



PVI SEND Support

18th March
2024



ò ~ Reasonable ~
X \$ Adjustments

Supporting H&F Settings/Schools

➤ What the Laws say:



The National Education Context

. In considering and developing our provision for children with SEND, there are two key pieces of legislation which need to be taken into account.

The Equality Act (2010), and *subsequent amendment (2012)* which introduced **‘Reasonable Adjustments’** and the **Children and Families Act (2014)**, which identifies a setting’s responsibilities in relation to **‘Best Endeavours’**

The definition of disability under The Equality Act is *‘a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities.’*

Long-term is defined as lasting, or likely to last, for at least 12 months. A substantial disadvantage means “more than minor or trivial”.

*However, in practice we do not distinguish between whether the action taken to support a child to achieve and thrive falls under ‘best endeavours’ or ‘reasonable adjustments. Instead, we consider **the impact** it has on them*

“Best Endeavours” or **“Reasonable Adjustments”** are effectively the first level of putting in appropriate support to meet SEND and they complement ***quality first teaching***.



Wherever there is concern about progress or wellbeing, consideration should always be given as to whether the **concern may be related to an undiagnosed/ unrecognised SEND**.

Recognising this and taking appropriate action to address it would fall within the ***‘best endeavour/reasonable adjustment duty.’*** It is important to be aware therefore, that although it is a possible outcome of the process, children and young people ***do not need to be on a SEN support register or have an EHCP*** before consideration is given to the relevance of ‘best endeavours/reasonable adjustments.’

The duties cover not just teaching and learning in classrooms, but lunchtimes and break/playtimes, clubs, activities and trips, in effect, the ***whole life of the setting***





Definition The Equality Act 2010 defines disability as ‘a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day- to- day activities.’

➤ What is the reasonable adjustments duty?

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

The reasonable adjustments duty includes three key requirements:

- *1.0 To make adjustments to provisions, criteria or practices*
- *2.0 To make adjustments to physical features*
- *3.0 To provide auxiliary aids and services*

These requirements **apply differently in different settings**

*Whilst the duty to alter physical features does not apply to schools, schools have **accessibility planning duties** that do not apply to other providers*



Requirements of the reasonable adjustments duty



In early years provision, the first and third requirements of the reasonable adjustments duty apply to all providers, whether they are private nurseries, independent schools or local authority maintained.

- ✓ The **first requirement** involves altering or adapting “**provisions, criteria or practices**” – namely policies, procedures and the way things are done within settings.
- ✓ *The second requirement does not apply to schools **but would apply to private nurseries**. It is a duty to make reasonable adjustments to physical features of buildings for example a ramp, signs or lighting.*
- ✓ The **third requirement** is to provide “**auxiliary aids and services**”, and includes the provision of equipment, advice or support. This might also include support from a one-to-one member of sta

This duty applies irrespective of whether or not the child or young person has an EHCP



1.0 Provisions, criteria and practices The requirement to make adjustments to any provision, criteria or practice relates to the way in which a setting works on a daily basis. This includes its decisions and actions, how they deploy resources, and the practices that they follow. This applies irrespective of whether the provision, criteria or practice is written down.

2.0 Physical features The physical features element applies to settings **not** designated as schools in relation to individual disabled pupils; instead, they have a duty to plan better access for disabled pupils generally.

3.0 Auxiliary aids and services Settings will be expected to provide an auxiliary aid or service for a child with a disability when it would be reasonable to do so and if such an aid would alleviate any 'substantial disadvantage' that the child faces in comparison to children without a disability. 'Substantial' is defined as being "anything more than minor or trivial. Whether a disabled child is at a substantial disadvantage or not will depend on the individual situation"

(Reasonable adjustments for disabled pupils, England –Equality & Human Rights Commission EHRC).

A failure to make reasonable adjustments so that disabled children are not placed at a substantial disadvantage is also a form of discrimination.





Physical features – settings that are not schools

Providers that are not schools have a duty to make reasonable adjustments to physical features that put disabled children at a substantial disadvantage. This might involve removing a physical feature, altering it, or finding a reasonable way of avoiding it.

For example, if the provider's premises do not have level access, reasonable adjustments might include offering a different convenient level-access entrance, providing a portable ramp, or changing 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.***





A disabled child may need **reasonable adjustments** to be made *in addition* to the special educational provision that they are receiving

A 4 year old disabled child with attention deficit hyperactivity disorder (ADHD) receives some individual adult support through the SEN framework. He is also diagnosed with severe asthma and needs assistance with his nebuliser.

Although this is not a special educational need, his asthma is likely to be a disability for the purpose of the Act and so a failure to provide a reasonable adjustment will place him at a substantial disadvantage. The setting trains his Key Worker and they provide him with the assistance needed. This would be a reasonable adjustment for the setting to make.





How the Equality Act 2010 applies to different settings

- Equality Act applies to all early years settings: to schools and preschools, 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.



Early years settings that are schools

Early years settings that are constituted as schools are covered by Part 6 of Equality Act.

Part 6 applies to all schools: private or state maintained, mainstream or special.

The duties in Part 6 of Equality Act 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.*



The duties cover not just teaching and learning, but play, 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 Equality Act.

For *a maintained school the responsible body is the governing body*, for *an independent school it is the proprietor*, which is the owner, the governing body, the management group or the trustees. For *an academy, it is usually the Academy Trust*.



Early years settings that are not schools

Early years settings that are not constituted as schools are covered by Part 3 of Equality Act.

Part 3 covers services and public functions and includes early years provision in or by: 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 Equality Act cover:

- *Whether or not a service is provided;*
- *The terms on which the service is provided;*
- *Stopping the service, or any other forms of detriment, that is: other forms of disadvantage.*



The duties under Part 3 apply to the individual or the organisation that provides the service (the equivalent of the *responsible body* under Part 6). 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 an LA it is the LA;* for individual childminders it is childminders themselves; for childminders working with an agency, it is likely to be childminders themselves in respect of the provision they make for children in their care; a childminder agency would also have a responsibility to make sure they do not discriminate in their responsibilities.



The Equality Act 2010 lists several different types of discrimination under the heading

“Prohibited Conduct”.

There are four “main” types of prohibited conduct which include:

- Direct Discrimination,**
- Indirect Discrimination**
- Harassment**
- Victimisation**



Direct discrimination

Direct disability discrimination is treating a disabled child less favourably than another child is (or would be) treated because they are disabled.



Example

An independent nursery leaves a child behind when the rest of her group goes to the park to see a puppet show. The child has learning difficulties and the staff consider that there is no point in taking her as she will not understand the show.

Example

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



Indirect disability discrimination arises where a provision, criterion or practice puts, or would put, disabled children at a particular disadvantage compared with children without that disability



Example

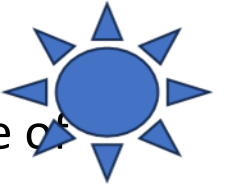
An independent nursery school requires high attendance from children before they are permitted to go on school trips. Children who have been absent from the nursery for medical treatment have been absent in the run up to the visit and are excluded from the visit



Example

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.

Discrimination arising from disability



Discrimination arising from disability arises where a disabled child is treated unfavourably because of something arising in consequence of their disability

Example

A mother seeks admission to the nursery for her child who has Autism. Poor interoception may lead to the late establishment of bowel control and as a result the child is not yet toilet trained. The nursery refuses to admit the child because they are not toilet trained.



Example

A young autistic child collects their sandwich box for their lunch and then has to queue for a drink. The autistic child is anxious and agitated in the queue and, when another child pushes them, turns round and bites the other child. The setting suspends the child for biting the other child



Justification



In cases that might otherwise amount to indirect discrimination or discrimination arising from disability, the responsible body may be able to argue that what they did was justified.

Justification requires the responsible body to show that what it did was a proportionate means of pursuing a legitimate aim.

A legitimate aim must be sufficiently important and may include such aims as:

- *The fair exercise of powers;*
- *Ensuring the health and safety of pupils and staff, provided that risks are clearly specified;*
- *Maintaining academic and behaviour standards;*
- *Ensuring the wellbeing and dignity of children.*

Proportionate means appropriate and reasonably necessary. There needs to be a fair balance between the need to achieve the legitimate aim and the disadvantage caused to the disabled child.

It would normally need to be shown that the same legitimate aim could not be achieved by a less discriminatory means.

Harassment



Disability-related harassment is unwanted conduct related to disability which violates the dignity of the child, or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. Harassment could include bullying, mocking or belittling a disabled child in connection with their impairment. Harassment cannot be justified.

Victimisation

Victimisation is subjecting a child to detriment because they, or sometimes someone connected to them, has done a protected act under the Equality Act. Protected acts are most commonly complaints about or allegations of breaches of Equality Act

Example:

During an inspection, the parent of a young autistic child, complains to Ofsted about their child's suspension for biting another child. The parent says that the school should not have suspended their child and that if they had prevented the anxieties linked to the child's autism, the incident would never have happened. Because the parent complained, the school does not allow the child to go on a museum visit with their class.



❖ Auxiliary aids and services: *applies to all settings*



- Auxiliary aids and services may include **equipment**, the provision of **specialist advice** to the setting, or **direct teaching or support** to the disabled child

- The SEND Framework requires LAs to set out what schools and other settings are expected to provide from their own resources and to publish this as part of the **SEND local offer** - often referred to as '**ordinarily available**' or **Universal provision**.

This requirement helps to clarify the respective responsibilities of settings, LAs and other



Providing balls with sounds inside for a visually impaired child to enable them to play with other children would be an example of providing an **auxiliary aid**.

Landmark case won by family of diabetic child

Support for ensuring a diabetic child got their insulin injections was withdrawn. This was held to be a *breach of the duty to make reasonable adjustments*. It was **reasonable** to recruit support staff whose duties included a responsibility for the administration of insulin.



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

Example: A child with an egg allergy is going to join a nursery class in a primary school.



The setting:

- *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;*
- *Makes adjustments to the handling of egg products in the kitchen.*

Physical accessibility requirements

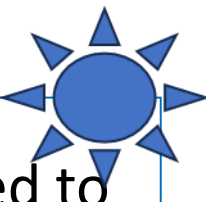


This is not just about ramps and doorways, it is about how settings can improve the physical environment to increase the extent to which disabled children can benefit from both the education provided at the setting and the wider offer, the benefits, facilities and services at the setting

Examples:

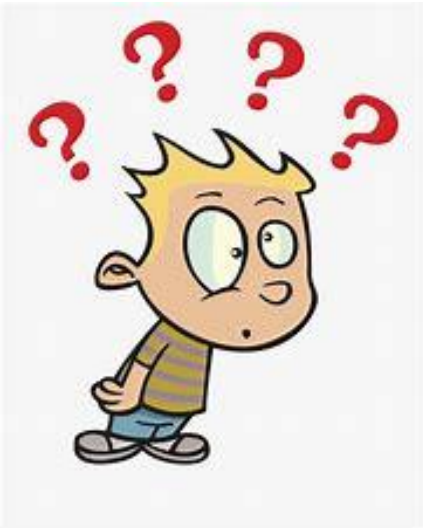
- ✓ introducing adjustable height benches for practical subjects;
- ✓ increasing colour contrast in corridors and doorways so that pupils with visual difficulties can find their way around more independently;
- ✓ improving the acoustic environment through room design and/or furnishings;
- ✓ providing a safe space/quiet area in the playground or classroom for children who find more busy areas overwhelming.





A setting's duty to make reasonable adjustments is an **anticipatory** one owed to disabled children generally, and therefore settings need to think in **advance** about what disabled children might require and what **adjustments** might need to be made for them.

Being **anticipatory** is preventive, pre-emptive, pro-active, it is in the **planning** stages, in the design phase, and so clearly not an afterthought or a bolt-on feature



Also, somewhat unhelpfully the Act doesn't lay out a definitive list of what **'reasonable'** is. What is considered reasonable under the Act, is dependent on what is **reasonable for that particular setting**, and that setting's unique situation.



THINGS TO
CONSIDER

The term **'reasonable'** is not explicitly defined in the Act, which leaves it up to the discretion of the setting to determine this. The Equality and Human Rights Commission makes it clear that it is not possible to say what will or will not be reasonable in any particular situation, but provides guidance on **factors that may be taken into account when deciding what is reasonable:**

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

The interests of other children and prospective children



There are limited circumstances in which the provision of a particular reasonable adjustment for a disabled child will **disadvantage** other children. This is relevant only where the adjustment results in significant disadvantage for other children.

In such a case, it may not be reasonable to expect the setting to make the adjustment.

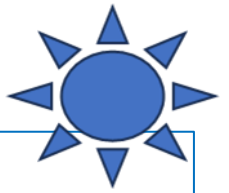
EXAMPLE

A disabled child has a skin condition that is aggravated by cold and his parents ask that his Group Room is kept at a very hot temperature. However, this would mean that the other children in the group would be uncomfortably hot.

The setting may not be expected to keep the room at the requested temperature, but it could take other steps, such as raising the room temperature to a level that is still comfortable for other children, placing the child in the hottest part of the room, such as by a radiator, and allowing him to wear warmer and more comfortable clothing.



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



Whether the cost of a proposed adjustment is reasonable may require consideration in the context of a **setting's resources and available funds**. However, what is reasonable for one setting to provide may not be for another. Settings may set a budget for any adjustments each year.

The setting is **not expected to fund all adjustments** whatever the cost (i.e. the setting has to be mindful that it has responsibility for **all children**).

The setting should consider each case for adjustments individually, **analysing cost in context**.



However, settings should be mindful that **cost alone will rarely be sufficient to justify a decision not to make an adjustment**, but other factors may be relevant such as the interests of other children. Settings should **consider factors other than cost alone**.



The likelihood that a particular adjustment would be effective

EXAMPLE



A Nursery school plans a trip to a local attraction in its town to undertake some activities. One of the children in the class is deaf and, because the attraction does not have a hearing loop installed, they will be unable to participate in the trip.

The school decides to change the trip and attend another attraction , which has a hearing loop. Although this will cause some inconvenience to the other children because the travel time to and from setting will be longer, the setting decides that this is a reasonable adjustment to make given the substantial disadvantage faced by the disabled child if they are unable to attend the trip



It is good practice to involve parents/caregivers and children themselves in planning reasonable adjustments.

Parents/caregivers and children are often best placed to help settings think about what disadvantage might arise and what reasonable adjustments may work best.

The principles that underpin ***Children and Families Act emphasise the importance of respecting the views, wishes and feelings of children and young people, and of their participation in decision-making.*** These principles should encourage and support settings in securing the effective participation of disabled children in planning and implementing reasonable adjustments.



Reasonabl²⁷
Adjustments
in Practice
.....*examples*



Reasonable adjustments aren't just for children with an Education Health and Care Plan.
Children with SEND who are getting SEN Support should have reasonable adjustments made for them too.

A child does not need to have a diagnosis for reasonable adjustments to be made. Changes made in a setting should be based on the needs of each individual.

Making reasonable adjustments is a great way for a child, their parents/caregivers and staff to work together to find solutions that really work. Talk to families about what works well at home – for example, what comforts their child and helps them to calm down.

Every child is unique and what works for one may not work for another. This might sound obvious, but sometimes when checklists and policies are drawn up and used, this can get lost.



Many of these are real life examples of reasonable adjustments that settings have made.

Please remember, it's not an exhaustive list. There is lots of room for creativity and of course the changes that need to be made for any child are led by their individual needs.

A recent case involving a young child considered whether making adjustments could have avoided a permanent exclusion from a Nursery School.

In this case, the young child was being assessed by an educational psychologist and attending a local nursery school for the other part of his time.

The Nursery was aware that unstructured times were challenging for the child. He has since been diagnosed with Autism. The child and his class were attending a forest school outdoor activity, with more than 20 children in the care of 3 adults, when the child became dysregulated and distressed. The member of staff who was tasked with “keeping an eye” on the child was also leading the activity.

The Nursery’s decision to permanently exclude the child for the protection of other children was initially found to be reasonable. However, on appeal, it was held that there were a number of other steps which should have been taken first to avoid such a final step being taken.



Reviewing the facts of the case, if financial resources allowed, it suggested that a reasonable adjustment to provide the child with one-to-one support during unstructured activities could have avoided the incident.



Two children with a hearing impairment are going to join a setting:

EXAMPLE

The setting:

- 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



The parent of a young disabled child visits a nursery. The manager can see that the parent is anxious about whether their child will be able to manage in a group setting. The manager invites the parent to go round the nursery and carry out a risk assessment with them. This enables the parent to identify aspects of the organisation of the nursery that might be difficult for their child. Together, the manager and parent identify creative adjustments to overcome the barriers that the parent identifies.



The Equality Act can be found at:

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

What is inclusion in Early Years?



Everyone has their own idea about what the term 'inclusion' means, and inclusion can look different in different settings.

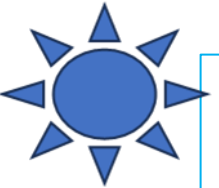
However you define it, your policies, practices, attitudes and values must together ensure that everyone belongs: children, parents/caregivers, staff and all connected with your setting.

Inclusion is sometimes *mistakenly* taken to apply solely to children identified as having special educational needs and disabilities, who attend non-specialist settings.



To be truly inclusive means to scrutinise the policies, practices, attitudes and values that make early childhood communities what they are, so that **everyone feels safe, comfortable, and welcome**. They **belong, and their individuality and heritages are understood and respected**. Their **needs are met** and **they can contribute**.

To make reasonable adjustments



Many reasonable adjustments are inexpensive and just require creative changes in practice, rather than the provision of expensive pieces of equipment or additional staff.

Small things really can make a huge difference!



- The Butterfly Effect is the phenomenon whereby a minor change in circumstances can cause a large change in outcome

*where a small change at one place can result in large differences to a later state
(Edward Lorenz)*

[Equality Act Guide for EY - FINAL2 0.pdf \(councilfordisabledchildren.org.uk\)](https://councilfordisabledchildren.org.uk/equality-act-guide-for-ey-final2-0.pdf)



Inclusion & specialist

Inspire

intervention Outreach

Provide outstanding Specialist interventions to inspire Children and Young People with SEND to transform lives and achieve their best possible outcomes



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Supporting H&F Settings/Schools

