

The social care sector and the Disability Equality Duty

**Additional information for social
care organisations working with
children and young people in
England**



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Introduction

This guidance gives additional information on the Disability Equality Duty (DED) as it relates to social care organisations working with children and young people in England. It complements the more detailed guidance on the DED for social care organisations available on the Disability Rights Commission's (DRC) website at www.drc.org.uk/employers_and_service_provider/disability_equality_duty/social_care.aspx, and can also be found as an appendix within this document.¹

¹ DRC (2006) 'The Social Care sector and the Disability Equality Duty: A guide to the Disability Equality Duty and Disability Discrimination Act 2005 for social care organisations', www.drc.org.uk/employers_and_service_provider/disability_equality_duty/social_care.aspx

The Disability Equality Duty

The Disability Discrimination Act 2005 (DDA) places a duty to promote disability equality on all public bodies, including schools and local authorities. This requires them to have due regard to the need to:

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

This duty applies in relation to all functions of a public authority from setting budgets or regulatory frameworks, to carrying out inspections, employing staff and delivering services. It is referred to as the 'general duty'.

In addition many authorities will be subject to 'specific duties' (described in detail below), to produce and implement Disability Equality Schemes (DES).

These new duties complement and enhance existing duties under the DDA 1995 and the Special Educational Needs and Disability Act 2001.

The general duty came into force on 4 December 2006 by when all public authorities should have been prepared. Those public authorities which are subject to the specific duties must have published their Disability Equality Schemes by 4 December 2006.²

² **The exceptions to the requirement to publish Disability Equality Schemes by 4 December 2006 are primary schools in England (which have until 3 December 2007) and all schools in Wales (no later than 1 April 2007). Some social care agencies may be working with schools with regard to extended school programmes and other activities and should be aware of this timescale.**

The Disability Equality Duty and social care for disabled children and young people - the context

The DED applies to all public authority services for children and young people, whether or not they are specifically designed for disabled children and young people.

The DDA defines disability as:

‘a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to perform normal day-to-day activities.’

Using this definition, it is estimated that one in 20 children under 16 has a disability as defined by the DDA. This definition includes a broad range of impairments, including:

- learning disability
- mental health
- sensory disability
- speech and language impairments
- long-term health conditions such as asthma, cancer, diabetes or HIV.

There is evidence that the pattern of childhood disability is changing, with an increase in autistic spectrum disorders and children with complex disabilities and health needs.³

³ See Prime Minister’s Strategy Unit (2005), ‘Improving the Life Chances of Disabled People’, Cabinet Office, London, or DH/DfES (2004), The National Service Framework for Children, Young People and Maternity Services, Standard 8, Disabled Children, DH Publications

‘Every Child Matters’ already requires social care organisations and their partners to improve the life chances of all children in their area (including disabled children) and to plan services strategically in order to improve outcomes.⁴

The DED provides a positive opportunity to think strategically about disability equality and how best to improve the life chances of disabled children and young people through ensuring that they achieve the five outcomes specified in ‘Every Child Matters’, namely:

- being healthy**
- being safe**
- enjoying and achieving**
- making a contribution**
- economic well-being.**

The DED offers public authorities a real opportunity to review and improve the provision of specialist advice, support and staff training to mainstream children’s services in order to promote positive inclusion and to improve disabled children’s life chances.

⁴ **Department for Education and Skills and Department of Health (2004 onwards) ‘Every Child Matters’, www.everychildmatters.gov.uk**

The specific duties – producing a Disability Equality Scheme

Many public authorities have additional and specific Disability Equality Duties. They will be required to produce and implement a DES.⁵

A DES must include:

- a statement of how disabled people have been involved in developing the scheme
- an Action Plan saying how the scheme will be delivered
- arrangements for gathering information about the performance of the public body in delivering the scheme
- arrangements for assessing the impact of the activities of the authority on disability equality and improving these if necessary
- details of how the authority proposes to use the information gathered, in particular reviewing the effectiveness of its Action Plan and preparing subsequent schemes.

Organisations must not only publish their Scheme but must carry out the actions set out in its Action Plan unless it is unreasonable or impracticable to do so. They must also publish annual reports on the implementation of their Scheme.

⁵ Information on which public authorities are required to produce Disability Equality Schemes is given in the DRC's statutory Codes of Practice on the DED. DRC (2005)'The Duty to Promote Disability Equality: Statutory Code of Practice', The Stationary Office

Disability Equality Schemes should:

- be focused
- be accessible
- be proportionate
- be influential
- be transparent
- be financially supported
- be organised
- develop and agree a protocol for involvement of disabled people.

Some public authorities may have a number of distinct units, departments or services within their remit. It may be appropriate for these discrete units to have their individual Action Plans within the generic Disability Equality Scheme for that authority.

For example, whilst each local authority will produce an overarching scheme for all its departments and functions, the DRC strongly recommends that each individual department considers its own evidence base and draws up its own Action Plan.

The Director of Children's Services and the Lead Elected Member in an authority have consulted children and young people in their area, as part of the development of their Children and Young People's Plan. Some disabled children and young people raise particular concerns about services and support for 'looked after' children. They say that they do not always feel fully involved in assessments and reviews. Some children are worried about what they see as a lack of support for education and report constant school moves which affect their long-term career options. Others worry about limited access to play and leisure activities. Some feel that they are bullied by other children and do not know how to complain. The local authority decides to include a discrete section within its DES's Action Plan on looked

after children in its area. This will also feed into the Children and Young People's Plan.

The local authority establishes a 'Care Action Group' to address the concerns. A group of young disabled people are identified to work alongside staff and members of the local authority. A part-time development officer supports the young people, who identify a small team of 'AA Inspectors' to visit local provision and to make recommendations for improvement. The group (with staff and elected members) draws up an Action Plan for the next three years. This specifies a number of targets which will be used in order to measure the effectiveness of actions taken and will feed into the local authority's impact assessments.

Key recommendations include:

- stronger partnerships between social care and schools
- the drafting and monitoring of an anti-bullying policy across all children's services
- protocols for the involvement of young people in staff appointments and disability equality training for staff.

The impact assessment includes young people re-visiting and 'inspecting' local services to assess progress.

Despite some initial anxieties from staff, the process is working well. The disabled children and young people feel more confident and valued – and the staff report real satisfaction in working with them to achieve a high quality service. At the staff's suggestion, the young people are now involved in workforce development and training (including local arrangements for developing the role of 'lead professionals'). The 'Care Action' Group receives continuing (albeit modest) funding in order to maintain momentum and ensure accurate feedback on progress being made.

Those responsible for social care will be located within the various departments of that local authority. These can include adult and

children's services or a collaborative joint commissioning arrangement with other agencies such as a Children's Trust or Local Area Agreement.

Partnerships

In many instances, children's services will be working in partnership with health, education and other public authorities in order to support disabled children. For example, in a number of local authority areas, Children's Trusts will be coordinating services for disabled children from a number of agencies. Whilst the general duty will apply to all the work of these partnership bodies, they may not have a formal legal requirement to produce a DES.

However, the public authorities which constitute the partnership (eg local authorities, Primary Care Trusts (PCTs), etc.) should set out in their own DES how they propose to work through these partnerships to promote equality for disabled children in accordance with the DED. In many cases the most effective way to ensure that disability equality is promoted effectively by these partnerships is to produce a DES for the partnership, even though there is no formal legal requirement to do so.

A Children's and Young People's Strategic Partnership is concerned that disabled children and young people with high individual support needs are not accessing the full range of services in the area because of concerns about risk management and through lack of specialist advice and training to mainstream staff. It is also concerned at the number of exclusions of children with autistic spectrum disorders from mainstream children's services. Therefore, within the Disability Equality Scheme, they plan to improve early access to specialist advice and support through using qualified nurses and health care assistants to provide the right skill mix needed in social care and education settings, in order to achieve an effective and improved focus on the holistic needs of the children.

The community nurses, who remain employed by the PCT, receive their professional supervision from the PCT but their management supervision and leadership from a children's social services

manager. School nurses are co-located with children's social workers and health visitors in community settings (including children's centres). Their skills have been enhanced and developed so that they are now increasingly involved in work around supporting children and young people with high individual support needs, children and young people with emotional or behavioural difficulties and young people using Child and Adolescent Mental Health Services. Local children's services value the rapid access to expert professional advice, which is now available to them. They are also better able to train staff in advance to meet the needs of children requiring intimate personal care or assistance with medication.

The Strategic Partnership is able to set achievable targets for improving access to mainstream services and reducing the numbers of disabled children whose parents are seeking residential education because of a lack of community support services. The numbers of exclusions are being monitored and it is expected that there will be an annual reduction as a result of rapid access to advice and support. Through improved advice and training on the management of special health needs in social care settings, the number of link families willing to offer short breaks to disabled children is increased and families (and children) report increased satisfaction with the service.

Reviewing Disability Equality Schemes

The Disability Equality Scheme must be reviewed and revised at least every three years. Children's services will wish to consider how this can best be developed and delivered in conjunction with other planning arrangements within the authority, for example the Children's and Young People's Plan, the Childcare Action Plan, the Accessibility Strategy and arrangements relating to Children's Trusts.

Children's services will of course be working increasingly in partnership with education services with regard to the development of Children's Centres and the Extended Schools Programme.

Therefore readers of this guidance already working in partnership with schools or education services may also find it useful to read the DFES/DRC 'Reasonable Adjustments Project' and 'Accessibility Planning Project' practical guidance.⁶

The following sections describe each of the Scheme's components in more detail.

Involvement

Involvement of disabled people is key in drawing up an effective Disability Equality Scheme.

The specific duties explicitly require public authorities to involve those disabled people and their organisations that appear to the authority to have an interest in the development of their Scheme. Involving former, current and potential service users will be central to this process, but authorities will also want to consider involving disabled staff and disabled people in the wider community (eg community groups)

In actively involving disabled children and young people, public authorities can draw upon existing consultation arrangements such as the Children and Young People's Plan, the Childcare Action Plan and other planning arrangements within the authority.

⁶ Department for Education and Skills and the Disability Rights Commission (2006) 'Implementing the Disability Discrimination Act in schools and early years settings', DfES Publications

(Note: although this practical guidance relates primarily to education settings, much of the practical and strategic advice also applies to social care and other areas of children's services).

A local authority wishes to improve its transition planning arrangements for young disabled people and to actively involve them in developing their Disability Equality Scheme. It recognises that many young people feel disengaged from the process and many social care services are unsure how they can move to a person centred approach.

The local authority sets up a stakeholder group of young disabled people, with support from Connexions, local schools, colleges and organisations of disabled people. The young people hold a consultative 'summit' on 'our lives, our future' and agree to work with the local authority, Connexions and the local Primary Care Trust in mapping local provision for young disabled people and producing a guide for transition planning. They ask for better cooperation between social care and education services during the statutory transition planning process in order to maximise their opportunities for independent living in adult life.

The local authority agrees to increase the number of direct payments for 16-17 year olds, with a view to moving towards individual budgets in the longer term. The social care, education, health and housing departments of the local authority (including adult services) hold a 'Future Planning Forum' to examine options for independent living and transition to adult social care services as well as continuing education, training and employment. The local authority sets annual targets over a three-year period within its Disability Equality Scheme to improve outcomes for young disabled people from the full range of local communities. These targets are reflected in the local authority's Accessibility Planning Strategy and the Children and Young People's Plan.

Action Plans

The Action Plan should specify the steps that a public authority is proposing to take, in order to promote disability equality over the period of the Scheme. It should focus upon practical proposals to improve equality of opportunity for disabled people, with clear identification of the specific outcomes to be achieved. The steps set out in the Action Plan must be carried out within three years of the Scheme being published, unless it can be demonstrated it is unreasonable or impracticable to do so.

The Action Plan should reflect a number of things including:

- the priorities of disabled people
- the public authority's strategic priorities
- the specific outcomes which are to be achieved
- how the outcomes are to be measured and assessed
- who is responsible for delivering the outcomes
- a realistic timetable for delivering each outcome.

It is recommended that social care organisations set specific targets in key employment or service delivery areas in which it can readily measure its performance.

Schemes are unlikely to be able to address all areas of concern to disabled people in the first three years and priorities will need to be considered. This means that actions should be concentrated on those areas that have been identified as having the maximum impact on disabled people's lives.

A Children's Services Department has been given the responsibility for developing relevant actions around social care and young people to be included in the local authority's Disability Equality Scheme and related Action Plan. The Department's Children and Young People Plan focuses on the five outcomes within Every Child Matters, namely that all children should:⁷

- be healthy
- enjoy and achieve
- be safe
- make a positive contribution
- achieve economic well-being.

The Local Authority decides to use Standard 8 of the National Service Framework for Children, Young People and Maternity Services as the over-arching vision for its Disability Equality Scheme, namely the ambition that 'Children and young people who are disabled or who have complex health needs should receive co-ordinated, high-quality child and family-centred services which are based on assessed needs, which promote social inclusion and, where possible, which enable them and their families to live ordinary lives.'

To put the standard into action, they explore various mechanisms for actively involving disabled children and young people, including special activities at short break, childcare and holiday schemes, which include disabled children. They ensure that the consultation includes 'looked after' disabled children and young people who are using family placement and residential services in the area. They also involve local disability organisations with

⁷ Department for Education and Skills and Department of Health (2004 onwards) 'Every Child Matters', www.everychildmatters.gov.uk

special reference to improving take-up of direct payments and encouraging children and families to plan for independent living in the future. The Leisure Department holds a special 'Let's Talk' day at the accessible Leisure Centre, to which disabled children and families are invited and where they have the opportunity to contribute to discussions about the Action Plan and its key targets. Children and families prioritise improved access to mainstream provision across social care, education and health services.

The 'Let's Talk' day is so successful that the local authority decides to make it an annual event so that disabled children and young people, service providers, families and the relevant public authorities can jointly review progress and targets for the coming year. This annual event will form part of the local authority's review of the effectiveness of its Disability Equality Scheme.

Gathering information

The Disability Equality Scheme must include a statement on the public authority's arrangements for gathering information on the effects of its policies and practices on disabled people. The specific duties require social care authorities to set out in the Disability Equality Scheme a statement of their arrangements gathering information on:

- the effect of its policies and practices on the recruitment, development and retention of its disabled employees
- the extent to which the services it provides and other functions it performs, take account of the needs of disabled persons.

Section 17 of the Children Act 2004 requires local authorities to prepare and publish a Children and Young People's Plan (CYPP), setting out their strategy for children and young people.⁸ The CYPP

⁸ Children Act 2004 (2004)
www.opsi.gov.uk/acts/acts2004/20040031.htm

is taken into account within the Joint Area Review (JAR) as part of the inspection arrangements for children's services. Most importantly, the CYPP represents a local vision for progressively improving outcomes for all children and young people in the area. It must be evidence based and it will bring together a range of data-sets and planning arrangements across the authority and in partnership with other relevant agencies. Children's social care agencies will wish to ensure that the new requirements around the DED and related DES are built into local planning arrangements relating to the CYPP.

Impact Assessments

Disability Equality Schemes will be required to include a description of how public authorities will assess the impact or likely impact of their existing or proposed policies and practices on disabled people. These cover all proposed, current and previous activities which an organisation carries or has carried out.

As part of its Children and Young Persons' Plan, a local authority decides to review the full range of its services for disabled children. The local authority provides a range of services, including short breaks in either a small residential unit or with link families; childcare after school and a range of holiday programmes.

To ensure that the views of disabled children are fully considered within this review, the local authority utilises the expertise of a children's development worker to work with the disabled children using the current services and also to meet children and families who are currently on the waiting list.

Through spending time with disabled children on their various activities (and talking to their families), the development worker is able to gain the children's views about what they want from services. The children and young people prioritise having a hobby, using local mainstream play and leisure services with appropriate support and spending time with both other disabled and non-disabled children. They all emphasise the importance of spending time with their friends and they and their families

identify transport as one of their biggest barriers in ‘getting a life’.

These views are fed back to the local authority. The local authority sets up a participation forum to actively involve the disabled children and young people in drawing up a three-year Action Plan. This includes increasing the number of direct payments (to maximise flexibility); improving transport; working with the leisure services to improve physical access to outdoor play spaces and providing ‘access cards’ to the local leisure centre for disabled children. This ‘impact assessment’ thus feeds into the authority’s review of its the Disability Equality Scheme.

Conclusion

The Disability Equality Duty represents a major strategic step-change from the individual focus of the Disability Discrimination Act 1995. For the first time, public authorities will be formally asking disabled people (including children and young people), their families and services to play an active role in the development and review of their Disability Equality Schemes.

This is an exciting opportunity to improve the quality of public services and to embed the new arrangements around disability equality within wider strategic change and development in policy, planning and practice in services for all children and young people. The introduction of Children and Young People's Plans in April 2006 encourages a strong focus on outcomes, partnership working and targets for progress over time, in line with the objectives of Every Child Matters.

The Disability Equality Scheme should assist public authorities in ensuring that disabled children and young people are fully and positively included in the proposed changes and new planning duties to improve the life chances of all children and young people in the community.

Appendix A - Other publications

- Council for Disabled Children, Sure Start and the National Children's Bureau (2004) 'Early Years and the Disability Discrimination Act 1995: what service providers need to know', NCB: Publications
- Department for Education and Skills (2006), Guidance on the Children and Young People's Plan, DfES: Publications
- Department for Education and Skills and Department for Work and Pensions (2006) 'Choice for Parents, the Best Start for Children, Making it Happen: An Action Plan for the Ten Year Strategy: Sure Start Children's Centres, Extended Schools and Childcare', DfES: Publications
- Department of Health and Department for Education and Skills (2004) 'National Service Framework for Children, Young People and Maternity Services, Standard 8 (Disabled Children)', Department of Health
- Emerson, E and Hatton, C (2005) 'The Socio-Economic Circumstances of Families with a Disabled Child', Institute of Health Studies, University of Lancaster
- Emerson, E. & Robertson, J. (2002) 'The Mental Health Needs of Children and Adolescents with Learning Difficulties in Manchester: A Summary of the Results of a City-Wide Survey', Institute for Health Research: Lancaster University.
- Mir. G. et al, (2001) 'Learning difficulties and Ethnicity, Report to the Department of Health', London: Department of Health.
- Norah Fry Research Centre (2006) 'Finding the right support? A review of issues and positive practice in supporting parents with learning difficulties and their children', Bristol: funded by the Baring Foundation.
- National Society for the Prevention of Cruelty to Children,

(2003) 'It doesn't happen to disabled children: Child Protection and Disabled Children', London, NSPCC

Disclaimer

The information in this guidance is based on the law but its main purpose is to help authorities to comply with and make the most of the Disability Equality Duty. The Statutory Code of Practice on the Disability Equality Duty provides further detail of the legislation.