

For PGCE trainees

Every Child Matters

SEN and disability legislation

Self-study task 2

Introduction to the self-study tasks

These self-study tasks are designed to help trainee teachers on PGCE courses learn more about teaching pupils with special educational needs (SEN) and/or disabilities. They can be used as stand-alone activities or to supplement and extend taught sessions on SEN and disability provided by the school or local authority.

There are 17 self-study tasks in all. Each task will take about two hours to complete, excluding practical activities.

Every Child Matters	
SST1	Inclusion and Every Child Matters
SST2	SEN and disability legislation
SST3	English as an additional language and SEN
SST4	Children's needs and development
SST5	ICT and SEN
Cognition and learning	
SST6	Moderate learning difficulties
SST7	Dyslexia and specific learning difficulties
SST8	Working memory
Behavioural, emotional and social needs	
SST9	Behavioural, emotional and social difficulties
Communication and interaction	
SST10	Speech, language and communication needs
SST11	Autistic spectrum disorders
Physical and sensory impairment	
SST12	Visual impairment
SST13	Hearing impairment
SST14	Handwriting
SST15	Developmental coordination disorder/dyspraxia
Working in partnership	
SST16	Working with colleagues in school
SST17	Working with parents/carers and other professionals

How to use the materials

This is an online resource. Some of the tasks are for you to do on your own; others are particularly suitable to do working with a partner.

Where some of the tasks ask you to record information you need to print out the relevant material first. Other tasks may involve using the internet, which gives you access to rich sources of information about SEN and disability and online forums for additional advice.

Each task includes the following elements:

- the professional standards addressed
- learning outcomes
- an opportunity to explore the concepts, definitions and research findings most relevant to the topic
- ideas for implementing the national curriculum inclusion statement in relation to the topic, including target setting, practical strategies, the role of additional adults and pupil grouping
- practical activities – including action research, child study and class observation
- resources – including books and websites
- an opportunity to evaluate your progress against the outcomes and plan your next steps.

A useful resource to support your studies is **Implementing the Disability Discrimination Act in Schools and Early Years Settings (DfES, 2006)**. It is available free to all schools and there should be a copy in your training institution or school. (If you haven't got a copy, you can order one using the link.)

It should be read in conjunction with **Promoting Disability Equality in Schools (DfES, 2006)** – which you can view, download or order by following the link.

Evidence and sources of information

As you work through these self-study tasks, try to keep a critical and evaluative attitude. Much of the understanding we have of what works, or doesn't work, in relation to meeting the needs of pupils with SEN and/or disabilities has not been fully researched.

Remember:

- many interventions suggested for one group of pupils with SEN and/or disabilities will often benefit other groups of pupils, including those without SEN and/or disabilities
- the quickest way to find out what to do is often to ask the pupil or their parent/carer what they think works.

Literature reviews of 'what works' in relation to literacy and mathematics for pupils with SEN and/or disabilities, which has been investigated in some depth, are available at: www.dcsf.gov.uk/research/data/uploadfiles/RR554.pdf

Other sources of information are listed at the end, under 'Resources and references'. You can use these to follow up and learn in greater depth about the material covered in this self-study task.

Self-study task 2

SEN and disability legislation

Professional standards addressed

- Q1** Have high expectations of children and young people including a commitment to ensuring that they can achieve their full educational potential and to establishing fair, respectful, trusting, supportive and constructive relationships with them.
- Q2** Demonstrate the positive values and attitudes and behaviour they expect from children and young people.
- Q3**
 - (a) Be aware of the professional duties of teachers and the statutory framework within which they work.
 - (b) Be aware of the policies and practices of the workplace and share in collective responsibility for their implementation.
- Q32** Work as a team member and identify opportunities for working with colleagues, sharing the development of effective practice with them.

Learning outcome

You will have an understanding of the framework of special educational needs (SEN) and disability legislation and guidance.



Activities

		Timings
Activity 1	Definitions of SEN and disability	25 minutes
Activity 2	Local authority and school responsibilities (SEN)	30 minutes
Activity 3	Provision that is 'additional' or 'different'	25 minutes
Activity 4	Local authority and school responsibilities (disability)	25 minutes
Activity 5	Points for action	15 minutes

Resources and references

Activity 1

Definitions of SEN and disability



Approximate timing: 25 minutes

The definition of special educational needs (SEN)

The notion of SEN was established by the Committee of Enquiry into the Education of Handicapped Children and Young People, chaired by Mary (now Baroness) Warnock in 1978, and subsequently defined in law in the Education Act 1981. That definition has not changed since 1981 and was consolidated into the Education Act 1996, along with the other statutory provisions for SEN.

The Education Act 1996 says:

"A child has special educational needs if he has a learning difficulty which calls for special educational provision to be made for him."

A child has a learning difficulty if he:

- (a) "has a significantly greater difficulty in learning than the majority of children of the same age
- (b) has a disability that either prevents or hinders him from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local authority, or
- (c) is under five and falls within the definition at (a) or (b) above or would do so if special educational provision was not made for the child."

'Special educational provision' is defined as:

- (a) "for children of two or over, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of their age in schools maintained by the local authority, other than special schools, in the area, and
- (b) for children under two, educational provision of any kind."

Section 312, Education Act 1996

Relative definitions

The definitions of SEN and special educational provision are relative, in two important ways:

- a learning difficulty needs to be 'significantly greater' relative to the difficulties in learning of the majority of children of the same age, and
- 'special educational provision' is relative to provision that is generally available in the area – ie it is additional to, or different from, provision that is generally available for children of the same age in mainstream schools in the area.

This accounts for some of the wide variation in the numbers of pupils identified as having SEN in different schools and local authorities across the country.

SEN and English as an additional language

The Act explicitly distinguishes between pupils with SEN and pupils learning English as an additional language (EAL).

“Children must not be regarded as having a learning difficulty solely because the language or form of language of their home is different from the language in which they will be taught.”

SEN Code of Practice (DfES, 2001)

Pupils learning EAL may also sometimes experience learning difficulties, be disabled, or have SEN, but a link should never be assumed without very good evidence.

How many pupils have SEN?

Nationally, nearly three per cent of pupils have a statement of SEN and nearly 18 per cent have SEN but no statement (DCSF, January 2009).

The government collects data on the types of need of pupils with SEN with statements and those at School Action Plus.¹ The types of need are described in guidance available to all schools – Data Collection by Type of Special Educational Need, DfES, 1889-2005.

The largest group of pupils with SEN have moderate learning difficulties (MLD), followed by those with behavioural, emotional and social difficulties (BESD). Pupils with speech, language and communication needs (SLCN), specific learning difficulties, including dyslexia, or autistic spectrum disorders (ASD) are the next largest groups.²

The definition of disability

The Disability Discrimination Act 1995 (DDA) defines a disabled person as someone who has:

“a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities”.

In the Act:

- ‘physical impairment’ includes sensory impairment
- ‘mental impairment’ includes learning difficulties as well as an impairment resulting from or consisting of a mental illness.

The definition can include a wide range of impairments, including hidden impairments such as dyslexia, ASD, SLCN, and attention deficit hyperactivity disorder (ADHD).

Having an impairment does not **of itself** mean that a pupil is disabled. It is the effect on the pupil’s ability to carry out normal day-to-day activities that has to be considered. The test of whether an impairment affects normal day-to-day activity is whether it affects one or more of the following:

- mobility
- manual dexterity
- physical coordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- perception of risk of physical danger.

1 There is a discussion of these terms in activity 3.

2 All statistics are based on the 2009 figures (DCSF, January 2009).

An impairment that has a **long-term** and **substantial** effect on a pupil's ability to do these things may be classed as a disability.

- 'Long-term' is defined in the DDA as having lasted, or being likely to last, 12 months or more. Clearly this rules out conditions such as a broken limb, which is likely to heal within that time.
- 'Substantial' means 'more than minor or trivial' – but it is often helpful to think of it as meaning 'having some substance'.

The combined effect of these two terms is to lower the threshold of what may count as a disability, thus including more people in the definition than is perhaps commonly assumed.

There are some conditions that 'automatically' count as a disability:

- People with severe disfigurements are covered by the DDA and do not need to prove that the impairment has a substantial, adverse effect on their ability to carry out normal day-to-day activities
- People who have progressive conditions (conditions that are likely to change and develop over time) are included in the definition and are likely to be covered as soon as there is some effect on their ability to carry out normal day-to-day activities (ie before there is a substantial effect)
- The DDA 2005 amended the 1995 Act to include people with cancer, multiple sclerosis and HIV infection as disabled as soon as they have the condition and before there is necessarily any effect on their ability to carry out normal day-to-day activities

The existence of an impairment or condition should not be confused with whether a pupil has been given an official diagnosis – a particular condition exists, whether or not it has been officially recognised. For the purposes of the definition, all treatments – except the use of spectacles – are ignored, and the effect of the impairment has to be considered as it would be without any medication or treatment.

The Government has issued guidance relating to the definition of disability in the publication, Disability Discrimination Act: Guidance on matters to be taken into account in determining questions relating to the definition of disability, Department for Work and Pensions, 2006.

Is Tom disabled?³



Asking yourself the following questions about an individual pupil can help you decide whether the pupil is disabled under the terms of the DDA. Try answering these questions for a child you know or a pupil you have observed or taught during your school placement who you think may be disabled. (For the purposes of this activity we call your pupil Tom.)

Q1 Does Tom have difficulty with any of the following 'normal day-to-day activities'?:

- **mobility:** getting to or from school, moving about the school and/or going on school visits
- **manual dexterity:** holding a pen, pencil or book, using tools in design and technology, playing a musical instrument, throwing and catching a ball
- **physical coordination:** washing or dressing, taking part in games and physical education (PE)
- **ability to lift, carry or otherwise move everyday objects:** carrying a full school bag or other fairly heavy items
- **continence:** going to the toilet or controlling the need to go to the toilet
- **speech:** communicating with others or understanding what others are saying – how they express themselves orally or in writing
- **hearing:** hearing what people say in person or on a video, DVD, radio or tape recording
- **eyesight:** ability to see clearly (with spectacles/contact lenses where necessary), including any visual presentations in the classroom
- **memory or ability to concentrate, learn or understand:** work in school, including reading, writing, number work or understanding information
- **perception of the risk of physical danger:** inability to recognise danger, eg when jumping from a height, touching hot objects or crossing roads.

Q2 Is Tom's difficulty caused by an underlying impairment or condition?

Q3 Has Tom's impairment or condition lasted, or is it likely to last, more than 12 months?

Q4 Is the effect of Tom's impairment or condition 'more than minor or trivial'?

If you have answered yes to questions 1 to 4, then Tom is probably disabled under the DDA. If Tom receives medical or other treatment to reduce or remove the effects of his condition, he may still be disabled. The test is whether the effects would recur if he were to stop his treatment.

3 Taken from the 'duties and definitions' chapter of *Implementing the DDA in Schools and Early Years Settings*, (DRC and DfES, 2006).

Disability and SEN: the relationship between them

The law on SEN is well established and has been in place for some years, while the 1995 DDA was extended to schools through the SEN and Disability Act in 2001.

The definition of disability applies to people of all ages, whereas the definition of SEN applies to children only. For pupils in our schools, we need to think about the overlap between pupils who have SEN and those who have a disability, as defined by the DDA.

Many pupils who have SEN will also be defined as disabled. It is quite likely that many of the pupils who have a statement or who are at School Action Plus, or Early Years Action Plus, will have impairments which have a long-term and substantial adverse effect on their ability to carry out day-to-day activities, and thus count as disabled. In 2005, a report from the Prime Minister's Strategy Unit estimated that about seven per cent of children in the UK may count as disabled. In a similar period – the academic year 2003/04 – 6.76 per cent of pupils in primary and secondary schools were at School Action Plus or had a statement (DfES, 2005).

However, not all disabled pupils have SEN. For example, every school is likely to have disabled pupils with medical conditions, such as severe asthma, arthritis or diabetes, who may have rights under the DDA but do not need special educational provision to be made for them under the SEN framework.

Activity 2

Local authority and school responsibilities (SEN)



Approximate timing: 30 minutes

30 mins

Local authority duties

Local authorities have important statutory duties relating to special educational provision and policy for SEN. They must:

- Review the special educational provision that they make.
- Have an SEN policy – this has to meet a range of requirements which are set out in regulations.⁴ Authorities should publish their SEN policy on their website.
- Secure and publicise a parent partnership service (PPS).
- Secure and publicise disagreement resolution (mediation) services.

The key duties of local authorities towards pupils with SEN are set out in the Education Act 1996. They are to:

- identify pupils with SEN
- assess pupils with SEN, when necessary
- make and maintain statements, when necessary
- arrange the special educational provision set out in a statement.

Parents who do not agree with the decisions of the local authority about the assessment of their child's needs, or the special educational provision to be made for their child through a statement, have a right of appeal to the First-tier Tribunal (Special Educational Needs and Disability) known as the Special Educational Needs and Disability Panel (SENDISP) (www.sendist.gov.uk).

4 The Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001. These are reproduced in annex A at the back of the SEN Code of Practice.

Schools' duties

Schools' SEN duties are also set out in the Education Act 1996. It is the responsibility of the governing body to:

- use its 'best endeavours' to make sure that the appropriate special educational provision is made for pupils with SEN
- ensure that, when the school knows that a pupil has SEN, those needs are made known to all relevant teachers
- ensure that teachers at the school are aware of the importance of identifying and providing for pupils who have SEN
- ensure that a pupil with SEN joins in the activities of the school together with pupils who do not have SEN, as far as possible
- report to parents on the implementation of the school's policy for pupils with SEN
- have regard to the SEN Code of Practice
- inform parents when the school is making special educational provision because it believes the pupil has SEN
- appoint a special educational needs coordinator (SENCO) – from 1 September 2009, this must be a qualified teacher.

The headteacher is responsible for the day-to-day management of all aspects of the school's work. The SENCO is responsible for coordinating the day-to-day operation of the school's SEN policy and provision for pupils with SEN. The SEN Code of Practice (DfES, 2001) makes it clear that "all teachers are teachers of children with SEN. Teaching such children is, therefore, a whole-school responsibility."

The school SEN policy

Every maintained school must have an SEN policy – a single document which sets out, for parents, staff, the local authority and others:

- basic information about its special educational provision
- its policies for identifying, assessing and providing for all pupils with SEN
- its staffing policies and partnerships with other bodies outside the school.

The role of the SENCO in mainstream schools

Every maintained school must appoint a teacher to coordinate provision for pupils with SEN.⁵ The school's governing body must determine the role of the SENCO in relation to the leadership and management of the school and the SENCO's key responsibilities. They must also monitor the effectiveness of the SENCO in undertaking those responsibilities. Regulations suggest what the responsibilities might be. They reflect to a large extent the following extracts from the SEN Code of Practice, which gives guidance on the role of the SENCO in mainstream primary and secondary schools.

Primary schools

5:30 The SEN coordinator (SENCO), in collaboration with the headteacher and governing body, plays a key role in determining the strategic development of the SEN policy and provision in the school in order to raise the achievement of children with SEN. The SENCO takes day-to-day responsibility for the operation of the SEN policy and coordination of the provision made for individual children with SEN, working closely with staff, parents and carers, and other agencies. The SENCO also provides related professional guidance to colleagues with the aim of securing high-quality teaching for children with SEN.

5:31 The SENCO, with the support of the headteacher and colleagues, seeks to develop effective ways of overcoming barriers to learning and sustaining effective teaching through the analysis and assessment of children's needs, by monitoring the quality of teaching and standards of pupils' achievements, and by setting targets for improvement. The SENCO should collaborate with curriculum coordinators so that the learning for all children is given equal priority, and available resources are used to maximum effect.

5:32 In mainstream primary schools the key responsibilities of the SENCO may include:

- overseeing the day-to-day operation of the school's SEN policy
- coordinating provision for children with special educational needs
- liaising with and advising fellow teachers
- managing learning support assistants
- overseeing the records of all children with special educational needs
- liaising with parents of children with special educational needs
- contributing to the in-service training of staff
- liaising with external agencies including the LEA's support and educational psychology services, health and social services, and voluntary bodies.

From chapter 5 of the SEN Code of Practice

5 From 1 September 2009 – see The Education (Special Educational Needs Coordinators) (England) Regulations 2008.

Secondary schools

- 6:32** The SEN coordinator (SENCO), in collaboration with the headteacher and governing body, plays a key role in helping to determine the strategic development of the SEN policy and provision in the school to raise the achievement of pupils with SEN. The SENCO takes day-to-day responsibility for the operation of the SEN policy and coordination of the provision made for individual pupils with SEN, working closely with staff, parents, the Connexions personal adviser (PA) and other agencies. The SENCO also provides related professional guidance to colleagues with the aim of securing high-quality teaching for pupils with SEN.
- 6:33** The SENCO, with the support of the headteacher and colleagues, seeks to develop effective ways of overcoming barriers to learning and sustaining effective teaching through the analysis and assessment of pupils' needs, by monitoring the quality of teaching and standards of pupils' achievements, and by setting targets for improvement.
- 6:34** The SENCO should collaborate with heads of department or faculty, the literacy and numeracy coordinators and pastoral colleagues to ensure that learning for all pupils is given equal priority, and that available resources are used to maximum effect.
- 6:35** In mainstream secondary schools the key responsibilities of the SENCO may include:
- overseeing the day-to-day operation of the school's SEN policy
 - liaising with and advising fellow teachers
 - managing the SEN team of teachers and learning support assistants
 - coordinating provision for pupils with special educational needs
 - overseeing the records on all pupils with special educational needs
 - liaising with parents of pupils with special educational needs
 - contributing to the in-service training of staff
 - liaising with external agencies including the LEA's support and educational psychology services, the Connexions PA, health and social services and voluntary bodies.

From chapter 6 of the SEN Code of Practice

The role of the SENCO is to lead teaching and learning and the coordination of provision for pupils with SEN in their school. The person appointed as the SENCO is not expected to carry out all of the functions associated with the role themselves, and SENCOs are often supported by others. It is up to individual schools to decide how to organise the coordination of SEN provision and arrangements vary from school to school. But all schools must have regard to the guidance in the SEN Code of Practice and comply with statutory regulations.

Gathering information on your school's SEN policy



The purpose of this activity is to gather information on a school's SEN policy. Use the SEN policy from a school you have visited, or one of your placement schools, to complete the relevant table. If possible, make an appointment to talk to the SENCO to discuss your findings and raise any questions arising from this activity.

1 Basic information

What are the objectives of the school's SEN policy? How were they arrived at?

What is the name of the person responsible for SEN coordination?

What are the arrangements for the coordination of provision?

What are the admission arrangements for pupils with SEN but no statement?

Does the school have any specialist provision, eg a resource base or special unit? If so, what kind of provision does it have?

What facilities are there for increasing access for disabled pupils?

2 Identification, assessment and provision

How does the school allocate resources for SEN?

What are the school's arrangements for identifying pupils with SEN, assessing their needs and reviewing their progress?

How does the school adjust its curriculum to meet the needs of pupils with SEN?

What steps does the school take to enable pupils with SEN to engage in activities with other pupils?

How does the governing body evaluate the success of the education the school provides for pupils with SEN?

What are the arrangements for hearing complaints about the school's SEN provision?

3 Staffing policies and partnerships beyond the school

What arrangements does the governing body make for professional development of staff in relation to SEN?

What use is made of teachers, facilities and support from agencies outside the school?

What links does the school have with other schools in respect of transfers and transition?

What links does the school have with health, social services, education welfare services and voluntary organisations?

Summarised from the Education (Special Educational Needs) (Information) (England) Regulations 1999⁶

6 The full text of the Regulations is reproduced in annex A at the back of the SEN Code of Practice.

Activity 3

Provision that is 'additional' or 'different'



Approximate timing: 25 minutes

Before you do the activities in this section, read:

- the SEN Code of Practice, chapter 5: Identification, assessment and provision in the primary phase (primary), or
- the SEN Code of Practice, chapter 6: Identification, assessment and provision in the secondary phase (DfES, 2001) (secondary), and
- the national curriculum inclusion statement (QCA/DfEE, 1999), and
- the SEN Toolkit, section 6: Strands of action to meet SEN (DfES, 2001).

As you have seen, school governing bodies are required to use their 'best endeavours' to ensure that appropriate provision is made for pupils with SEN. Local authorities and schools, and others working with them, are required by law to 'have regard to' the SEN Code of Practice (DfES, 2001) which provides the main guidance on carrying out their duties.

Most pupils make progress within an inclusive curriculum without any great difficulties. Skilled teachers can usually meet their learning needs even when these are more persistent or complex. The more flexible and responsive teachers' strategies are, the more likely it is that pupils with a range of learning needs will make adequate progress.

The SEN Code of Practice (5:41 and 6:49) states that "where progress is not adequate, it will be necessary to take some **additional or different** action to enable the pupil to learn more effectively".

The code recommends that schools adopt a 'graduated approach' to meeting a pupil's SEN, making provision that is additional to or different from that provided as part of the school's usual differentiated curriculum. The 'graduated approach' envisages that increasingly, step by step, specialist expertise can be brought in to help support the school in meeting the pupil's needs.

Action by a school to meet pupils' SEN tends to fall within four broad strands, described in the SEN Toolkit (DfES, 2001) as:

- **assessment, planning and review** – supplementing normal systems of assessment, monitoring and planning for all pupils
- **grouping for teaching purposes** – using groups of different types and sizes within normal lessons, on either a short- or long-term basis to improve learning
- **additional human resources** – developing and deploying teachers, teaching assistants and other adults effectively and involving pupils to improve learning and participation
- **curriculum and teaching methods** – using the considerable flexibility offered by the curriculum to help pupils with diverse learning needs to make progress.

The code sets out two levels of intervention which the school has full responsibility for:

- School Action, and
- School Action Plus.

It also sets out the requirements for statutory assessments and statements, which involve the local authority and the school.

School Action

For most pupils with SEN, appropriate provision can be made from the resources and expertise already available in their mainstream school through School Action. Deciding on the most appropriate form of provision involves:

- looking at the pupil's all-round progress, including their attainment, barriers to their participation and learning and their strengths and achievements, and
- assessing the strategies that are currently being used to meet the pupil's learning needs and how these might be made more effective.

The triggers for intervention through School Action could be the teacher's or others' concern, underpinned by evidence, about a pupil who, despite receiving differentiated learning opportunities:

- "makes little or no progress even when teaching approaches are targeted particularly in a pupil's identified area of weakness
- shows signs of difficulty in developing literacy or mathematics skills that result in poor attainment in some curriculum areas
- presents persistent emotional and/or behavioural difficulties, which are not ameliorated by the behaviour management techniques usually employed in the school
- has sensory or physical problems, and continues to make little or no progress despite the provision of specialist equipment, and/or
- has communication and/or interaction difficulties, and continues to make little or no progress despite the provision of a differentiated curriculum."

SEN Code of Practice, paragraphs 6:51 and 5:44

School Action: the national curriculum inclusion statement

The national curriculum inclusion statement is a **statutory** part of the National Curriculum (DfEE/QCA, 1999). It requires teachers to:

- **set suitable learning challenges** – to give every pupil the opportunity to experience success in learning and to achieve as high a standard as possible
- **respond to pupils' diverse learning needs** – by setting high expectations and providing opportunities for all pupils to achieve, and planning approaches to teaching and learning so that all pupils can take part in lessons fully
- **overcome potential barriers to learning and assessment for individuals or groups of pupils** – by taking account of particular learning and assessment requirements and making modifications/adjustments, where necessary, to support individuals or groups of pupils.

School Action: inclusive teaching benefits all pupils

While the combination of actions taken for a pupil with SEN and/or disabilities may be unique, many of the actions will benefit other pupils in the class. For example, a pupil with learning difficulties in year 7 might have a combination of:

- targeted literacy support
- materials differentiated with an appropriate reading age across the curriculum
- small group work in maths, once a week
- peer tutoring on science vocabulary
- the support of a teaching assistant in science lessons
- specific seating arrangements in some lessons
- a visual timetable
- a 'social skills' lunch club.

Although these interventions are all additional to, or different from, what is provided generally, most are likely to support other pupils, as well as those with SEN.

School Action Plus

Intervention through School Action Plus occurs when a pupil continues to make little or no progress with the additional or different provision made through School Action. At School Action Plus, the school seeks advice and support from others such as an educational psychologist, local authority support services or consultants for behaviour management. The aim is to develop more effective strategies for helping the pupil to make progress in their learning.

Statutory SEN assessments and statements of SEN

In the relatively few cases where pupils do not make adequate progress with the support provided through School Action and School Action Plus, the local authority may make a statutory assessment of special educational needs and then consider whether or not to issue a statement.

A statutory assessment is a detailed investigation to find out exactly what a pupil's SEN are. It can be requested by the child's parent or school. In considering such a request, the local authority works cooperatively with the pupil, their parents, their school, and, as appropriate, other agencies, to decide whether a statutory assessment of their SEN is necessary. If it concludes that a statutory assessment is necessary, the local authority conducts the assessment in close collaboration with parents, schools and other agencies.

If the local authority decides a statutory assessment is necessary it seeks advice, as appropriate, from:

- the child's parents
- their school
- a doctor/health services
- an educational psychologist
- social services (who will only give advice if they know the child)
- anyone else the local authority thinks appropriate.

The SEN Code of Practice strongly advises local authorities to ascertain and take the child's views into account.

The advice obtained is then considered by the local authority 'in the round' and informs their decision about whether a statement should be drawn up.

If the local authority decides to make a statement, a further process of consultation takes place. During this, the child's parents have the right to comment on and seek amendments to draft statements, ask for meetings with the local authority, and ask for the statement to name a particular school they want their child to attend.

A statement:

- draws on (and includes as appendices) all the advice gathered during the statutory assessment
- describes the pupil's special educational needs, and any relevant non-educational needs, to give a full picture of the pupil, their strengths and difficulties
- specifies the special educational provision the pupil should have in order to meet their social educational needs, the objectives it should meet, and the arrangements for monitoring progress in meeting the objectives
- specifies the school, or type of school, the child should attend
- specifies any non-educational provision.

Local authorities have a legal duty to arrange the special educational provision specified in a statement and the governing body of a maintained school specified in the statement has a duty to admit the pupil.

If parents disagree with the local authority's decisions they have the right to appeal against the contents of the statement to the Special Educational Needs and Disability Panel. The panel can require the local authority to amend the statement, and if they do so the local authority must comply. Once a statement is made for a pupil it must be reviewed annually and amended if necessary.

Note in lieu of a statement

A statutory assessment will not always lead to a statement. A local authority will normally decide to make a statement only when it concludes that the special educational provision necessary to meet the pupil's needs cannot reasonably be provided by the pupil's school from the resources available to it. If the local authority decides a statement is not needed, it may prepare a note in lieu. This uses the findings of the assessment to guide the school and those working with it on augmenting their strategies to meet the pupil's SEN.

Reducing reliance on statements

An Audit Commission study in 2002 raised these concerns about the assessment and statementing process:

- "statutory assessment is a costly, bureaucratic and slow process – a statement takes six months to produce and costs an estimated £2,500, but often it 'adds little value' in helping to meet a pupil's needs, according to parents and teachers
- many parents find statutory assessment a stressful and alienating process – most of those met by the research team said they 'had to fight' to get a statement
- statements provide little guarantee that a child will get the support they need in school, due to weak monitoring arrangements in many local authorities and schools and shortfalls in some health and social services for children, and
- children with similar needs are getting different levels of support depending on where they live, which school they go to and how assertive their parents are."

The study also recognised that parents and professionals valued:

- “the formal recognition of a child’s needs provided by a statement, and the advice received from the educational psychology service and other agencies (although often this came prior to statutory assessment), and
- the rigour added to planning to meet the needs of individual children – and pressure on all concerned to work together to this end.”

Such findings have contributed to local authorities delegating more of the resources previously set aside and held ‘centrally’ for statements to schools to support earlier intervention through School Action and School Action Plus. The Government also encouraged local authorities to reduce reliance on statements by building the capacity of schools to identify and meet pupils’ SEN earlier in its SEN strategy Removing Barriers to Achievement, but it was clear that this “...must result in a better deal for children and their parents, not a reduced entitlement”. Delegated resources are not ring-fenced, however, and parents and voluntary groups often express concerns that they can be redirected to meet other school priorities.

Planning for individual pupils

The practical measures taken to support pupils with SEN, including those with a statement, can be set out in an individual education plan (IEP). IEPs are not a legal requirement, provided a school can show it has other appropriate procedures and practices in place – eg a whole-school model in which every pupil has their own targets and their own plan.

When looking at any plan for a pupil, check whether:

- targets are assessable – ie will you be able to see if they have been achieved?
- the plan discusses strengths as well as difficulties
- the plan proposes strategies that will help the teacher design inclusive lessons.

Jean Gross (2003) has suggested that planning for pupils with SEN and/or disabilities is most effective when it is done as part of a teacher’s usual medium- and short-term planning.

Embedding SEN and disability in teachers’ planning takes time and effort, however, and teachers often need:

- professional development on the basic principles
- appropriate planning formats
- modelling or coaching support on differentiated planning from the SENCO.

Gross asserts that schools should:

- consider building the requirement to plan for pupils with SEN and/or disabilities into performance management
- build in systems for monitoring teachers’ planning to identify staff who may need further support or help.

Identifying the action taken for pupils



On your next school placement or visit, identify a pupil with SEN who you teach or who is taught in lessons you can observe. You may want to discuss your choice of pupil with your mentor or the school SENCO.

Identify the action taken for this pupil – by you, or others who teach the pupil – that is **additional to** or **different from** action taken for all the other pupils. Some of the interventions may be set out in an IEP or other documents where the pupil’s targets and **additional or different** provision are recorded. Use table 1 to write down these actions under the appropriate headings.

Consider how each action helps to include the pupil in lessons and helps them to make progress.

Table 1: Action taken

Actions	Effect of the action
1 Assessment, planning and review	
2 Grouping for teaching purposes	
3 Additional human resources	
4 Curriculum and teaching methods	

When you have a fairly comprehensive view of the action taken for this pupil, consider with your mentor and/or the SENCO the following issues:

- Communication – are all staff aware of the provision required by the pupil?
- The pattern of provision – are the additional or different arrangements the same for every area of the curriculum that you have considered?
- Effectiveness – how do the additional or different arrangements improve outcomes or progress for the pupil? How is this monitored?
- Additional features of provision – are there any additional features of the learning environment that are adapted, but not captured, by the four strands in the chart – eg any factors that are varied to motivate the pupil or to help the pupil to remember things?

Activity 4

Local authority and school responsibilities (disability)



Approximate timing: 25 minutes

25 mins

This section summarises the main requirements of legislation about disability on schools.

Requirements on schools

The disability discrimination duties in Part 4 of the DDA make it unlawful for schools to discriminate against disabled pupils. A school discriminates if it:

- "treats a disabled pupil or prospective pupil less favourably than another for a reason related to their disability and without justification, and
- fails, without justification, to take reasonable steps to avoid placing disabled pupils at a substantial disadvantage. This duty is often known as the 'reasonable adjustments' duty. Most actions taken to remove barriers for pupils with SEN will count as reasonable adjustments."

The Disability Rights Commission Code of Practice for Schools (2002) provides guidance on the way that the duties operate. The code provides examples illustrating how the duties apply in practical situations in schools. Ofsted expects to see evidence of reasonable adjustments being made in the classroom and in other areas of school life.

Schools most often treat a disabled pupil less favourably by having a 'blanket' policy, such as:

- requiring all pupils to wear the school uniform which, for example, may discriminate against a pupil who has eczema and who needs to wear a different fabric to make sure his skin is not irritated
- having a healthy snacks policy where only fresh fruit may be consumed at breaktimes which, for example, can discriminate against a diabetic pupil who may need to eat a high-calorie snack at some times during the day
- requiring all children to be toilet-trained before they can be admitted which, for example, may discriminate against a pupil with Hirschprung's disease who may be delayed in developing continence.

Requirements on schools fall into three areas:

- reasonable adjustments
- increasing accessibility – accessibility plans
- promoting disability equality – disability equality schemes.

Reasonable adjustments

Schools need to make 'reasonable adjustments' to their policies and practice. The reasonable adjustments duty requires schools to think ahead to anticipate the barriers that disabled pupils may face and remove or minimise them before a disabled pupil is placed at a substantial disadvantage.

Reasonable adjustments may need to be made in:

- admissions
- exclusions
- 'education and associated services' – a term that covers every aspect of the life of the school.

The local authority has responsibility for the DDA duties in decisions about admissions to a community school. But, in general, the governing body of the school is the 'responsible body' for the DDA duties and needs to make sure everyone in the school – staff or volunteer – is aware of the duties owed to disabled pupils.

To avoid discrimination, all staff should implement the duties in relation to their area of responsibility. For example:

- in the classroom – for a teacher
- on a school trip – for a member of staff planning the trip
- at lunchtimes and breaktimes – for relevant support staff
- in a particular area of the curriculum – for those with curriculum responsibilities
- across the whole school – for the headteacher.

Making reasonable adjustments helps to develop schools' capacity to provide improved access to every aspect of school life for disabled pupils. This doesn't happen overnight; it is a gradual and cumulative process. Successive waves of making reasonable adjustments, and the gradual incorporation of these into 'ordinary' good practice, are likely to raise the threshold from which the next round of reasonable adjustments can be made. In this way there is a gradual development of schools' capacity to include and provide access to every area of school life for disabled pupils.

Many adjustments, such as a change in timetabling or homework policy, will require all staff to do something differently. Such adjustments require collective rather than individual effort, institutional rather than individual change, and will require coordination at the most senior level.

Accessibility plans (planning duties in Part 4 of the DDA)

Schools are required to publish accessibility plans to show how, over time, access for disabled pupils will be increased. Plans have to show how schools are going to:

- increase access to the curriculum for disabled pupils
- make improvements to the physical environment of the school to increase access to education and associated services
- make information accessible in a range of different ways for disabled pupils, where it is provided in writing for pupils who are not disabled.

The governing body of the school is responsible for the school's accessibility plan. The development and implementation of the plan will involve different members of staff, according to their responsibilities, and it is now normally incorporated in the school's disability equality scheme.

Promoting disability equality: disability equality schemes

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

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

The duties apply across all schools' existing duties to disabled pupils, disabled staff and disabled parents, carers, governors and other people who use services provided by the school.

The duties are important and significant. They require schools to take a much more proactive, systematic and comprehensive approach to promoting disability equality and eliminating discrimination. They require schools to move from individual responses to building disability equality considerations in from the start, at every level of activity – from strategic policy to management and classroom practice. Schools must demonstrate what they have done and what they plan to do to improve opportunities for disabled pupils, staff, parents and others. They must involve disabled pupils, staff, parents and other users of the school in developing those plans. And they must address their various DDA duties together in a way that brings greater benefits to disabled pupils, staff, parents and other users of the school.

Regulations made under the DDA 2005 also place a specific duty on schools to develop a disability equality scheme to support the implementation of the general duty. The disability equality scheme provides the evidence of the school's work towards the six elements in the general duty set out above.⁷

The main requirements of the specific duty are to:

- prepare and publish a disability equality scheme (DES)
- involve disabled people in the development of a scheme
- implement the scheme, and
- report on it.

In drawing up a scheme, schools must:

- involve disabled people (pupils, staff, parents) in the preparation of the scheme
- set out how disabled people have been involved in its preparation
- set out their arrangements for gathering information on the effect of the school's policies on:
 - the recruitment, development and retention of disabled employees
 - the educational opportunities available to, and the achievements of, disabled pupils
 - the school's methods for assessing the impact of its current or proposed policies and practices on disability equality
 - the steps the school is going to take to meet the general duty (the school's action plan)
 - the arrangements for using information to support the review of the action plan and to inform subsequent schemes
- implement the actions in their scheme within three years
- report on their scheme annually
- review and revise their scheme every three years.

The school is not required to do anything under its scheme that is unreasonable or impracticable. Good practice in accessibility planning and in making reasonable adjustments (see above) helps schools towards meeting their duties under the DDA 2005. The more the school has made whole-school adjustments, and the further and the more effectively accessibility planning is designed to adapt the curriculum, physical environment and information for disabled pupils, the less schools will need to do to meet the 2005 requirements.

7 The Disability Rights Commission (DRC) Code of Practice on The Duty to Promote Disability Equality sets out the requirements of a disability equality scheme. Promoting Disability Equality in Schools (DfES, 2006a) is the DfES guidance on schools' duties. It is published as the sixth section of the DfES and DRC resource, Implementing the DDA in Schools and Early Years Settings. It is also available on the Teachernet website.

Local authority policies



Go to your local authority's website and find the following:

- their SEN policy
- their disability equality scheme
- details of the parent partnership service (PPS).

Make a note of any points of interest on SEN and/or disability you see in the site to discuss with colleagues and/or the SENCO.

If you cannot find either the policy or details of the PPS, you can e-mail the authority to check where the information is held.

Activity 5

Points for action



Approximate timing: 15 minutes

Spend a few minutes reflecting on this self-study task and record key points for action below.

What do I want to do next to develop my practice?

How will I do this?

What is my timescale for this to happen?

How will I know if I have been successful?

Do I need to involve anyone else in enabling this to happen?

Resources and references

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DfES, 2004, Removing Barriers to Achievement

DfES, 2004, Working Together: Giving children and young people a say

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DfES, 2006, Improving Behaviour and Attendance: Guidance on exclusion from schools and pupil referral units

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DRC, 2002, Code of Practice for Schools – Disability Discrimination Act 1995: Part 4

DRC, 2002, Survey carried out for the DRC by National Opinion Poll (NOP)

DRC, 2004, Code of Practice: Employment and occupation, The Stationery Office

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DRC, 2006, Schools and the Disability Equality Duty in England and Wales: Guidance for governors, headteachers, teaching and support staff working in schools in England and Wales

DWP, 2006, Disability Discrimination Act: Guidance on matters to be taken into account in determining questions relating to the definition of disability

The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005, SI no 2966

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Lewis, A, Parsons, S and Robertson, C, 2007, My School, My Family, My Life: Telling it like it is, University of Birmingham, School of Education and the Disability Rights Commission – a study detailing the experiences of disabled children, young people and their families in Great Britain in 2006.

Lindsay, G, Pather, S and Strand, S, 2006, Special Educational Needs and Ethnicity: Issues of over- and under-representation, Research report 757, Department for Education and Skills

Mencap, 2000, Living in Fear: The need to combat bullying of people with learning difficulties

Prime Minister's Strategy Unit, 2005, Improving the Life Chances of Disabled People

QCA/DfEE, 1999, Inclusion: Providing effective learning opportunities for all pupils (the national curriculum inclusion statement)

Social Exclusion Unit, 2003, A Better Education for Children in Care

Social Inclusion Partnership for the South East, 2004, 'Don't Leave Me Out' Exclusion through disability: A focus on children and young people in the south east, Government Office for the South East

Websites

DRC and DWP publications are available on the Equality and Human Rights Commission website:

www.equalityhumanrights.com

Information on the Disability Equality Duty: **www.dotheduty.org**

Disabled Parents Network: **www.disabledparentsnetwork.org.uk**

Promoting disability equality in schools, DfES guidance on the disability equality duty:

www.teachernet.gov.uk/docbank/index.cfm?id=10822

First-tier Tribunal (Special Educational Needs and Disability): **www.sendist.gov.uk**