

SECTION 2

The Statutory Framework for SEN and Disability

Throughout the 1980s and 1990s, the law on special educational needs continued to develop and be amended through a series of Education Acts. These were consolidated in the Education Act 1996.

The Education Act 1993 placed a duty on the Secretary of State to issue an SEN Code of Practice¹ and the power to revise it from time to time. The first Code of Practice came into effect in 1994. The second was published in 2001.

The purpose of the SEN Code of Practice is to give practical guidance and advice to Local Authorities, maintained schools, early years' settings and others on carrying out their statutory duties to identify, assess and make provision for children's special educational needs. The Code sets out guidance on policies and procedures aimed at enabling children with SEN to achieve, to be included fully and to make successful transitions from early years to school and from school to adulthood. The second Code is accompanied by practical guidance on a number of issues, the 'SEN Toolkit'.

The fundamental principles of the Code are:

- children with Special Educational Needs should have their needs met;
- all teachers are teachers of children with SEN;
- the special educational needs of children will normally be met in mainstream schools or settings;
- the views of the child should be sought and taken into account;
- parents have a vital role to play in supporting their child's education;
- children with SEN should be offered full access to a broad, balanced and relevant education.

The Code says that, in the majority of cases, individual needs will be met by differentiation in the mainstream classroom. Where children fail to make adequate progress despite differentiated work, they may be considered to have Special Educational Needs and should receive interventions and support through 'Early Years' Action' or 'School Action', where the setting or school draws upon its own learning support arrangements to provide additional support. If children still fail to make adequate progress they may receive additional support through 'Early Years' Action Plus' or 'School Action Plus' where the level of support will be greater and involve specialist advice, usually external to the setting or school. Further guidance on this is found in Section 6.

¹ Unless otherwise stated all references to 'Code of Practice' contained in this Reference File relate to the SEN Code of Practice (2001).

The National Curriculum Inclusion Statement

The National Curriculum Inclusion Statement² outlines every teacher's statutory responsibility in relation to inclusion and providing effective learning opportunities for all children. Central to this statutory statement are three principles that are essential to the development of a more inclusive curriculum:

- setting suitable learning challenges;
- responding to pupils' diverse learning needs;
- overcoming potential barriers to learning and assessment for individuals and groups of pupils.

The Primary and Secondary National Strategies have shown these three principles as three overlapping circles, illustrating what needs to coincide to enable pupils to learn and progress. Reasonable adjustments for disabled pupils lie at the centre of the intersection of the three circles.



The three circles are often in use in classrooms, but usually not all together. For example, the learning objectives may be right in programmes, which break mathematics learning down into very small steps, but if teaching styles are not also varied you will get 'death by worksheet'. To give another

² Qualifications and Curriculum Authority/DfEE (1999) *Inclusion: providing effective learning opportunities for all pupils* known as *The National Curriculum Inclusion Statement*. For a full copy of the Statement with specific examples see: http://www.nc.uk.net/nc_resources/html/inclusion.shtml

example, the access strategy may be to employ a Teaching Assistant to support the child, but if the appropriate learning objectives and teaching styles are not also adjusted, the child may be 'helped' to access a totally inappropriate curriculum. All three circles need to work together to ensure inclusion.

Teachers should aim to give every child the opportunity to experience success in learning and to achieve as high a standard as possible. The National Curriculum programmes of study set out what most children should be taught at each Key Stage - but teachers should teach the knowledge, skills and understanding in ways that suit their pupils' abilities. This may mean choosing knowledge, skills and understanding from earlier or later Key Stages so that individuals can make progress and show what they can achieve. Where it is appropriate for children to make extensive use of content from an earlier Key Stage, there may not be time to teach all aspects of the age-related programmes of study. A similarly flexible approach will be needed to take account of any gaps in pupils' learning resulting from missed or interrupted schooling, including those with long-term medical conditions, pupils with neurological problems, such as head injuries, and those with degenerative conditions.

For pupils whose attainments fall significantly below the expected levels at a particular Key Stage, a much greater degree of differentiation will be necessary. In these circumstances, teachers may need to use the content of the programmes of study as a resource or to provide a context, in planning learning appropriate to the age and requirements of their pupils.

Applying these principles should keep to a minimum the need for aspects of the National Curriculum to be disapplied for a pupil.

In responding to pupils' diverse learning needs, teachers should set high expectations and provide opportunities for all pupils to achieve and take part in lessons fully and effectively.

Teachers should take specific action to respond to pupils' diverse needs by:

- a. creating effective learning environments
- b. securing their motivation and concentration
- c. providing equality of opportunity through teaching approaches
- d. using appropriate assessment approaches
- e. setting targets for learning.

Teachers will encounter a wide range of pupils with special educational needs, some of whom will also have disabilities. In many cases, the action necessary to respond to an individual's requirements for curriculum access will be met through greater differentiation of tasks and materials, consistent with school-based intervention as set out in the SEN Code of Practice. A smaller number of pupils may need access to specialist equipment and

approaches or to alternative or adapted activities, consistent with school-based intervention augmented by advice and support from external specialists as described in the SEN Code of Practice, or, in exceptional circumstances, with a statement of special educational need. Teachers should, where appropriate, work closely with representatives of other agencies who may be supporting the pupil.

Teachers should take specific action to provide access to learning for pupils with special educational needs by:

- a. providing for pupils who need help with communication, language and literacy
- b. planning, where necessary, to develop pupils' understanding through the use of all available senses and experiences
- c. planning for pupils' full participation in learning and in physical and practical activities
- d. helping pupils to manage their behaviour, to take part in learning effectively and safely, and, at key stage 4, to prepare for work
- e. helping individuals to manage their emotions, particularly trauma or stress, and to take part in learning.

Not all children with disabilities will necessarily have special educational needs. Many children with disabilities learn alongside their peers with little need for additional resources beyond the aids which they use as part of their daily life, such as a wheelchair, a hearing aid or equipment to aid vision. Teachers must take action, however, in their planning to ensure that these children are enabled to participate as fully and effectively as possible within the National Curriculum and the statutory assessment arrangements. Potential areas of difficulty should be identified and addressed at the outset of work, without recourse to the formal provisions for disapplication.

Teachers should take specific action to enable the effective participation of children with disabilities by:

- a. planning appropriate amounts of time to allow for the satisfactory completion of tasks
- b. planning opportunities, where necessary, for the development of skills in practical aspects of the curriculum
- c. identifying aspects of programmes of study and attainment targets that may present specific difficulties for individuals.

Education and Inspections Act 2006

From September 2007 under Section 173 of the Education and Inspections Act, schools are required to appoint a Special Educational Needs Coordinator. It is anticipated that further associated regulations will follow which will state that although a number of people within a school might help with SENCO functions, a teacher should have the lead responsibility for co-ordinating SEN provision and that that designated person should be part of a school's senior leadership team, reflecting the importance attached to addressing the needs of children with SEN and/or disabilities.

The SEN and Disability Act 2001 (SENDA)

The SEN and Disability Act 2001 (SENDA) further developed, but did not supersede the 1996 Education Act. It extended the provisions of the 1995 Disability Discrimination Act to apply to schools.

SENDA 2001 delivered a strengthened right to a mainstream education for children with special educational needs and disability, clearly signalling that "where parents want a mainstream education for their child everything possible should be done to provide it".³

The Disability Discrimination Act 1995 (DDA)

Four sets of duties combine to provide the statutory framework that underpins equality of opportunity for pupils with disabilities in accessing school education:

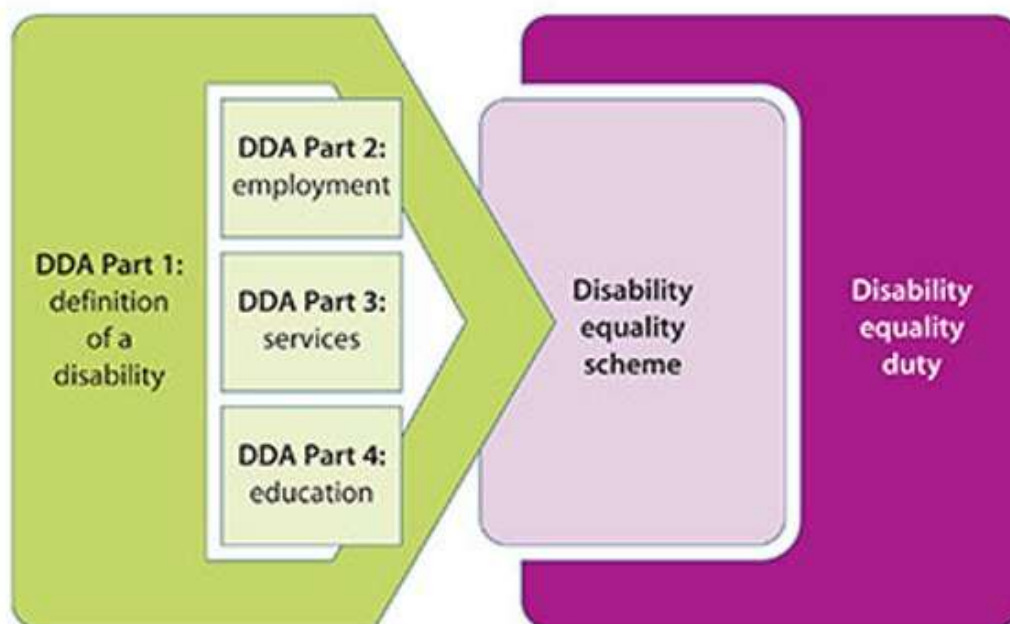
- The Disability Discrimination Duties in Part 4 of the DDA;
- The planning duties in Part 4 of the DDA;
- The Special Educational Needs (SEN) duties in the Education Act 1996
- The Disability Equality Duty in Part 5A of the DDA.

The DDA applies to schools in a range of different ways:

- In providing education to pupils;
- To the School as an Employer;
- To the School as a provider of services to parents, carers and the wider public.

³ *Inclusive Schooling: Children with SEN*, DfES, 2001

How the DDA duties fit together:



The Definition of Disability in Part 1 of the DDA

The DDA defines a disabled person as someone who has “a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities”. A ‘physical impairment’ includes sensory impairments. A ‘mental impairment’ includes learning difficulties and an impairment resulting from a mental illness. ‘Substantial’ means more than ‘minor or trivial’ and ‘long-term’ is defined as 12 months or more. For more information see “Definition of Disability” <http://www.warwickshire.gov.uk/Web/corporate/pages.nsf/Links/3594CE5E6D6D475B802572290035C14B>

School duties in relation to pupils and prospective pupils in Part 4 of the DDA

It is unlawful for schools to discriminate against disabled pupils and prospective pupils with disabilities. A school discriminates if

- it treats a disabled pupil or prospective pupil less favourably than another for a reason related to their disability and without justification;
- it fails, without justification, to take reasonable steps to avoid placing disabled pupils at a substantial disadvantage. This duty is often known as the ‘reasonable adjustments’ duty.

The reasonable adjustments duty requires schools to think ahead, anticipate the barriers that disabled pupils may face and remove or minimise them

before a disabled pupil is placed at a substantial disadvantage. Reasonable adjustments may need to be made in admissions, exclusions and 'education and associated services,' a term that covers every aspect of the life of the school. A *Code of Practice*, published by the Disability Rights Commission (DRC)⁴ provides guidance on the way that the duties operate. See http://www.drc-uk.org/pdf/COP_Schools1.pdf

The Code provides examples illustrating how the duties apply in practical situations in schools. In addition, if you have not already done so send for your DfES training resource, "Implementing the Disability Discrimination Act in Schools and Early Years' Settings", one copy per school available only from the DfES Publications on 0845 6022260, quoting the reference number 0160-2006DOC-EN. This resource contains many DVD examples of how schools and early years' settings are making reasonable adjustments for children and young people.

Ofsted inspectors expect to see evidence of practical adjustments being made in the classroom and all areas of school life.

In general it is the governing body of the school that is the 'responsible body' for the DDA duties and needs to ensure that everyone in the school, staff or volunteer, is aware of the duties owed to disabled pupils. To avoid discrimination against disabled pupils, all staff need to implement the duties in relation to their area of responsibility.

If parents think that their child has been discriminated against, they can make a claim of disability discrimination. Most claims are made to the SEN and Disability Tribunal and are against the governing body. If the Tribunal finds that a school has discriminated unlawfully against a disabled pupil it can order a number of remedies, for example, an order to train staff and governors, to review policy and practice, to re-run an activity from which a pupil has been excluded, to fund additional tuition to compensate for loss of teaching, although as yet it cannot order financial compensation.

School planning duties in Part 4 of the DDA

Local Authorities (LAs) and schools have a duty to plan strategically to increase access to school premises and the curriculum for children with disabilities.

These strategies and plans are required to show how, over time, access to local schools will be increased by:

- increasing access to the curriculum for pupils with disabilities;
- making improvements to the physical environment of the school to increase access to education and associated services;

⁴ DRC (2002) *Disability Discrimination Act 1995: Part 4: Code of Practice for schools*

- making written information accessible in a range of different ways for disabled pupils, where it is provided in writing for pupils who are not disabled.

Since 2003 schools have had to have an Accessibility Plan covering these three areas. Ofsted inspects schools' plans. The LA recommends that schools combine this Accessibility Plan with the Action Plan required under the Disability Equality Duty (see below).

For further information and more detail on adapting the physical environment (e.g. steps, stairways, paving, parking, doors, gates, toilets and hygiene facilities, handrails, acoustic changes etc) please refer to "Accessible Schools; Planning to increase access to schools for disabled pupils", DfES, July 2002, which can be downloaded from:

<http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=LEA+0168+2002&>

For further information on making written information more accessible, schools can access training on "Communication Friendly Environments" (delivered by the Integrated Disability Service Teaching & Learning, formerly DISCS). All Warwickshire schools have access to Communicate in Print software to produce documents using Widgeit symbols and can access curriculum resources via the Warwickshire area of the Widgeit website:

<http://sip.widgeit.com/>

School duties in relation to employment in Part 2 of the DDA

Employers discriminate if they:

- treat a disabled employee or applicant less favourably than another on the grounds of the person's disability;
- fail to take reasonable steps to avoid placing a disabled employee or applicant at a substantial disadvantage (the 'reasonable adjustments duty').

The duties apply to:

- recruitment, selection and interview procedures;
- terms and conditions of employment;
- induction, opportunities for promotion and transfer, training, professional development and other benefits;
- termination of employment.

The duties apply to all employees with disabilities and those who apply for a job including:

- teaching and non-teaching;
- full-time and part-time;
- permanent and temporary or casual staff;

- contract staff, for example, contract cleaners and agency supply teachers.

The reasonable adjustments duty in Part 2 of the DDA includes:

- making changes to an employee's duties, working hours or place of work;
- the provision of auxiliary aids and services;
- physical alterations to buildings.

When a disabled person considers that they have been discriminated against they should first seek to resolve the dispute within the workplace, wherever possible. A claim of discrimination is made by application to an employment tribunal.

For further information on examples of workplace 'reasonable adjustments' and sources of support and funding for staff see "Responsibilities of Schools towards Staff":

<http://www.warwickshire.gov.uk/Web/corporate/pages.nsf/Links/3594CE5E6D6D475B802572290035C14B>

In addition, "Promoting disability equality in schools", DfES 2006, contains further guidance. You can download a copy from:

<http://www.teachernet.gov.uk/docbank/index.cfm?id=10822>

School duties in relation to parents and users of facilities by the wider community in Part 3 of the DDA

Part 3 of the DDA applies to schools where they provide services to parents and carers and to the wider public, for example, a meeting between teachers and parents, governing body meetings, school performances, award ceremonies, communication between the school and parents, the use of school buildings by community groups.

The following⁵ provides some examples of adjustments that might be made for a disabled parent, carer, governor or other person using the school:

Altering policies, practices and procedures, for example: providing a front row seat at the school play for a parent who lip reads; allowing guide dogs into school so that a visually impaired governor or parent can visit and attend meetings and events at the school; adjusting the school's 'no buggies' policy where a buggy is used for a disabled child; adjusting the complaints' policy so that a disabled parent can make a complaint verbally instead of in writing;

Auxiliary aids and services, for example: producing a termly newsletter in large print, in Braille, on an audio cassette, or on a CD-ROM, for a visually impaired parent, in 'easy read' language or using illustrations / symbols for a parent with a learning difficulty; providing a sign language interpreter for a

⁵ *Promoting Disability Equality in Schools*, DfES, 2006

deaf parent attending a parents' evening; providing a portable ramp up a step so that a governor with a mobility impairment can access the head teacher's room;

Removing or altering physical features, for example: where a school hall is used for plays and other events installing a loop or soundfield system and improving the acoustics for hearing impaired parents and grandparents; providing parking spaces for disabled people, including a disabled parent taking a child to and from school; installing a platform lift to enable disabled people to access community provision on a mezzanine floor;

Reasonable alternatives, for example: where parent teacher meetings are normally held in the school hall on the first floor, meeting with a disabled parent in a downstairs room or moving the meeting to the gym which is an accessible room on the ground floor.

The Disability Equality Duty in Part 5A of the DDA

The general duty requires schools to:

- promote equality of opportunity between disabled people and other people;
- eliminate discrimination that is unlawful under the Disability Discrimination Act;
- eliminate harassment of disabled people that is related to their disability;
- promote positive attitudes towards disabled people;
- encourage participation by disabled people in public life;
- take steps to meet disabled people's needs, even if this requires more favourable treatment.

The duty applies to:

- disabled pupils;
- disabled staff;
- disabled parents and carers and other users of the school.

The general duty applied to all schools from 4 December 2006.

The specific duty requires schools to demonstrate how they are meeting the above responsibilities through a published Disability Equality Scheme. Schools are required to undertake the development of their Scheme in a particular way and to include particular elements. The School must:

- involve disabled people (pupils, staff, parents, community members) in the preparation of the scheme;
- set out in their scheme:
 - how disabled people have been involved in its preparation;
 - their arrangements for gathering information on the effect of the school's policies on:

- the recruitment, development and retention of disabled employees;
- the educational opportunities available to and the achievements of disabled pupils;
- the school's methods for assessing the impact of its current or proposed policies and practices on disability equality;
- the steps the school is going to take to meet the general duty through an Action Plan (the LA recommends this is combined with the statutory Accessibility Plan);
- the arrangements for using information to support the review of the Action Plan and to inform subsequent schemes;

The School must:

- implement the actions in their scheme within three years;
- report on their scheme annually;
- review and revise their scheme every three years.

Schemes for secondary schools had to be published by December 2006. Schemes for primary schools, special schools and PRUs must be published by 3 December 2007. It is the local authority that has responsibility for the scheme for a PRU.

The Disability Rights Commission (soon to be the Commission for Equality and Human Rights) can take action against schools that have not met their duties.

For further guidance, including a Warwickshire Scheme Template and a Model Scheme with a combined Scheme Action Plan and Accessibility Plan (see Northgate School), please visit the linked Disability Equality webpages:

<http://www.warwickshire.gov.uk/Web/corporate/pages.nsf/Links/3594CE5E6D6D475B802572290035C14B>

Information Schools must publish in relation to SEN and Disability

From 1 September 2005 the regulations for the school prospectus changed, so that there is much more flexibility over what is included. The only mandatory content of the school prospectus is now the information about SEN and disability provision, previously required in the governors' annual report. Since schools are required to produce this information by the *Education (Special Educational Needs) (Information) (England) Regulations 1999*, it makes sense to include it in the prospectus where it will be easily available to parents. Schools must include:

- Arrangements for the admission of pupils with disabilities
- Details of steps to prevent disabled pupils being treated less favourably than other pupils

- Details of existing facilities to assist access to the school by pupils with disabilities
- The Accessibility Plan (required under the Disability Discrimination Act 1995) covering future policies for increasing access to the school by pupils with disabilities
- Information about the implementation of the governing body's policy on pupils with special educational needs and any changes to the policy during the last year.

For further information see:

<http://www.teachernet.gov.uk/management/atoz/p/prospectus/>

Responsibilities of the Governing Body in respect of SEN and Disability

The Governing Body should, with the head teacher, decide the school's general policy and approach to meeting children's special educational needs for those with statements and those without. They must set up appropriate staffing and funding arrangements and oversee the school's work. The governing body may also appoint a committee to monitor the school's work for children with special educational needs.

Governing bodies have legal duties under the 1996 Act. They **must**

- ensure that the necessary special arrangements are made for any pupil who has special educational needs;
- ensure that the 'responsible person' makes all staff who are likely to teach the pupil aware of those needs. The 'responsible person' is generally the head, but may be the chair of the governing body or a governor appointed by the governing body to take that responsibility. If the 'responsible person' is the head, it may be helpful for one other governor to have an interest in special needs;
- ensure that the teachers are aware of the importance of identifying pupils who have special educational needs and of providing appropriate teaching;
- consult the LA and the governing bodies of other schools when it seems necessary to co-ordinate special educational teaching in the area;
- make arrangements to allow pupils with special needs to join in the everyday activities of the school as far as is practical;
- report each year to parents on their policy for pupils with special educational needs; and
- take account of the Code of Practice when carrying out their duties towards all pupils with special educational needs.
- ensure that appropriate risk assessments are in place.

Under the Education and Inspections Act (2006) Governors **must**:

- designate a member of staff a Special Educational Needs' Co-ordinator.

Under the DDA

Questions the Governing Body may want to ask itself as the 'responsible body' for the school:

Duties to disabled pupils, staff and parents	Yes	No	Evidence
Does the Governing Body (GB) receive regular reports on how the school is meeting its duties to: <ul style="list-style-type: none"> disabled pupils? disabled staff? disabled parents, carers, governors, other disabled people who use the school or may want to? 			
Disability equality duty: General duty			
Does the GB have regard to the need to: <ul style="list-style-type: none"> promote equality of opportunity for disabled people? eliminate disability discrimination? eliminate disability-related harassment? promote positive attitudes towards disabled people? encourage participation by disabled people in public life? take steps to meet disabled people's needs, even if this requires more favourable treatment? 			
Disability equality duty: Specific duty			
Does the school have a disability equality scheme?			
Did the school involve disabled people (pupils, staff, parents) in the development of the scheme?			
Does the school's scheme show : <ul style="list-style-type: none"> how disabled people have been involved? how information is gathered on the effect of the school's policies on: <ul style="list-style-type: none"> recruitment, retention of disabled staff? opportunities for, achievements of disabled pupils? how the school assesses the impact of its policies, current or proposed, on disability equality? the steps it is going to take to meet the general duty (the school's action plan)? how information will be used to support the review of the action plan and to inform subsequent schemes? 			
Did the school implement the actions in its scheme within three years?			
Does the GB: <ul style="list-style-type: none"> report on its scheme annually? review and revise its scheme every three years? 			