific actions. Some of the actions needed may require staff training, curriculum adjustments, detailed work with parents, the involvement of the child and the engagement of other agencies, but the focus is on measurable outcomes that will eliminate discrimination, improve equality of opportunity and foster good relations. The intention is that these considerations should become embedded in policies and practices.

## 28. Why are these general duties important?

The aim of the public sector equality duty is to make sure that equality considerations are taken into account in every day decisions made by settings. The impact should be that, over

time, the culture and attitudes of the setting become more welcoming, outcomes for disabled children improve, and providers do not have to make so many individual adjustments for individual children because, in the widest sense, all that the setting has to offer is more accessible to all children.

## 29. Getting it right and avoiding discrimination

Where early years providers have a 'can do' attitude and are committed to including disabled children in the full life of the setting, they are unlikely to have any difficulty in complying with the duties in EqA. However, there are some things that all providers would sensibly do to reduce the risk of discriminating against a disabled child.

### **Working in partnership with parents**

Sharing information is a crucial part of meeting the EqA duties. Providers will want to make sure that they provide opportunities for parents, and disabled children themselves, to share information about potential or actual barriers, and the sort of adjustments that may need to be made to remove those barriers. An important part of encouraging the sharing of information will be developing parents' trust that information that they share will be handled sensitively. Such trust is more likely to develop where parents encounter a welcome, rather than resistance to their child, a willingness to explore possibilities rather than a refusal to consider them.

## **Training**

Whilst it is the responsible body who has the responsibility for the EqA duties, it is important that senior staff in any setting are aware of and understand the duties towards disabled children. It is also important that all staff and volunteers are aware of the EqA duties, of the main requirements in the legislation, and understand disability as an equality issue. Training is an important element in raising awareness of the duties and of the disability equality commitments on which they are based.

## **Reviewing**

An important part of meeting the duties is ensuring that settings do not inadvertently discriminate against disabled children. If all settings recognise that they already have disabled children on roll, or are likely to admit them, then one of the key things that they will want to do is to review their policies, practices and procedures and revise them where necessary. In doing this they will sensibly look across all the different areas of the life of the setting, and may want to check their admissions policy in particular.

## **Working with others**

For some disabled children, as well as working in partnership with parents and drawing on their expertise in understanding their own child, settings will need to seek help beyond their own expertise and resources. Services vary from area to area and settings will want to know what is available locally.

Under CFA, providers of relevant early years education should be involved with, and are required to co-operate with, LAs in

the development of their local offer, see above. The local offer must include information about the support available across education, health and social care services for disabled children and children with SEN, including information about:

- services assisting providers to support young children with medical conditions;
- childcare for disabled children and children with SEN;
- the provision that the LA expects to be available from providers of relevant early years education;
- Information, Advice and Support Services: services providing parents and children with information, advice and support on SEN and disability, on education, health and care;
- support groups who can support parent carers of disabled children.

The local offer should also include information about:

- provision such as Area SENCOs, SEN support or learning support services, sensory support services or specialist teachers and therapies such as speech and language therapy;
- support available to parents to aid their child's development at home, including such services as Portage;
- arrangements for identifying and assessing children's needs in the early years;
- arrangements for reviewing children's progress including health and development reviews between the ages of 2 and 3;
- the LA's arrangements for providing top-up funding for children with high needs;
- the arrangements for EHC needs assessments and plans.

## 30. Conclusion

The disability discrimination duties sit alongside an inclusive framework for early learning and development and an SEN framework that focuses significantly on participation and outcomes for disabled children and children with SEN. Together, the duties are designed to provide a strong legal framework to underpin equality of opportunity for young disabled children. Settings that are already committed to and striving for equal opportunities and inclusion are unlikely to face difficulties in meeting the duties. What is required of all settings is what is *reasonable* in all the circumstances of the case.

Philippa Stobbs  
Council for Disabled Children



## References

- I. Department for Education (2014) *Statutory framework for the early years foundation stage: setting standards for learning, development and care for children from birth to five*
- II. Department for Education and Department of Health (2015) *Special educational needs and disability code of practice: 0 to 25 years*
- III. Department for Education (2014) *Statutory framework for the early years foundation stage: setting standards for learning, development and care for children from birth to five*
- IV. Department for Education (2014) *Statutory framework for the early years foundation stage: setting standards for learning, development and care for children from birth to five*
- V. Department for Education and Department of Health (2015) *Special educational needs and disability code of practice: 0 to 25 years*
- VI. Equality and Human Rights Commission (2011) *Equality Act 2010 Statutory Code of Practice: Services, public functions and associations*
- VII. ACAS (2011) *The Equality Act – What’s new for employers?*
- VIII. Department for Education (2013) *Teachers’ Standards*
- IX. Office for National Statistics (2009) *Life Opportunities Survey: Interim Results, 2009/10*
- X. Office for Disability Issues (2011) *Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability*
- XI. Porter J, Daniels, H, Georgeson J, Hacker J, Gallop V, Feiler A, Tarleton B and Watson D (2008) *Disability Data Collection for Children’s Services Research Report*. Department for Children, Schools and Families: RR062

XII. Department for Education (2014) *Supporting pupils at school with medical conditions*

XIII. Department for Education and Skills (2006) *Implementing the DDA in schools and early years settings*

**Also available as:** DfES (2007) *Implementing the DDA in schools and early years settings: A training resource for schools and local authorities (a shortened pack)* TSO (The Stationery Office)

XIV. Department for Education and Skills (2002) *Accessible Schools*

XV. Department for Education and Skills (2006) *Implementing the DDA in schools and early years settings*

**Also available as:** DfES (2007) *Implementing the DDA in schools and early years settings: A training resource for schools and local authorities (a shortened pack)* TSO (The Stationery Office)

## Related Links

Council for Disabled Children (CDC):  
[www.councilfordisabledchildren.org.uk/](http://www.councilfordisabledchildren.org.uk/)

Children's Rights Alliance England (CRAE): [www.crae.org.uk/](http://www.crae.org.uk/)

United Nations Convention on the Rights of the Child  
[www.ohchr.org/en/professionalinterest/pages/crc.aspx#](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx#)

Foundation Years : [www.foundationyears.org.uk/](http://www.foundationyears.org.uk/)

First-tier Tribunal (SEND)  
[www.gov.uk/special-educational-needs-disability-tribunal/overview](http://www.gov.uk/special-educational-needs-disability-tribunal/overview)



## About the Council for Disabled Children

The Council for Disabled Children (CDC) is the umbrella body for the disabled children's sector in England, with links to the other UK nations. CDC works to influence national policy that impacts upon disabled children and children with Special Educational Needs (SEN) and their families. The CDC Council is made up of a variety of professional, voluntary and statutory organisations, including disabled young people and parent representatives. CDC's broad based membership and extensive networks of contacts provides a unique overview of current issues. It also enables us to promote collaborative and partnership working among organisations.

CDC hosts the following networks and projects:

- IASS Network
- Independent Support
- Making Ourselves Heard
- Preparing for Adulthood
- Special Educational Consortium
- Transition Information Network

CDC is also part of the consortium that delivers the Every Disabled Child Matters campaign.



[cdc@ncb.org.uk](mailto:cdc@ncb.org.uk) | [councilfordisabledchildren.org.uk](http://councilfordisabledchildren.org.uk) | 020 7843 1900



Council for Disabled Children is hosted by the National Children's Bureau.  
NCB is a registered charity No. 258825. Reg in England and and Wales No. 952717