



Disabled Children and the Equality Act 2010: What Early Years providers need to know and do

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Introduction

The best start in life

All children deserve the care and support they need to have the best start in life. Children learn and develop at a faster rate from birth to five years old than at any other time in their lives, so their experiences in early years have a major impact on their future life chances^{1,2}.

The Department for Education (DfE) guidance on the Early Years Foundation Stage (EYFS) opens with these two important statements. They embody both a commitment to that *best start in life*, and a recognition of the importance of early experiences in shaping later life chances.

The importance of the early years of children's lives is widely recognised. From Marmot³ to Leadsom⁴, from the EPPE studies⁵ to the *Best Beginnings in the Early Years* report of the Children's Commissioner⁶ there is a consistent message about the importance of giving every child the best start in life.

Recent research has taught us more about the importance of early experiences and their impact on life chances. It shows that high quality early childhood education and care (ECEC) can have a positive influence on cognitive, language, behavioural, and social outcomes⁷. In school and beyond, it can affect grades at GCSE and longer-term economic benefits⁸.

However, research has also highlighted the impact of poorer early experiences for young disabled children on learning and progress⁹. Recent evidence to the

¹ DfE (2024) *Early years foundation stage statutory framework, for group and school-based providers: Setting the standards for learning, development and care for children from birth to five*

² DfE (2024) *Early years foundation stage statutory framework, for childminders: Setting the standards for learning, development and care for children from birth to five*

³ Marmot, M (2010) *Fair Society, Healthy Lives* (Marmot Review) and Marmot, M and others (2020) *The Marmot Review ten years on*. London: Institute of Health Equity

⁴ HM Government (2021) *The best start for life: a vision for the 1,001 critical days* (Leadsom Review)

⁵ Taggart, B and others (2015) *Effective pre-school, primary and secondary education project (EPPSE 3-16+) How pre-school influences children and young people's attainment and developmental outcomes over time*. DfE Research Brief

⁶ Office of the Children's Commissioner (2020) *Best Beginnings in the Early Years*

⁷ Melhuish, E and others (2015) *A review of research on the effects of early childhood education and care on children development* EU: CARE, Curriculum Quality Analysis and Impact Review of European Early Childhood Education and Care

⁸ Cattan, S, Crawford, C and Dearden, L (2014) *The economic effects of pre-school education and quality*. Institute for Fiscal Studies IFS Report R99

⁹ Parsons, S and Platt, L (2017) *The early academic progress of children with special educational needs* British Educational Research Journal. Volume 43, Issue 3

House of Lords highlighted how early in a child's life ambition may be compromised:

The House of Lords Public Services Committee found evidence of assumptions that young disabled people didn't need careers advice because they would never be able to move into work:

These perceptions can take root at a very young age. Laura Davis, told us of an occasion when she was in a nursery:

'They were having conversations with these little people, aged three or four, about what they want to be when they grow up. There was a boy in the room who said he wanted to be a bus (sic), and nobody questioned that, which is fine, but they skipped over the little girl with Down's syndrome. They did not ask her.'

When Ms Davis asked the nursery staff why they had not asked this child, their response had been that they did not want to 'raise their ambition'¹⁰.

The impact of compromised expectations and poor experiences can be life-long. It can be seen in the teen years¹¹ and into adulthood. Experiences of social isolation among disabled adults have been linked to childhood identified disability¹².

The Equality Act 2010 (the Equality Act) is designed to address inequalities, protect children from discrimination and ensure they are not placed at a disadvantage compared with their peers.

This Guide is designed to support all those working in the early years in understanding the disability duties in the Equality Act, delivering high-quality, inclusive education and giving disabled children the best start in life. Positive early experiences contribute to a better, happier childhood, to better lives as children grow through their teenage years and to improved life chances and better experiences as disabled adults.

The requirements of the Equality Act apply in the context of other statutory requirements on early years providers, in particular the requirements:

- in the Statutory Frameworks for the EYFS; and

¹⁰ House of Lords Public Services Committee (2024) *Think Work First: The transition from education to work for young disabled people*

¹¹ Parsons, S and Platt, L (2018) *SEN, School life and future aspirations*

¹² Parsons, S and Platt, L (2019) *Growing up lonely? Exploring the social outcomes of three generations identified with special educational needs or disabilities in childhood* LSE Department of Social Policy

- in the Children and Families Act 2014 (CFA), together with the statutory guidance - the Special educational needs and disability code of practice¹³ (the Code).

This Guide sets the disability discrimination duties in the context of duties to all young children. It sets out what early years professionals need to know and do in order to address inequalities and to ensure they do not discriminate against disabled children.

To note: This Guide is part of a family of guides to the Equality Act, from the Council for Disabled Children (CDC) see references.

The examples in this Guide are drawn from early years settings and schools and have been designed to show how the Equality Act duties work in different situations.

Neither this nor the companion guides should be used as a guide to any individual situation or as a substitute for legal advice.

¹³ DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*

1. Early Years Foundation Stage

The EYFS framework brings together the *learning and development requirements, assessment and the safeguarding and welfare requirements*¹⁴ and sets the standards that all early years providers¹⁵ must meet to ensure that children learn and develop well and keep healthy and safe. These requirements have a legal basis in section 39(1) of the Childcare Act 2006 and apply to all early years providers: maintained schools and academies; 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^{16,17}.

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

equality of opportunity and anti-discriminatory practice, ensuring that every child is included and supported.

The EYFS sets out an inclusive approach, designed to be responsive to individual needs and all providers must make information available to parents and carers¹⁸ on how the setting supports disabled children and children with special educational needs (SEN). It focuses on delivering improved outcomes for all children and closing the achievement gap between disadvantaged children and others.

To this end, the government funds 15 hours a week of free early years education for disadvantaged and disabled children from the age of two. Local authorities (LAs) are under a statutory duty to secure that free early education and childcare places are available for eligible children. They must publish an *SEN and disability Local Offer*, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans.

¹⁴ Throughout this Guide italics are used to indicate that a term or expression has a particular meaning which is defined in legislation. Many of these terms or expressions are explained in this Guide. We also use italics for direct quotes from guidance and other sources.

¹⁵ When we refer to *early years providers* in relation to EYFS, we mean providers required by section 40 of the Childcare Act 2006 to comply with the EYFS.

¹⁶ DfE (2024) *Early years foundation stage statutory framework, for group and school-based providers: Setting the standards for learning, development and care for children from birth to five*

¹⁷ DfE (2024) *Early years foundation stage statutory framework, for childminders: Setting the standards for learning, development and care for children from birth to five*

¹⁸ Throughout this Guide, when we refer to *parents*, we include parents, carers and those with parental responsibility.

2. The Children and Families Act 2014

Under the CFA, LAs have responsibilities to disabled children as well as those with SEN. In particular, in exercising their SEN and disability functions under the CFA, 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 support to achieve the best possible educational and other outcomes.

LAs must identify disabled children as well as those who have or may have SEN; must commission services jointly with other agencies; must integrate services where it will promote wellbeing or improve quality of services; must publish an *SEN and disability Local Offer* of services, see section 16, below; must provide information and advice; must keep educational, training and social care provision under review; and must both cooperate with, and seek the cooperation of, *local partners*, see below. 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* include a wide range of different bodies but, in early years, they include schools and anyone else who makes *special educational 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 and children with SEN; and in ensuring that parents of disabled children and children with SEN know about the information and support available locally and about the range of services available to disabled children through the *SEN and disability 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.

Under the CFA, providers that are maintained nursery schools, and mainstream maintained schools and academies are also specifically required (with limited exceptions) to make sure that children with SEN engage in activities alongside their peers. Many children with SEN are also disabled, see section 6, below, and many of the Equality Act requirements support providers in meeting this duty.

The Code¹⁹ provides statutory guidance on the SEN and disability provisions in the CFA. Providers of early years education, that is, all early years providers in

¹⁹ DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*

the maintained, private, voluntary and independent sectors that an LA funds, must *have regard* to the Code when they are exercising their functions under the CFA or making provision funded by the LA for children with SEN or disabilities. This means that, whenever they are taking relevant 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.

3. What this Guide does and doesn't do

This Guide explains the Equality Act within the context of the EYFS and the CFA. The focus is primarily on how the Equality Act duties apply to disabled children in early years settings in England. It shows how the Equality Act applies to different types of providers 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.

This Guide focuses on the way the Equality Act 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. The SEN duties are explained in the Code, particularly in Chapter 5, which provides guidance on the SEN responsibilities of early years settings.

This Guide does not go into the detail of other groups of children who are protected under the Equality Act, 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.

The Equality and Human Rights Commission (EHRC) publishes a number of statutory codes of practice, including those on employers' duties²⁰ and the provision of services²¹, and a range of guidance on the application of the Equality Act for schools²² and others with responsibilities under the Equality Act. The DfE also provides guidance on the Equality Act for schools²³.

²⁰ EHRC (2011) *Equality Act 2010 Statutory Code of Practice: Employment*

²¹ EHRC (2011) *Equality Act 2010 Statutory Code of Practice: Services, public functions and associations*

²² EHRC (2014, updated September 2023, amended July 2024) *Technical Guidance for Schools in England*

²³ DfE (2014) *The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities*

This Guide is designed to raise awareness of the Equality Act among a wide group of practitioners, managers, teachers, support staff, parents and others working with them in the early years. It should not be used as a guide to any individual situation or as a substitute for legal advice.

References and sources of information and advice are listed at the back of this Guide.

4. The Equality Act 2010

The Equality Act is designed to address the disadvantage and discrimination experienced by particular groups of people and to provide a legal framework for addressing these inequalities. The duties in the Equality Act cover most aspects of our lives and affect a wide range of responsibilities: including those of employers, landlords, service providers, public authorities and education providers. There are duties that are owed to individuals and duties to plan more widely for increased equality of opportunity for groups of people.

It is important to recognise from the start that early years providers have a range of duties under the Equality Act: to staff, as employees; to parents and others, where a setting is providing a service to other people; and to children, staff and others who share other *protected characteristics* as well as disability. It is often more efficient and more effective to bring these duties together and, in particular, where settings are meeting longer term requirements to address inequalities, to embed these in wider planning processes.

Schools are covered by Part 6 of the Equality Act; other early years providers have different duties, which are covered by Part 3 of the Equality Act. This Guide brings these duties together for all early years providers.

Under the Equality Act, there are important ways in which disability is treated differently from other *protected characteristics*, 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: two important terms in the Equality Act

- *Protected characteristics*
- *Prohibited conduct*

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

Protected characteristics

Under the Equality Act, there are nine protected characteristics:

- 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 early years settings in relation to employment and their other duties under the Equality Act.

Prohibited conduct

Prohibited conduct is the general term applied to discriminatory behaviour that is unlawful under Equality Act. The Equality Act sets out the four main forms of *prohibited conduct*:

- *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*; and
- a failure to make *reasonable adjustments*.

The different forms of *prohibited conduct* are explained in more detail in sections 7 to 10, below.

5. How the Equality Act 2010 applies to different providers

The Equality Act applies to all early years providers: to schools and pre-schools, to mainstream and to special, to children's centres, to private, voluntary, independent and state maintained settings, to individual childminders 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 the Equality Act are explained next and, where there are differences, in subsequent sections.

Early years settings that are schools, Part 6 of the Equality Act

Early years settings that are constituted as schools are covered by Part 6 of the Equality Act. Part 6 applies to all schools: private or state, mainstream or special, and maintained nursery schools, but doesn't apply to other institutions that provide only early years provision²⁴.

The duties in Part 6 of the Equality Act cover discrimination in:

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

The duties cover not just teaching and learning, but play, lunchtimes, activities, and trips; in effect, the whole life of the school.

It is the *responsible body* for the school which has responsibility for the duties in the Equality Act.

- For a maintained school, the *responsible body* is the governing body or the LA. Responsibility for most school functions sits with the governing body but the LA also has functions in relation to some areas, such as some admissions functions. The *responsible body* is whichever of the governing body or the LA is responsible for the particular function.
- For an academy, the *responsible body* is the proprietor, which is the academy trust.
- For an independent school the *responsible body* is the *proprietor*, which is the owner, the governing body, the management group or the trustees.

The *responsible body* is responsible for the actions of its employees while working for the school, and for others, *agents*, that is, people acting on their behalf but not employed by them. In respect of most *protected characteristics*, most employees and *agents* are also individually liable for discrimination. However, for disability discrimination in schools this individual liability does not apply.

²⁴ CDC provides a more detailed guide for schools: *Disabled Children and the Equality Act 2010: What teachers need to know and what schools need to do* (updated 2025)

Responsible bodies need to be able to show that they have taken *all reasonable steps* to make sure employees and *agents* understand that they must not discriminate. Qualified teachers working in the early years, in school and non-school settings, have individual professional responsibilities under the Teachers' Standards²⁵, see below.

There are places where the disability duties in the Equality Act are linked to other duties, in particular to the SEN duties in the CFA, that apply differently to different types of schools. Where duties apply differently to different types of schools, we make this clear.

Early years settings that are not schools, Part 3 of the Equality Act

Early years settings that are not constituted as schools are covered by Part 3 of the Equality Act. Part 3 covers *services and public functions* and includes early years provision in or by: family centres, children's centres, nurseries, pre-schools and playgroups, 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 the Equality Act cover:

- whether or not a service is provided;
- the terms on which the service is provided; and
- 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 *service provider* (the equivalent of the *responsible body* under Part 6). The duties apply whether they are in the private, public or voluntary sector. For a nursery, pre-school, playgroup or other private or voluntary group, the *service provider* 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; and 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; childminder agencies also have duties to make sure they (the agencies) do not discriminate in respect of their responsibilities.

The *service provider* is responsible for ensuring that disabled children are not discriminated against and is responsible for the actions of their employees and

²⁵ DfE (July 2011 (introduction updated June 2013, latest terminology update December 2021)) *Teachers' Standards: Guidance for school leaders, school staff and governing bodies*

others, *agents*, that is, people acting on their behalf but not employed by them. *Service providers* need to be able to show that they have taken *all reasonable steps* to make sure employees and *agents* understand that they must not discriminate.

For early years settings covered by Part 3 of the Equality Act, employees and *agents* are also liable for discrimination. This includes, for example, a volunteer or a member of staff, a manager or a trainee, a teacher, an assistant or an administrator. This means that anyone working in an early years setting that is not a school, could expose both themselves and the *service provider* to a claim of discrimination.

Considerations for service providers, in Part 3, and responsible bodies, Part 6

Whatever the setting, qualified teachers working in the early years have individual professional responsibilities under the Teachers' Standards²⁶. 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 the Equality Act.

In any setting, it is important that the *responsible body* or *service provider* makes sure that those working in their setting, whether paid or unpaid, receive training and understand the duties towards disabled children and know about the *reasonable adjustments* that need to be made for particular children.

To simplify the text for the reader, throughout this Guide we refer to those with responsibility for the Equality Act duties, that is, *responsible bodies* and *service providers*, as providers. Where the duties vary for different providers, we make this clear.

6. Which children may count as disabled?

The definition of disability in the Equality Act is broad. The Equality Act 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*²⁷.

In the context of early years, *normal day-to-day activities* would include playing, sitting with other children in a group, singing songs and rhymes, running around, more focused table activities, listening to stories, reading stories, talking about

²⁶ DfE (July 2011 (introduction updated June 2013, latest terminology update December 2021)) *Teachers' Standards: Guidance for school leaders, school staff and governing bodies*

²⁷ The Equality Act 2010, section 6

stories, making marks, writing, in fact anything that a child might ordinarily do as part of the EYFS.

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

If an impairment has a *substantial and long-term* effect on a child's ability to carry out normal day-to-day activities it will amount to a disability.

Substantial is defined as being *more than minor or trivial*; *long-term* means something that has lasted, or is likely to last, for *a year or more*. The meaning of *substantial* in the Equality Act is slightly at odds with what it means in everyday use, where we tend to think of it as being quite big, for example, a substantial meal. It may be helpful to think of *substantial* in the Equality Act as being big enough to 'have substance', hence *more than minor or trivial*. In combination, the terms *substantial* and *long-term* set a relatively low threshold and cover more children than many imagine. The Family Resources Survey carried out in 2022-2023 estimates that 11% of children may count as disabled²⁸.

Checkpoint: young children

A child *under the age of six* who has an impairment which does not have a *substantial and long-term* adverse effect on their ability to carry out normal day-to-day activities is included in the definition of disability where their impairment would have that *substantial and long-term* adverse effect on the ability of a child *over six* to carry out normal day-to-day activities²⁹.

It's important to note that, if a child is receiving treatment for a medical condition, whether they are disabled needs to be considered as if they were not receiving that treatment.

There is guidance from the Government Equalities Office (GEO) and the Women and Equalities Unit (WEU)³⁰ on a range of issues to be taken into account in deciding who may be covered by the definition of disability. To note: the GEO and WEU guidance pre-dates case law from 2018 covered in the checkpoint below on the *tendency to physical abuse*.

²⁸ Department for Work and Pensions (2024) *Family Resources Survey: financial year 2022-2023*

²⁹ The Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

³⁰ GEO and WEU (2011 updated 2013) *Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability*

Checkpoint: tendency to physical abuse

Regulations³¹ exempt certain conditions from being considered as impairments. This includes a *tendency to physical abuse*. However, a decision by the Upper Tribunal, in August 2018, determined that, for children in education who have a recognised condition that is more likely to result in a *tendency to physical abuse*, the Regulations do not remove a child from the definition of disability or from the protection that the Equality Act provides³².

This decision means that, in line with the duties set out below, providers must make *reasonable adjustments* to prevent or manage challenges presented by behaviour that arises in consequence of a disability and must be able to justify any action taken in these circumstances as *proportionate*.

Ultimately, if a claim of discrimination is made, the decision about whether or not a child is disabled is taken by the First-tier Tribunal (Special Educational Needs and Disability) (the Tribunal), for children in a school; and by the county court, for children in early years settings that are not schools.

Checkpoint: disability, special educational needs and health conditions

Though the definitions of disability and SEN are covered by different legislation, in practice there is a significant overlap. In particular, children with more significant SEN, including those who have an EHC plan, are more likely to be covered by the Equality Act. This likelihood is not strictly because they have an EHC plan, but because they are more likely to have an impairment that meets the definition of disability in the Equality Act.

Research published in 2008³³ found that 40% of children in primary school with SEN met the definition of disability³⁴ on the basis of parental judgement.

³¹ The Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128)

³² Upper Tribunal decision in the case of Child L

³³ Porter, J and others (2008) *Disability Data Collection for Children's Services Research Report*. Department for Children, Schools and Families: RR062

³⁴ To note: the definition that applied at the time of the research is substantially the same as that in the Equality Act.

The disability discrimination legislation in the Equality Act covers disabled children and young people whether or not they 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 SEN.

In order to avoid discrimination, to anticipate and make *reasonable adjustments*, and to meet wider responsibilities, settings need to know their disabled children. However, the important point for settings is that they know about a child's impairment or condition and understand that a child may be disabled under the definition in the Equality Act.

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 *could not reasonably have been expected to know* that the child was disabled. 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 both respects a child's dignity and privacy and encourages parents to share information. If parents think that information might be used against their child, for example to keep them out of a setting rather than to support them to be included in a setting, 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 Equality Act, 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 developmental delay may indicate SEN or a disability. Parents should be involved in the two-year check.

At the end of reception year, the EYFS Profile provides another opportunity to check learning and development. It can also help in identifying any developmental delay which, in turn, should lead to a discussion of whether there may be an underlying, unmet or unidentified SEN or disability. The child's parent should participate in this review.

7. Discrimination

Direct discrimination

Direct disability discrimination is treating a disabled child *less favourably* than another child is treated, or would be treated, 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 child 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*.

Direct discrimination can also take place where a child who is not disabled is treated less favourably because they are associated with a person who is disabled (for example, because one of their parents is disabled), or because they are wrongly thought to be disabled.

In some circumstances it may be necessary to treat a disabled child more favourably than a child who is not disabled, for example, by waiving a policy or by making particular provision for a disabled child that is not available to their non-disabled peers. It is not *direct discrimination* against a non-disabled child to treat a disabled child more favourably.

Under the Equality Act, there is no justification for *direct discrimination*.

Indirect discrimination

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 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.

This example constitutes *indirect discrimination* unless it can be *justified*, see *Justification*, below.

Indirect discrimination often arises when the provider applies a blanket policy. 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 above was applied in the same way to all children, a child with diabetes would be placed at a disadvantage. If an individual disabled child is affected by this policy and is placed, or would be placed, at a disadvantage, this is likely to amount to *indirect discrimination*.

In some instances, a *provision, criterion, or practice* may put disabled children at a disadvantage but may be justified. *Justification* is addressed later in this section. The example above is unlikely to be justified.

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 4: A nursery does not admit children until they are toilet trained. A mother seeks admission to the nursery for her child who has Hirschsprung's disease. Hirschsprung's disease 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 5: A young autistic child collects their sandwich box for their lunch and then has to queue for a drink. The child is anxious and agitated in the queue and, when another child teases them, turns round and bites the other child. The school excludes the child for biting the other child.

Both of these are examples of being treated unfavourably because of something arising in consequence of a child's disability. These will constitute unlawful discrimination arising from disability unless the provider can show that its actions are justified.

To note: it doesn't matter whether what the setting does is set out in a policy, is a standard practice or is a one-off action.

In some circumstances, the setting may be able to justify unfavourable treatment. *Justification* is addressed, below.

If a provider knows, or *could reasonably be expected to know*, that a child is disabled, they cannot claim that they did not know that something the child did arose in consequence of the disability. If a claim of discrimination were made, it would be no defence for the provider to say that they did not know that a child was disabled, unless they *could not reasonably have been expected to know* that they were disabled. If a parent shared information about an impairment or condition with any member of staff including, for example, a member of staff in the office, the provider would be deemed to know.

This underlines the importance of having a proper understanding of a child's disability and how it can affect them.

Justification

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

Justification requires the provider 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:

- ensuring the health and safety of children and staff, provided that risks are clearly specified;
- maintaining academic and behavioural standards; and
- ensuring the wellbeing and dignity of children³⁵.

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.

In example 5, above, the setting may be able to justify the exclusion if they could demonstrate that it was a *proportionate means of achieving a legitimate aim*, for example that the exclusion was a *reasonably necessary* means of protecting the wellbeing of other children in the setting.

³⁵ EHRC (2014, updated September 2023, amended July 2024) *Technical guidance for schools in England*

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 section 10, below.

8. 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.

9. 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 the Equality Act.

Example 6: During an inspection, the parent of the young autistic child in example 5, above, complains to Ofsted about their child's exclusion for biting another child. The parent says that the school should not have excluded 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.

To note: in the example above the parent did not refer to the Equality Act, they just made it clear that they felt that their child had been treated badly because of their disability. This is likely to be a *protected act*. The school's treatment of the child in response to the complaint is likely to constitute *victimisation*.

The duty not to *victimise* applies differently to schools (under Part 6) and to other settings (under Part 3). For schools the *protected act*, that is, the complaint or allegation, can be made by the child, their parent or a sibling. In other settings (under Part 3), the *protected act* can be made by the child and

only in certain circumstances by the child's parents. Regardless, it is best practice to treat all allegations of discrimination with respect and without retaliation.

10. Reasonable adjustments

The *reasonable adjustments* duty includes three requirements and these apply differently in different settings. This is explained in more detail later in this section. First, we set out some key features of the duty and look at some examples.

Where something a setting does might put disabled children at a *substantial disadvantage* compared with other children, providers must take *reasonable steps* to avoid that disadvantage. This is 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*.

A reminder: *substantial* disadvantage is defined as a disadvantage that is *more than minor or trivial*.

In example 5, above: there may be *reasonable adjustments* that the school could have made. *Reasonable adjustments* in this situation might have been:

- putting the drinks ready on the table before lunch, at least for the child with autism, in order to avoid the queuing;
- asking the child's parents about ways of reducing or avoiding anxiety for their child and then implementing these adjustments;
- training staff in understanding the nature of the child's autism so that they could deploy techniques to reduce anxiety; and
- giving the child a safe place to go to when they do get too anxious.

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 Code places a great emphasis on co-production:

The Code and co-production:

This is a way of involving disabled children and young people and their parents: *in a way which ensures that children, young people and parents feel they have participated fully in the process and have a sense of co-ownership. This is often referred to as 'co-production'*³⁶.

The benefits of co-production can be seen in this example:

Example 7: 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.

This enables the nursery to put in place the adjustments before the child starts, the parents to feel more confident about the child starting in a group setting and the staff to feel confident in welcoming the child.

As a marker of high-quality provision to meet the needs of children with SEN, the Code includes ensuring that *decisions are informed by the insights of parents and those of children and young people themselves*³⁷. Endorsing the principle of children's participation in decision-making, the Code cites the UN Convention on the Rights of the Child which emphasises this right, *from the early years*:

UN Convention on the Rights of the Child:

*Children have a right to receive and impart information, to express an opinion and to have that opinion taken into account in any matters affecting them from the early years. Their views should be given due weight according to their age, maturity and capability*³⁸.

³⁶ DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*, paragraph 4.9

³⁷ DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*

³⁸ Articles 12 and 13 of the United Nations Convention on the Rights of the Child

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 8: Two deaf children are going to be admitted to a children's centre. The centre:

- arranges training for staff in the familiarisation of the children's hearing instruments and wireless remote microphones (previously referred to as Radio Aids);
- draws up guidance for staff in the light of the training. This includes appropriate use and management of wireless remote microphones, the transfer of microphones to other children at group times and checking that the children's hearing instruments are set correctly for use with the wireless remote microphone if necessary;
- changes the location of the book corner. The rooms in this centre have large windows down one side. Following discussion with the children's parents, staff 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; and
- puts in place a series of meetings with the parents to review the arrangements.

Example 9: 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 is keen to act inclusively and to provide the best possible opportunities for the child but thinks that it may be unsafe to let the child go in and out of the house and it may be difficult for the child 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 an unacceptable 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 they should be encouraged to use.

Sometimes settings may need to call on specialist advice to inform the planning of *reasonable adjustments*. Health specialists, including occupational therapists and speech and language therapists, can advise on the most effective adjustments and can advise on the best ways of removing barriers for disabled children. However, 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.

Example 10: A child with a serious egg allergy who has been prescribed an adrenalin auto-injector (AAI) is going to be admitted to a nursery class in a primary school. The school:

- works with the parents to assess risks at the setting and develop an allergy action plan;
- shares the action plan with all staff involved in the preparation and handling of food;
- ensures that staff are clear about who is responsible for checking that the child's food meets all the requirements at each mealtime and snack time;
- ensures all staff are aware of the symptoms and treatments for allergies and anaphylaxis;
- ensures staff are trained in the use of the child's AAI;
- ensures there is at least one person with a valid paediatric first aid certificate in the room when children are eating; and
- plans the regular review of the arrangements with the parents and the nursing staff.

Example 11: A pre-school reviews its policies, including its admissions policy, and makes some changes to ensure that conditions in the policy do not discriminate against disabled children. They remove a condition requiring children to be toilet trained and link with a health visitor to support a toilet training programme for all children. They also build in an additional visit to the pre-school for parents of children who may be disabled. This visit is designed to enable parents to review the setting with the manager, to identify any aspects of the setting that might present a barrier for the child and to discuss possible adjustments.

The 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 the CFA, schools³⁹ must make arrangements for supporting pupils with medical conditions and, in doing so, *have regard* to statutory guidance, *Supporting pupils at school with medical conditions*⁴⁰. 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.

Reasonable adjustments: three key requirements

The *reasonable adjustments* duty includes three key requirements, to:

- make adjustments to a *provision, criterion or practice*;
- make adjustments to *physical features*; and
- provide *auxiliary aids and services*.

These requirements apply differently in different settings:

- early years settings that are not schools are required to meet all three of the requirements; and
- early years settings that are schools are required to meet the first and the third requirements.

Whilst the duty to alter *physical features* does not apply to schools, schools have *accessibility planning* duties that do not apply to other providers, see section 12, below.

³⁹ The duty applies to maintained schools, academies and pupil referral units.

⁴⁰ DfE (2015, updated 2017) *Supporting pupils at school with medical conditions: Statutory guidance for governing bodies of maintained schools and proprietors of academies in England*

Adjustments to any provision, criterion or practice – all settings

The first requirement applies in a very similar way to all providers. They are required to make *reasonable adjustments* to any *provision, criterion or practice* that puts disabled children at a substantial disadvantage.

Most of the examples, above, relate to adjustments to a *provision, criterion and practice*, that is, the way settings organise themselves, deploy resources, operate their policies and the day-to-day practices that they follow.

The failure to make a *reasonable adjustment* overlaps with *indirect disability discrimination* in that both are concerned with a *provision, criterion or practice* that places disabled children at a disadvantage.

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;
- changes to lighting and ventilation;
- re-arranging or adapting furniture; or
- adapting fixtures and fittings.

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.

Auxiliary aids and services – all settings

All providers have a duty to take *reasonable steps* to provide an *auxiliary aid* or service if a disabled child would be put at a substantial disadvantage without it.

Auxiliary aids and services may include the provision of equipment, advice or direct support to a disabled child.

The Equality Act is clear about the direct duty on providers to make *reasonable adjustments*. However, in practical terms, providers may be able to draw on the

SEN framework⁴¹ and other sources for support beyond that which they might reasonably be expected to make themselves. Such support might include:

- the use of SEN Inclusion Funding, to support eligible children with low and emerging needs;
- Disability Access Fund (DAF), to support disabled children in accessing their early years entitlements;
- *special educational provision* made for a child with SEN, including provision set out in an EHC plan;
- the support of an Area Special Educational Needs Coordinator (SENCO); or
- other services provided in the early years by the LA and local health agencies.

Where something is already provided through the SEN framework, this can be taken into account in deciding what *reasonable adjustments* to make.

LAs must publish an *SEN and disability 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 next.

What is reasonable?

The EHRC indicates that it is not possible to say what will or will not be reasonable in any particular situation, but that some of the factors that are likely to be taken into account include: the extent to which *special educational provision* will be made through the SEN framework; costs and available resources; the effect of the disability on the individual; health and safety; the need to maintain standards; the interests of other children; and other considerations such as the effectiveness and practicability of a particular adjustment⁴².

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 setting⁴³. Settings can take these considerations into account when they plan what they may need to do for disabled children.

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

⁴¹ The SEN framework is set out in the CFA, associated regulations and the *Special educational needs and disability code of practice: 0 to 25 years* (DfE and DH, 2015)

⁴² EHRC (2019) *Reasonable adjustments for disabled pupils, England*

⁴³ EHRC (2019) *Reasonable adjustments for disabled pupils, England*

setting with a small budget may not be expected to make adjustments that might be expected of a larger setting with a larger budget.

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. The results should be kept under review. Where difficult issues arise, it may be important to seek advice beyond 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 their responsibility to identify and make *reasonable adjustments*. They do affect decisions about which *reasonable adjustments* must be made.

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

11. 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 legal claim of disability discrimination.

It is important that settings have in place clear policies for resolving any problems before a parent feels they need to make a legal claim.

Avoiding any disadvantage that might lead to a claim

Keeping *reasonable adjustments* under regular review, checking that they are working, is key to preventing any disadvantage arising for the child that might lead to a claim. Staff need to consult parents and seek advice from the SENCO or a manager⁴⁴. They may need specialist advice from local support services.

Seeking resolution without a claim

It is helpful if there are mechanisms for raising a concern informally. However, for use where such mechanisms have not worked, settings are required to have in place a written procedure for dealing with concerns and complaints from

⁴⁴ For childminders this may be someone who acts as SENCO for a local network or, for those registered with a childminder agency, for the agency.

parents. Settings must keep a written record of any complaints and their outcome^{45,46}.

It is in the interests of children, parents and settings that the formal complaints mechanism is well advertised and accessible. This may allow for the resolution of any issues without recourse to the Tribunal or the courts.

Beyond the setting, there are local and national services that support the resolution of disagreements between parents and settings:

- LAs are required to provide, and publicise, SEN and disability information advice and support (SENDIAS) services for children and their parents, see section 16, below. SENDIAS can provide informal support in resolving disagreements.
- LAs are also required to make disagreement resolution services available for the resolution of disagreements, including those between parents and early years providers, about the *special educational provision* made for a child, whether they have an EHC plan or not⁴⁷.
- The Equality Advisory and Support Service also provides free advice, information and guidance on equality, discrimination and human rights issues. It runs a national helpline⁴⁸.

Making a claim

For schools, covered by Part 6 of the Equality Act, the child's parent makes a claim of disability discrimination to the Tribunal⁴⁹; or, in respect of disability discrimination in admissions, to a local admissions appeal panel. 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 settings are covered by Part 3 of the Equality Act, 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 normally include financial compensation, including compensation for injury to feelings.

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

⁴⁵ DfE (2024) *Early years foundation stage statutory framework, for group and school-based providers: Setting the standards for learning, development and care for children from birth to five*

⁴⁶ To note: Childminders are not required to have a written procedure for handling complaints, but they must keep a record of any complaints they receive and their outcome.

⁴⁷ LAs must set out details of disagreement resolution arrangements in their *SEN and disability Local Offer*.

⁴⁸ Equality Advisory and Support Service: [Equality Advisory and Support Service](#)

⁴⁹ For a link to the Tribunal, see links and resources section.

the last instance of discrimination. The Tribunal or the county court has the power to extend the six months if it considers it just and equitable to do so.

12. Accessibility planning for schools

For schools, the Equality Act *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 prepare a plan to improve accessibility for disabled children over time⁵⁰.

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

- increased access to the curriculum for disabled children;
- improvements to the physical environment of the school to increase access to education and associated services at the school; and
- improvements in the provision of information for disabled children where it is provided in writing for pupils who are not disabled.

An *accessibility plan* must be:

- a plan for a three-year period;
- in writing;
- implemented; and
- reviewed and revised as necessary.

When they prepare an *accessibility plan*, the responsible body must have regard to the need to allocate adequate resources for implementing the plan⁵¹.

The timescales for accessibility plans are quite specific and a new plan must be prepared every three years, counting from 2006, when the first 'new' plans were required⁵². A new plan needs to be prepared on 1 March 2027, 2030, and so on and runs for the three-year period starting on 1 April in the same years⁵³.

The governing body of a maintained school or maintained nursery school, and the proprietor, that is, the academy trust, of an academy must ensure that *information as to the plan* is set out in the school's SEN Information Report. The

⁵⁰ CDC publishes a handbook for schools on accessibility planning: CDC (2025) *Accessibility plans and the Equality Act 2010: a handbook for schools*

⁵¹ The Equality Act 2010 Schedule 10, paragraph 4(1)

⁵² The Disability Discrimination (Prescribed Times and Periods for Accessibility Strategies and Plans for Schools) (England) Regulations 2005 (SI 2005/3221)

⁵³ For new schools, plans run from a month after opening to the next three-year period that applies to existing schools. Thereafter, plans follow the same three-year cycle as other schools, see Regulations above.

publication of an SEN Information Report is a requirement of the CFA⁵⁴ and must include *information as to* a number of different aspects of schools' duties to disabled pupils, see section 15, below. This includes the school's accessibility plan.

Schools that are not covered by the duty to publish an *SEN Information Report* will nonetheless want to consider whether to publish information about their *accessibility plan* or the plan itself.

The accessibility planning duties apply to disabled pupils at the school and to disabled children who might be admitted to the school. This means that schools need to think ahead: consider patterns of admission, whether and, if so, how these patterns are changing; and be alert to early information about children coming through the admissions or transition processes. This can help schools to plan ahead, be ready to welcome disabled children and reduce concerns that they may feel 'unable to meet need'.

Ofsted can inspect school *accessibility plans*.

13. What is the public sector equality duty?

In addition to their responsibilities to individual disabled children, certain bodies, including state-funded schools, have more general duties under the *public sector equality duty (PSED)*. These duties also apply to any organisation that is exercising a *public function*.

The *PSED* requires such providers to have due regard to the need to:

- eliminate *discrimination, harassment, victimisation* and other *prohibited conduct*;
- advance 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 advance 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.

⁵⁴ The CFA, section 69

Specific duties

Specific duties sit under the general requirements described above and apply to maintained schools and academies but not to other schools or settings.

Regulations require maintained schools and academies to publish information to *demonstrate their compliance* with the general duty. This information must be published annually.

Maintained schools and academies must also prepare and publish *equality objectives* to achieve the core aims of the general duty: to eliminate discrimination, advance equality of opportunity and foster good relations. These objectives must be specific and measurable and new objectives must be published within four years of the previous objectives.

Example 12: A maintained 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 over four years.

14. The Equality Act and positive discrimination

In general, the Equality Act makes positive discrimination unlawful. However, there are some specific exceptions.

The Equality Act allows for the more favourable treatment of disabled people, including disabled children. More favourable treatment does not amount to discrimination against children who are not disabled, see *direct discrimination* in section 7, above. This applies both to the treatment of an individual child and to groups of children. It would be lawful, for example, to give priority in admissions to a disabled child applying to come to the setting or to allocate a specialist teacher to work with disabled children.

The Equality Act also allows providers to take *positive action* to address any disadvantage arising from the under-representation of children who share a *protected characteristic*. *Positive action* can overcome barriers for groups of children, improve education and ultimately outcomes.

The Equality Act limits *positive action* in that it must be a *proportionate* means of achieving one or more of three aims⁵⁵. However, because the more favourable treatment of disabled children is allowed under other parts of the Equality Act, it is not constrained by the considerations that limit *positive action*.

15. Provider information for parents and carers

As part of their responsibilities under the EYFS, all providers must make information available to parents on how the setting supports children with SEN and disabilities.

Over and above this, the governing body of a maintained school or maintained nursery school, and the proprietor, that is, the academy trust, of an academy must publish information about the implementation of their SEN policies in their *SEN Information Report*. This Report includes key *information as to* various 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*.

16. Local authority information, advice and support for children and their parents

SEN and disability information advice and support (SENDIAS) services

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

LAs must draw these services to the attention of parents, schools and others in their area. All providers will want to make sure that parents know about their

⁵⁵ *Positive action* must be a proportionate means of achieving one or more of the following aims: address the impact of a disadvantage that is current or that has happened in the past to those who share a particular *protected characteristic*; meet the particular needs of persons who share a *protected characteristic*; or facilitate participation in activities where participation of those sharing a particular *protected characteristic* is disproportionately low.

local SENDIAS service and have access to the information, advice and support that they provide.

Childcare

LAs must provide information, advice and assistance to parents⁵⁶, including information about childcare and the suitability of childcare for disabled children⁵⁷.

SEN and disability Local Offer

Under the CFA, LAs are required to publish and keep under review an *SEN and disability Local Offer*. This *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; and
- support groups for parents of disabled children.

It should also include information about:

- provision such as Area SENCOs, SEN support or learning support services, educational psychology services, sensory support services or specialist teachers and therapy services such as speech and language therapy;
- support available to parents to aid their child's development at home⁵⁸;
- 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 two and three;
- the LA's arrangements for providing additional funding for children with SEN e.g. through their local SEN Inclusion Fund; and
- the arrangements for EHC needs assessments and plans.

⁵⁶ Childcare Act 2006, section 12

⁵⁷ The Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007 (SI 2007/3490)

⁵⁸ For example, a local Portage service for young disabled children and children with SEN and their families

17. The Equality Act and Ofsted inspection

Equality considerations are integral to Ofsted inspection of settings. Ofsted considers how well settings promote equality of opportunity and diversity to ensure children understand, appreciate and respect difference so that they can:

... thrive together, understanding that difference is a positive, not a negative, and that individual characteristics make people unique (Ofsted)⁵⁹

Ofsted recognises the importance of the leadership of the setting and looks for leaders who:

- *have a clear and ambitious vision for providing high-quality, inclusive care and education to all. This is realised through strong shared values, policies and practice; and*
- *act with integrity to ensure that all children, particularly those with SEND, have full access to their entitlement to early education⁶⁰.*

And practitioners who:

- *value and promote equality and diversity;*
- *[develop] children's understanding and appreciation of diversity;*
- *[celebrate] what we have in common; and*
- *routinely [challenge] stereotypical behaviours and promoting respect for different people⁶¹.*

Ofsted also considers how well the provider ensures that the setting is fulfilling its statutory duties, including those under the Equality Act⁶².

18. 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 the Equality Act. However, there are some things that all providers would sensibly do to reduce the risk of discriminating against a disabled child.

Reviewing

An important part of meeting the duties is ensuring that settings do not inadvertently discriminate against disabled children. If all settings recognise that

⁵⁹ Ofsted (2024) *School Inspection Handbook*

⁶⁰ Ofsted (2024) *Early years inspection handbook*

⁶¹ Ofsted (2024) *Early years inspection handbook*

⁶² Ofsted (2024) *Early years inspection handbook*

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.

Embedding equality considerations

Where equality considerations are taken into account in everyday 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 settings 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.

Working in partnership with parents

Sharing information is a crucial part of meeting the Equality Act duties. Settings 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, and a willingness to explore possibilities rather than a refusal to consider them.

Aiming high

The research we cited in the introduction tells us of the importance of high quality ECEC for all children but also of the poorer early experiences of disabled children and of compromised ambition. At each stage of their lives it is important that disabled children are *supported to achieve the best possible educational and other outcomes*⁶³ and are well prepared for the next stage of their lives. This message is echoed in the EYFS:

Practitioners should be ambitious for all children^{64, 65}.

⁶³ DfE and DH (2015) *Special educational needs and disability code of practice: 0 to 25 years*

⁶⁴ DfE (2024) *Early years foundation stage statutory framework, for group and school-based providers: Setting the standards for learning, development and care for children from birth to five*

⁶⁵ DfE (2024) *Early years foundation stage statutory framework, for childminders: Setting the standards for learning, development and care for children from birth to five*

Training

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 Equality Act duties 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.

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 the CFA, *providers of relevant early years education* should be involved with, and are required to co-operate with, LAs in the development of their *SEN and disability Local Offer*, see above. This *Local Offer* must include information about the support available across education, health and social care services for disabled children and children with SEN.

19. 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.

Disabled children's enjoyment of childhood is dependent on their positive early experiences and its impact on their life chances cannot be over-estimated. Settings that are committed to and striving for equal opportunities and inclusion can be confident that they are making a difference for disabled children. They 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.

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Links and resources

Anaphylaxis UK www.anaphylaxis.org.uk

Children's Rights Alliance England (CRAE) www.crae.org.uk

Council for Disabled Children (CDC)

www.councilfordisabledchildren.org.uk

Equality Advisory and Support Service [Equality Advisory and Support Service](#)

Equality and Human Rights Commission

www.equalityhumanrights.com/en

First-tier Tribunal (SEND) www.gov.uk/special-educational-needs-disability-tribunal

Foundation Years www.foundationyears.org.uk

Independent Provider of Special Education Advice (IPSEA)

www.ipsea.org.uk

Information, Advice and Support Services Network (IASSN)

<https://www.councilfordisabledchildren.org.uk/what-we-do-0/networks/informationadvice-and-support-services-network/find-your-local-ias-service>

Legal advice www.gov.uk/find-legal-advice

United Nations Convention on the Rights of the Child

www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child