

DERBYSHIRE LEA

AVOIDANCE OF DISABILITY DISCRIMINATION

CONTEXT - Equality Act 010

The Equality Act replaced the previous anti-discrimination laws with a single Act. It places a Equality Duty on public bodies to consider how different people will be affected by their activities.

The new Equality Duty replaces the 3 previous public sector duties – for race, disability and gender.

This guidance focuses on meeting the requirement in relation to disability.

Disability Discrimination Act 1995

1. Purpose

This document provides guidance to Governing Bodies in respect of their employment responsibilities to disabled people. It has been discussed and agreed with all of the teachers' associations and Unison.

2. Introduction

The Act protects disabled people, and people who have been disabled from discrimination in the field of employment.

In December 1999 the Department of Education and Employment issued Circular 20/99 giving advice on the Disability Discrimination Act and its implications for schools and LAs. This is a very useful reference document and Governing Bodies are advised to study the contents of that guidance in addition to the advice contained in this document.

Public Bodies requires public bodies to have due regard to the need to:-

1. a) Eliminate unlawful discrimination, harassment and in victimisation.
- b) Employers must make 'reasonable adjustments' to the workplace or working conditions which cause disadvantage to a disabled employee.
- c) Employers must consider practice in relation to recruitment, promotion, training, working conditions and dismissal.
- d) Employment tribunals have jurisdiction to hear complaints of discrimination against disabled employees and may award **unlimited compensation**.

2. Advance equality of opportunity between people who share a protected characteristic and those who do not foster good relations between people who share a protected characteristic and those who do not.

3. Definition of a Disabled Person

The Act defines a disabled person as someone with “a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities”.

An impairment is to be taken to affect normal day-to-day activities if it affects:-

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry or move everyday objects
- Speech
- Hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Perception of risk of physical danger.

4. Employment Provisions

There are 2 ways in which an employer might unlawfully discriminate against a disabled employee or job applicant by:-

- Treating him or her less favourably (without justification) than other employees or job applicants because of his or her disability.
- Or**
- Not making reasonable adjustments (without justification).

Governing Bodies have a duty to make reasonable adjustments where existing arrangements place the disabled person at a substantial disadvantage to:-

- Working arrangements
- The workplace, eg equipment, facilities, tools, etc.

5. Guidance to Avoid Discrimination

There are many ways to avoid discrimination:-

- **Do not make assumptions.** It will probably be helpful to talk to the disabled person about what the real effects of the disability might be or what might help. There is less chance of a dispute where the person is involved from the start. Such discussions should not, however, be conducted in a way which would itself give the disabled person any reason to believe that he/she was being discriminated against.
- **Promote equal opportunities.** All schools should have an Equal Opportunities Policy that should cover disability issues. Governing Bodies who have, and follow, a good policy – including monitoring its effectiveness – are likely to have that counted in their favour by a tribunal if a complaint is made. Governing Bodies should remember, however, that treating people equally will not always avoid a breach of the Act. A Governing Body may have a duty to make a reasonable adjustment. This could apply at any time in the

recruitment process or in the course of a disabled person's employment.

- **Consider obtaining expert advice.** The Local Education Authority can provide this advice through the Occupational Health Unit as part of its traded services to schools. This includes arranging workplace risk assessments with an Occupational Nurse and a Health and Safety Officer and providing advice regarding whether an impairment is covered by the Act.

Reasonable adjustments a school may be required or expected to make:-

- **Adjustments to premises.** There might have to be structural or other physical changes such as widening a doorway, providing a ramp or moving furniture for a wheelchair user.
- **Allocating some of the disabled person's duties to another person.** Minor or subsidiary duties might be reallocated to another employee if the disabled person has difficulty in doing them because of the disability.
- **Transferring the person to fill an existing vacancy.** If an employee becomes disabled, or has a disability which worsens so they cannot undertake their current post, then the employee should be considered for any suitable alternative vacancies in the school including reasonable training to do so.
- **Altering the person's working hours.** This may include allowing the disabled person to work more flexible hours to enable additional breaks to overcome fatigue arising from the disability or changing the disabled person's hours to fit with the availability of a carer.
- **Allowing the person to be absent during working hours for rehabilitation, assessment or treatment.** The employee may need time off to receive physiotherapy or psychoanalysis or undertake employment rehabilitation. A similar adjustment might be appropriate if a disability worsens or if a disabled person needs occasional treatment.
- **Giving the person, or arranging for them to be given, training.** This could be training in the use of particular pieces of equipment unique to the disabled person, or training appropriate for all employees but which needs altering for the disabled person because of the disability.
- **Acquiring or modifying equipment.** A school might have to provide special equipment. Examples are an adapted keyboard for

a visually impaired person or someone with arthritis, or an adapted telephone for someone with a hearing impairment.

- **Modifying instructions or reference manuals.** The way instruction is normally given to employees might need to be revised when telling a disabled person how to do a task. The format of instructions or manuals may need to be modified, for example, produced in Braille or on audiotape.
- **Providing a reader or a signer.** For example for reading information to a visually impaired person at particular times during the working day.
- **Modifying procedures in recruitment and selection for testing or assessment.** This could involve ensuring that particular tests do not adversely affect people with particular types of disability. For example, a person with restricted manual dexterity might be disadvantaged by a written test, so a school might have to give that person an oral test.

In addition to the above, Governors may wish to consider the following adjustment:-

- **Changing the location the person is required to work within school.** This could include ensuring that a teacher with mobility difficulties that prevents them from using stairs can hold all their lessons in a classroom on the ground floor.

6. Policies and Procedures Where the Equality Act, with respect to Disability, will have a Direct Impact

- **Recruitment and Selection**
It is important to offer and make applicant information available on request in other formats, for example, large print, tape, Braille, computer disk. If an applicant has declared on their application form that they are a disabled person they must be asked whether they require any alternative arrangements to be made to take account of any impairment or disability they have.

It is important to consider if the selection process will put the candidate at a disadvantage. If so, any reasonable adjustments must be made.

At the interview the selection panel should discuss with the candidate what reasonable adjustments, if any, would be required for them to undertake the duties of the post, should they be successful. They must be reassured that the issue will not affect the decision making process.

- **Training**
Schools must not discriminate in selection for training and must make any necessary reasonable adjustments to enable the individual to participate fully in all training opportunities and events.
- **Absence Control/III-Health Capability**
All schools should have an Absence Control procedure to deal with intermittent and longterm absence. Governing Bodies should be aware that an employee interviewed in accordance with these procedures may have an impairment.

Once you are aware that the employee may have an impairment in accordance with the Act you should consider whether a reasonable adjustment can be made in order to assist the employee to return to or remain at work at any stage.

- **Redundancy Procedure**
When considering redundancy they must follow their agreed redundancy procedure. Governing Bodies must be aware of employees who have an impairment in accordance with Equality Act.

They must ensure that a disabled person is not disadvantaged in any redundancy selection procedure.

- **Professional Competence of Teachers**
All schools must have a procedure to address issues of professional competence of teachers. An employee who has impairment, in accordance with the Act, has a right to their employer making reasonable adjustments to the workplace in order that they may undertake fully the duties of their post. This will include any reasonable adjustments in accordance with the Act.

Useful Contacts

The Employment Service introduced a scheme in 1994 entitled “Access to Work”. The aim of this scheme is to help people make the most of their opportunities in working to tackle some of the practical obstacles that may occur either in the event of an employee becoming disabled or the recruitment of an employee with disabilities. It offers practical advice and help in a flexible way so that it will be tailored to suit the needs of the person’s particular job. In certain situations funding can be provided to meet the needs of the disabled person. Governing Bodies are reminded of this initiative.

Your Health and Safety Officer based at County Hall, Matlock will also be able to give advice and guidance.

It is recommended that Governing Bodies adopt the policy included as an appendix to this document to assist them in their employment responsibilities

to people with disabilities. Further advice and guidance can be obtained from the Local Education Authority.

POLICY STATEMENT

DERBYSHIRE LA

LEA PRIMARY SCHOOL

Equality Act – Discharge of Duty in Relation to Disability

INTRODUCTION

The Disability Discrimination Act 1995 introduced new measures aimed at protecting disabled people from discrimination. The Equality Act confirmed and extended the provisions for disabled people in the following areas:-

There are 2 ways in which a Governing Body might unlawfully discriminate against a disabled employee or job applicant by:-

- treating him or her less favourably (without justification) than other employees or job applicants because of his or her disability

or

- not making reasonable adjustments (without justification).

POLICY

The Governing Body is committed to eliminating unlawful discrimination and promoting equality of opportunity in the field of employment. It will, therefore, fulfil its legal obligations in accordance with the Act and any related or subsequent legislation including seeking to identify and remove all unjustified direct and indirect discrimination.

The Governing Body will not discriminate against candidates applying for vacancies within the school. Special consideration will, therefore, be given to the following:-

- Application forms.
- Interview arrangements.
- Terms and conditions of employment.
- Staff development opportunities.
- All other policies and procedures adopted by the Governing Body.

Ways to Avoid Discrimination

The Governing Body will undertake the following measures to avoid direct and indirect discrimination:-

- Not make assumptions about a person's disability.
- Promote equal opportunities.
- Professional advice will be sought with regard to workplace risk assessments being undertaken and on whether an impairment is covered by the Equality Act 2010.

Reasonable Adjustments

The Governing Body, wherever possible, will agree to reasonable adjustments being made to school (if required) to assist a person with a disability including:-

- Adjustments to premises.
- Reallocation of a disabled person's duties.
- Consideration of suitable alternative employment.
- Consideration of more flexible working (including altering the person's working hours).
- Allowing time off for rehabilitation, assessment or treatment
- Training.
- Acquiring or modifying equipment.
- Modifying instructions or reference manuals.
- Modifying procedures in recruitment and selection for testing or assessment.

Policies and Procedures

The Governing Body will ensure that, where relevant, the school's policies and procedures will take into account fully the Equality Act. These will include:

- Recruitment and Selection.
- Training/Staff Development.
- Absence Control/III-Health Capability.
- Redundancy.
- Professional Competence of Teachers.

The Governing Body is aware that the above list is by no means exhaustive and that the Act may have a direct impact on other personnel policies and procedures adopted by the Governing Body.

All employees of the Governing Body have a contractual obligation to comply with this policy statement.

The Governing Body will embrace their duty to have regard for the need to:-

- Advance equality of opportunity between people who share a protected characteristic, under the Equality Act, and those who do not.

- Foster good relations between people who share a protected characteristic and people who do not.

The Governing Body will discharge this duty through taking account of the needs of people with protected characteristics when developing and reviewing policies, designing and delivering services and commissioning from others. For further information see Equal Opportunities Policy.