

national transition support team

working together to improve transition
for disabled young people

Disability Equality: Fulfilling duties for young people in transition

Introduction

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This information leaflet focuses on what local authorities and their partners can do to ensure they are taking positive action to fulfil their duties to disabled young people under the Disability Discrimination Act (DDA) during the transition to adulthood. It covers the legislative background and the relevance of the DDA to transition as well as give an outline of key issues that commissioners and service providers will need to consider in order to fulfil their duties. As its focus is on taking a positive and proactive approach to disability equality this information leaflet will pay particular attention to the Disability Equality Duty alongside provisions on discrimination against individuals.

This guide will be updated once the Equality Act provisions are in place.

The DDA and Transition: General Information

Existing legislation

Disability Discrimination Act 1995 (DDA) made direct and indirect discrimination, harassment and victimisation in relation to disability illegal, placing duties on employers, public bodies and other providers of services allowing the more favourable treatment of disabled people to promote equality.

Special Educational Needs and Disability Act 2001 (SENDA) amended the 1995 Act to apply in part to education providers.

Disability Discrimination Act 2005 (DDA) amended and strengthened the original DDA of 1995 by expanding the definition of a disabled person and imposing a more proactive duty to promote equality of opportunity for disabled people, the Disability Equality Duty (DED).

The Future: Equality Act

In March 2010 the Equality Act was passed. It will replace equality legislation covering a broad range of 'protected characteristics' including disability and thus replace the DDA. The Equality Act's provisions on disability will be based on the DDA and majority of the law on disability discrimination and equality will remain the same.

The Equality Act will come into force in stages from October 2010, although, at the time of writing (August 2010), the timescales have not been confirmed. The Disability Equality Duty will be replaced with similar provisions in the Equality Act from April 2011 at the earliest ⁽¹⁾.

Why does the DDA matter in transition?

One of the critical features of the DDA is that it applies to disabled children and adults. Therefore, the duties in the DDA can help bridge the divide between children's and adult services. Furthermore, the DDA has a very broad and inclusive definition of disability ⁽²⁾. Given that everyone who comes within the definition is entitled to its protection, this demonstrates clearly that local areas cannot

exclude any disabled young people who come under the definition, (whether they have complex needs or impairments such as Asperger syndrome), from transition support, as to do so would be discrimination contrary to the DDA. This does not mean that the DDA requires all disabled people to receive the same support throughout transition. It means that support offered must be available to all disabled people without discrimination, at a level and in a way which meets their needs. The DDA imposes duties on a broad range of organisations, all of which have relevance to disabled young people during their transition to adulthood. These include:

- The duties of public authorities, which includes local authorities (who provide social care and Connexions/LAG) and primary care trusts (PCTs).
- The duties of current and prospective employers not to discriminate against disabled employees.
- The duties of education providers, from early years through to further and higher education.
- Obligations on transport providers to make their modes of transport accessible in every sense.

Who is disabled under the DDA?

The DDA defines disability as: *'a physical or mental impairment which has a substantial and long-term effect on a person's ability to perform normal day to day activities.'* (3)

On the basis of this definition, it is estimated that one in 20 children under 16 has a disability as defined by the DDA (4).

Within a broad range of impairments, the following are included:

- Learning disability
- Mental health
- Sensory impairment
- Speech and language impairments
- Long-term health conditions such as asthma, cancer, diabetes or HIV.

However, it is being recognised that the pattern of childhood disability is changing, with a noted increase in autistic spectrum disorders and children with complex disabilities and health needs. A child or young person with complex additional support needs may have at least two different types of severe or profound impairment:

- Motor impairment
- Hearing impairment
- Visual impairment
- Cognitive impairment
- Speech & Language impairment
- Behaviour difficulties
- Feeding difficulties
- Additional chronic health needs such as epilepsy or asthma.

This means that it is unlikely that any single professional, agency or discipline will be able to meet their needs entirely.

In addition, there are a small but significant proportion of children and young people who may have a number of impairments, thus requiring them to receive support and resource input from therapy services, education, nursing care, and social care. It is important that consideration is given to how services are accessed and delivered. They need to be prioritised on the basis of the individual, in the context of their life and environment.

Public Authorities' Disability Equality Duty (DED)

Section 49A of the DDA (as amended in 2005) sets out the general Disability Equality Duty (DED) of every public authority. It requires every public authority 'in carrying out its functions' to have due regard to a series of specified needs, being the need to:

- eliminate unlawful discrimination;
- eliminate harassment of disabled people

that is related to their disabilities;

- promote equality of opportunity between disabled people and others;
- take steps to take account of disabled people's disabilities, even where that involves treating disabled persons more favourably than other persons;
- promote positive attitudes towards disabled people; and
- encourage participation by disabled people in public life.

There are also specific duties regarding the formulation, publication and review of Disability Equality Schemes, which are detailed in [Appendix A](#).

The DED is of importance to commissioners and service providers from all agencies. Any time a commissioning decision is made, due regard must be had to the needs set out in section 49A. In particular, commissioners need to consider in their decision-making:

- The need to promote equality of opportunity for **all** disabled people (because to only promote equality of opportunity for some disabled people would unlawfully discriminate between different groups of disabled people);
- The potential need to treat disabled people more favourably than others if it is necessary to do so to promote disability equality;
- The need to encourage participation by disabled people in public life. This is not just confined to helping disabled people to participate in formal parts of 'public life', for instance a council meeting. It also means helping disabled people to make a positive contribution to the whole life of their community.

What the law requires from commissioners, and all other decision makers, is that they keep these needs at the forefront of their minds and can show how the needs were factored in to any decisions taken.

It should also be noted that the Courts have conclusively stated that the section 49A duty

applies in relation to decisions made on individual cases as well as when strategic or policy decisions are made ⁽⁵⁾.

Appendix E outlines some general considerations to be made when forming an organisation's general approach to disability equality. A checklist for commissioners is also provided as a rough guide in Appendix C. In addition, Appendix D sets out information on how a contracted organisation could promote disability equality.

Key considerations for commissioners and service providers

Types of reasonable adjustments

The duty of providers to make adjustments is 'owed to disabled people at large' and so is an anticipatory one in the first instance ⁽⁶⁾. This means ⁽⁷⁾:

- Making sure that where any **practices, policy or procedures** may otherwise make it difficult for a disabled person to use a service which is being provided to other members of the public, then reasonable steps are taken to make changes, so that this effect is no longer there.
- Doing the same with **physical features of premises**, such as in the design, construction or the approach or access to premises.
- Providing an **auxiliary aid or service** where it would allow or facilitate a disabled person to make use of a service.

Considering individual needs

Where equality for disabled people may require treating them 'more favourably', this becomes especially pertinent when considering the access requirements of disabled children and young people with complex needs. In the same way that it is not possible to achieve equality of opportunity between disabled and non-disabled people just by treating them in the same way: so it is not possible to achieve equality of opportunity between individual disabled people simply by treating them alike.

Establishing what is important to the young person

When working with young people with complex support needs, it is especially important to prioritise in a meaningful way.

This will involve:

- Making efforts to find out what matters most to the individual and their family and work with them to try and address it.
- Using the statutory transition planning process where possible to set out priorities identified and agreed with the young person and their family. State in the transition plan clearly how services will address and meet these priorities.
- Disabled young people and families need clear, timely and accessible information to enable them to participate in decisions and understand the options available.
- Services need to be designed and reviewed to ensure they are accessible to all so planning with disabled young people and families can take advantage of all support available.

A good service is one which recognises these considerations of individual need and has in place procedures and approaches which address this to facilitate the accessibility of all its activities and the inclusion of all in a way that is appropriate for each individual. For example:

- For a child or young person requiring gastrostomy feeding, this may require the training of a number of staff to ensure that this delegated health care task becomes a matter-of-fact routine which can be undertaken with minimum disruption to the child's activities.
- Likewise, where a child who has epilepsy and may experience seizures requiring the administration of emergency medication, this should be organised so that staff working with the child or young person are trained and competent to be able to deliver the medication when and wherever it becomes necessary to do so, in as matter-of-fact way as possible

Equipping and deploying staff

Often, the most appropriate reasonable adjustments for disabled children and young people involve the skills and availability of appropriate staff support.

- One such example might be the provision of a 1:1 intervenor for a deaf blind child with cerebral palsy, severe learning difficulties and mobility impairment: someone who can work alongside and understand the child's communication and multi-sensory requirements and act as a bridge between the external world and the child's experiences.

It is particularly important that the service has in place processes and procedures to ensure that specialist knowledge, once acquired, is documented and shared with others. This means more staff can feel confident in seeking to interact and support the young person, and the information can be used for informing routines and working practices. This also ensures that staff can better support other young people who may access the service in the future.

Information and skill sharing should also be done in a practical way that ensures appropriate and timely accessibility i.e. that it is available to those who need it, at the point that it is relevant.

- In a residential special school, for example, a team of multidisciplinary staff have been working to build up 'Communication Passports' which become an invaluable means of sharing key information about the young person and that the young person wants to convey, as they move between services and access a range of support including short breaks, therapy services, college and work placements.

For further information see Appendix B - good practice checklist for services, and Appendix F – for examples of specific policies and actions to avoid discrimination.

Appendices

Appendices to *Disability Equality: Fulfilling duties for young people in transition* can be downloaded here:

www.transitionsupportprogramme.org.uk/resources/toolkits.aspx

References

1. For up to date information on implementation of the Equality Act:
www.equalities.gov.uk/equality_bill.aspx
2. DDA Section 1
www.opsi.gov.uk/acts/acts1995/ukpga_19950050_en_2#pt1-l1g1
3. DDA 1995 Clause 1 (1)
www.opsi.gov.uk/acts/acts1995/ukpga_19950050_en_2#pt1-l1g1
4. *Improving the Life Chances of Disabled People* (Prime Minister's Strategy Unit, 2005).
www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/disability.pdf
5. R (JL) v Islington LBC [2009] EWHC 458 (Admin) per Black J at [114]; R (AM) v Birmingham CC (2009) 12 CCLR 407 per Cranston J at [25], citing with approval the Disability Rights Commission Code of Practice at 2.42: '*when preparing individual community care plans, a local authority should have due regard to the need to promote disability equality. Disability equality is of particular relevance in this context*'.
6. *The Duty to Promote Disability Equality Statutory Code of Practice England & Wales Explanatory Note p.160* (Disability Rights Commission, 2005)
www.dotheduty.org/files/Code_of_practice_england_and_wales.pdf
7. It should be noted that there is an element of 'proportionality' and that the adjustment is 'reasonable' within the given context and circumstances.

Resources list

The Duty to Promote Disability Equality Statutory Code of Practice England & Wales
Disability Rights Commission (2005)
www.dotheduty.org/files/Code_of_practice_england_and_wales.pdf

The Disability Equality Duty & Involvement – Guidance for public authorities on how to effectively involve disabled people
Disability Rights Commission (2006)
www.dotheduty.org/files/Involving_disabled_people.pdf

The social care sector and the Disability Equality Duty
Disability Rights Commission (2006)
See especially Appendix 1
[www.dotheduty.org/files/SocialCareGuidance\(England\).pdf](http://www.dotheduty.org/files/SocialCareGuidance(England).pdf)

Implementing the Disability Discrimination Act in schools and early years settings
Department for Education and Skills and Disability Rights Commission (2006)
www.teachernet.gov.uk

A Transition Guide for All Services
This guide, produced by the Council for Disabled Children and partners for the Department of Health and the Department for Children, Schools and Families brings together information about legal duties and good practice guidance for supporting all areas of a disabled young person's transition to adulthood.
Department for Children, Schools and Families (2007)
www.transitionsupportprogramme.org.uk

Government Equalities Office Website - Equality Act
Visit this site to keep up to date on the Implementation of the Equality Act 2010
www.equalities.gov.uk/equality_bill.aspx

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About cerebral palsy.
For disabled people achieving equality.

www.scope.org.uk

National Transition Support Team (NTST)

NTST is working alongside the National Strategies and the Child Health and Maternity Partnership to coordinate the delivery of the Transition Support Programme.

NTST is based at the Council for Disabled Children (CDC), the umbrella body for the disabled children's sector in England. CDC is hosted by NCB. www.ncb.org.uk/cdc

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