

OEAP EG: Inclusion as a Legal Issue

Employers, Heads/Managers, Curriculum Planners, EVCs and Visit Leaders should be aware of the extent to which Inclusion is or is not a legal issue.

Under the Disability Discrimination Act 1995, it is unlawful to:

- treat a disabled young person less favourably;
- fail to take reasonable steps to ensure that disabled persons are not placed at a substantial disadvantage without justification.

A young person will be deemed to have a disability if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. Young people who have had, but no longer have, a disability are also protected from discrimination.

- The term "Impairment" includes sensory difficulties such as sight or hearing difficulties.
- "Mental impairment" covers a range of impairments relating to mental functioning, including "learning difficulties".
- "Long term" in this context means it has lasted 12 months or more, or is likely to last at least 12 months, or is likely to last the rest of the person's life.

Every effort should be made to ensure that outdoor learning activities and visits are available and accessible to all, irrespective of special educational or medical needs, ethnic origin, gender or religion. If a visit needs to cater for young people with special needs, every reasonable effort should be made to find a venue that is both suitable and accessible and that enables the whole group to participate fully and be actively involved.

Establishments should take all reasonably practicable measures to include all young people. The principles of inclusion should be promoted and addressed for all visits and reflected in establishment policy, thus ensuring an aspiration towards:

- an entitlement to participate
- accessibility through direct or realistic adaptation or modification
- integration through participation with peers

However, the Disability Code of Practice for schools states '*where a child has a behaviour difficulty for a reason other than a disability, for example arising from social or domestic circumstances, it is likely that such a difficulty is not covered by the [DDA] legislation.*'

It is also the case that the adjustments made under the DDA to include a disabled young person, should not impinge unduly on the planned purpose of the activity. As an example, it may not be appropriate for a parent to accompany a child on a residential visit where the planned learning outcomes of the visit include "developing independence" and "developing relationships".

A decision to exclude a young person should never be taken lightly, and only after extensive consultation with all those who have responsibility for the young person, including head teacher/manager, visit leader/class teacher, parent and any support staff and possibly their GP and any third party provider. Therefore, it may be reasonable to exclude a young person where their behaviour presents a significant, unmanageable and unacceptable risk to the health, safety and welfare of either themselves, or other members of the group, or the leaders.

When a young person is excluded on these grounds, there should be consideration of providing alternative ways of achieving the same learning outcomes.

Where there is some doubt as to including or excluding a young person on the grounds of their behaviour, then the following points should be considered;

- identifying the issue at the earliest stage of planning;
- involving all interested parties;
- recording this process;
- establishing a behaviour management plan with agreed action points that may enable inclusion on the visit;
- establishing behaviour targets and timescales to be met to allow inclusion, or trigger a decision to exclude;
- providing an additional adult, such as a parent or support worker, with a specific brief to manage behaviour issues;
- expectations of staff must be reasonable, be within their competence and be in keeping with their normal work practices.