



Health and safety matters for special educational needs: Legal issues including risk assessment

1 Introduction

This guidance is one of a series concerned with health and safety matters for special educational needs. It applies to the range of special educational needs that may be present in an educational environment, ranging from minor impairments through to more serious conditions. Details of other titles in this series can be found at: <http://www.hse.gov.uk/pubns/index.htm>.

It is intended principally for action by education employers who have disabled¹ students and/or students with special educational needs (SEN).² These may include local education authorities (LEAs), school governing bodies, principals and head teachers.

It recognises that some disabled students and students with SEN may require specialist handling, treatment or facilities. It also recognises that teachers and teacher assistants may face new situations, particularly when students with severe or complex SEN are taught in a mainstream setting or 'special' targeted provision.

It seeks to assist employers in complying with their duties under the Health and Safety at Work etc Act 1974 (HSW Act), and to help in their decision-making, which if done without thought for the quality of life, independence and dignity of the student, or without thought for the health and safety of the employee, can ultimately be costly and dangerous.

It is not meant to be an authoritative statement of the law. It offers practical solutions to the problems, adopting the risk assessment approach. It will also be relevant to employees, students (which for the purposes of this guidance includes pupils), carers (which for the purposes of this guidance includes parents) and visitors, eg visiting professionals, members of the public or contractors.

2 Achieving the balance

The guidance recognises that a balance has to be achieved between the requirements of the HSW Act and other legislation, such as the Disability Discrimination Act (DDA) or requirements under community care legislation. Under the HSW Act,

¹ 'Disabled students' includes all students who have 'an impairment or condition which has a substantial and long-term adverse effect on their ability to undertake normal day to day activities' (Disability Discrimination Act 1995). Under the Act school governing bodies, further education colleges and universities have a legal duty not to discriminate against disabled students and to take reasonable steps to avoid placing disabled students at a substantial disadvantage compared to non-disabled students.

² Students have special educational needs if they have a learning difficulty that calls for special educational provision to be made for them, even if a statement

employers are required to ensure the health and safety of their employees and non-employees ie students with disabilities. This has to be balanced in a way that ensures the human rights of each group are maintained. The DDA requires education employers to consider whether they have taken 'reasonable steps', if necessary by amending their health and safety policies, procedures and practices, to ensure that students with disabilities are not placed at a substantial disadvantage.

Protecting the health and safety of such students must be done in a way that is consistent with employers' duties under the DDA and in a way that does not place any unreasonable restrictions on students' rights to autonomy, privacy or dignity. For example, a student cannot be excluded solely on health and safety grounds.

3 Guiding principles

To help employers achieve this balance this guidance sets out some guiding principles:

- There should be a balance between the health and safety considerations of employees and individual students' rights to dignity, autonomy and privacy.
- Employees' health and safety should be maintained, but this should not be used as an excuse for denying disabled students and students with SEN access to educational opportunities.
- Effective management of health and safety considerations for disabled students and students with SEN should allow them maximum opportunities in their education.

4 The risks

Particular health and safety issues may include:

- manual handling of students with physical disabilities;

is not maintained (see Section 312 of the Education Act 1996). (In Scotland, the Record of Needs process, established by the Education (Scotland) Act 1980). In Scotland, other key legislation includes the Standards in Scotland's Schools Act 2000, the Further and Higher Education (Scotland) Act 1992, the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002, and the Education (Additional Support for Learning) (Scotland) Act 2004, which introduces a new framework built around the concept of additional support needs, a much broader concept than SEN. Employers also have responsibilities under the Special Educational Needs and Disability Act 2001.

- students unable to recognise everyday hazards, communicate distress, or move around independently;
- using mechanical aids and equipment;
- using therapy and ball pools;
- administering medical treatment and minimising the risk of infection;
- management of difficult behaviour and the use of restraint;
- lone working where an employee works on a one-to-one basis with a SEN student; and
- transport issues such as getting learning disabled or physically disabled students in and out of transport and making sure that access to the premises is appropriate.

5 The health and safety framework - general

The HSW Act and supporting regulations require employers to ensure the safety, health and welfare at work of their employees so far as is reasonably practicable. It also places a general duty on employers to conduct their business in such a way as to ensure that others (ie non-employees and members of the public) are not exposed to risks to their health or safety.

Employees are required to co-operate with their employers in complying with health and safety law. They are required to take reasonable care to ensure they do not endanger themselves or anyone else using the premises, which could include students and visitors. They should:

- follow the instructions and training given by their employer in the safe use of particular items of equipment such as hoists, facilities such as hydrotherapy pools, medical substances such as drugs and safe use of other chemicals such as cleaning materials as appropriate;
- inform their employer of any work situation which is a serious and immediate danger to health and safety, for example broken equipment;
- inform their employer of any shortcomings in the arrangements for ensuring the health and safety of employees.

Under the Management of Health and Safety at Work Regulations 1999, as amended (the Management Regulations), employers need to assess the risks to the health and safety of employees and others who may be affected by their activities. This may require employers taking advice from other professionals on specific risks, eg medical substances.

6 How should risk assessments under the HSW Act be carried out?

Assessments may be needed at different levels. At the **generic** level they should examine what reasonable steps can be taken to minimise health and safety risk generally, while avoiding disability discrimination. An **individual** risk assessment will relate specifically to the student.

Where there are specific health and safety risks to employees and/or disabled students, these should be treated on a **case-by-case** basis. They should not result in blanket policies that place restrictions on all disabled students or automatically assume that disabled students are a greater risk. The risk assessment process is a balancing exercise between health and safety considerations and the prevention of unreasonable restrictions on the student's right to autonomy, dignity and privacy.

7 How are risk assessments undertaken?

- By identifying significant risks arising out of work, which are likely to cause harm.
- By identifying and prioritising the measures that need to be taken to avoid and control the risk.

The level of detail in a risk assessment should be related to the risk. The purpose is not to catalogue every hazard, nor to anticipate hazards beyond the limits of current knowledge. A suitable and sufficient risk assessment will sensibly reflect what it is reasonable to expect and deal with.

The Management Regulations also require employers to review risk assessments from time to time. This is to help decide whether the existing precautions are adequate or whether more should be done.

8 Who is responsible for the assessment?

It is the employers' responsibility to ensure risk assessments are carried out. In practice, competent employees who have the relevant training, knowledge and understanding of the issues may undertake them. It is also important to involve key decision makers in the process (as appropriate) especially where there are significant resource implications. To be fully effective, they need to consider how other issues, such as environmental conditions, restricted workspace, and the risk of violence, might affect how the education is to be delivered. Assessments should take account of the student's autonomy, privacy and dignity.

Employees of another company or organisation, such as physiotherapists or carers, need to be made aware of the risks to their health and safety while working on the premises. So the school/college needs to make

these employees aware of the precautions in place to protect them. These include emergency procedures and the person who is nominated to implement them.

9 When to assess

Experience shows that assessments are often made too late. So far as is reasonably practicable, they should be made:

- before students are admitted – this is a planning ahead exercise;
- when planning educational activities both on and off site;
- when planning and purchasing new facilities and when work practices are to be introduced or changed;
- when deciding on a placement;
- when an existing student develops a health need, eg after an operation, or where a significant change in their existing needs occurs;
- when a student is to undertake work experience.

Examples include:

- a teacher producing a lesson plan, eg in science, drama or PE;
- an educational psychologist involved in the production of a statement of special educational needs (or co-ordinated support plans) should consider the health and safety issues as part of this process;
- a head teacher/principal determining the measures necessary to accommodate a prospective student with SEN;
- a lecturer, in conjunction with their employer, determining the measures necessary to accommodate a student with SEN;
- an occupational therapist carrying out an assessment of physical accessibility;
- a special educational needs co-ordinator (SENCO) (in Scotland, learning support teacher) who will have the co-ordinating role for special educational provision at a school.

In some circumstances, it may be appropriate for an external professional to carry out, or be involved in, risk assessment. For example, external specialist advice may be required when an insulin-dependent student with diabetes wishes to go on a school trip or when a student with epilepsy wishes to take part in physical education or other activities that might present risks.

10 Links to other assessments

Some hazards are governed by specific legislation or guidance, such as:

- manual handling activities;
- use of display screen equipment;
- exposure to hazardous substances;
- infection control.

The risk assessment will need to encompass the identification of prevention measures necessary when carrying out work related to these hazards.

Further guidance on carrying out risk assessments can be found in the free HSE leaflet *Five steps to risk assessment*. This should be read alongside the more specific information in this guidance, and is available from HSE Books or from the HSE website.

11 Managing health and safety

- Successful management of health and safety requires the active involvement of all employees. It should be assessed in the context of wider responsibilities, including the need not to discriminate against disabled students.
- Once potential hazards are identified and risks assessed, sensible precautions should be adopted.
- Employers need to ensure that their health and safety policies and procedures are appropriate, effective and regularly reviewed.
- Employers need to be satisfied that their employees (including head teachers/principals and their management team) are adequately trained so that they understand their role in monitoring health and safety performance – see below.
- Everyone needs to know what they are supposed to do, and where to get help.

Appendix 1 is an example of a risk assessment. Appendix 2 is a case study of a risk assessment relating to school playground equipment in a special school.

12 Involving the workforce

Employers are required by law to consult their employees, or their representatives, on health and safety matters. Employers must consult all employees in good time about any changes to the workplace or work activities that may affect health and safety. They

should encourage employees to get involved in the risk assessment process - they are often in the best position to identify ways of reducing risk.

Consultation can work through different routes. If there are no safety representatives or active safety committees then the employer must arrange to consult directly with employees. The precise arrangements will depend on the size and structure of the organisation. The end result must be a workforce that is informed and confident that potential hazards have been identified and controlled.

It is also important to communicate the results of the assessment. Experience shows that information about health and safety for employees should be clearly displayed in key work areas, eg:

- the staff room;
- the entrance lobby or reception area;
- areas where specialist equipment is kept and/or used;
- hydrotherapy pools;
- any medical treatment areas;
- transport drop-off points.

13 Involving students and carers

It is helpful to involve students and carers as early as possible in the risk assessment process. They can identify hazards that might otherwise have been overlooked.³ They are likely to have an in-depth knowledge of the student's needs, which will assist in the process. Assessments in a simple format are the most useful, as they can be quickly assimilated.

Health and safety law puts no legal duty on students and their families to co-operate in this process.

However risk assessments developed in consultation with students or their advocates can be more acceptable and effective. They might prevent a student being treated less favourably or at a substantial disadvantage without justification.

An individual risk assessment will find the control measures necessary for the individual's needs. However, if they put other students at an additional risk there should be consultation with the SEN student and carers and, if necessary, expert advice should be sought. Any resulting decisions must balance the educational benefits from the activity and the additional risks imposed on all concerned. This is needed to determine whether there are, or can be, suitable measures applied to manage the risk to an acceptable level and ensure the needs of all parties are adequately met. For example, a wheelchair user visiting a seaside would need to consider the implications of gaining access to the actual beach and the benefits to be gained. Consideration would need to include the ease of access, the scope for involvement on the beach and the ease of leaving the beach especially in an emergency. Without full consideration, an effective visit for all parties cannot be planned.

14 Health and safety training

By law, employers must ensure that all employees are provided with adequate health and safety training as part of their induction period. Ongoing training must also be provided in response to changes such as the identification of additional risks, new or modified equipment or new job responsibilities. Monitoring procedures can help highlight when training is required and also continually review the content of the training, eg how much the training relates to the job.

Given the variety of provision needed to meet the special educational needs of individual students, it is vital that educational providers have an ongoing programme of training for their employees. It is likely, particularly in a mainstream setting, that meeting the needs of a new student with severe or complex SEN will require employees to develop appropriate skills, knowledge and competencies.

Employers must not give employees tasks that are beyond their capabilities in health and safety terms. For example, an employee should not be expected to manually lift a heavy young person without adequate training or mechanical aids as identified in the risk assessment. They should not administer medicines⁴ without suitable and sufficient training from health professionals.

³ This also meets the General Teaching Requirement for Health and Safety in the National Curriculum in England and similar provisions in the school curricula in Scotland and Wales.

⁴ See DfES/DoH guidance *Access to education for children and young people with medical needs* (in Scotland, Scottish Executive Guidance *The administration of medicines in schools*).

Appendix 1

Examples of risk assessments

Note: These examples are meant as indicative guidance only, particular circumstances will vary and alternative control measures may be necessary.

| Activity (take into account the whole process from beginning to end and then identify each hazard) | Identify the hazards (a hazard is something with the potential to cause harm) | Who/what may be harmed | Risk | | | Existing control measures (check legal requirements and good practice) | Recommendations/further action required (establish whether the risk can be removed completely or if not, how it can be reduced) |
|--|---|------------------------|--------------------------|--|--------------|---|---|
| | | | Likelihood of occurrence | Severity of harm (High, Medium or Low) | Overall risk | | |
| Travelling in a school/college mini bus | Students moving about | Students and employee | Medium | Medium | Medium | Seat belt checked and used. Supervision, competent escort | Regular monitoring and surveillance |
| Travelling in a school mini bus | Tampering with doors, windows or interference with the driver or controls | Students and employee | Medium | High | High | Supervision. Escort sits at back of the bus with clear and uninterrupted vision. Seat belt checked and used. Restraining used (as appropriate) | Regular monitoring and surveillance |
| Physical disability – leg strapped | Fall, fatigue | Student and employee | Medium | Medium | Medium | Supervision. Student has been placed in a smaller, less physically demanding group | Constant monitoring and surveillance |
| Swimming lessons | Student in danger of drowning in the pool while having a seizure | Student | Medium | High | High | Student to wear armbands at all times in the pool, except when being given one-to-one instruction. Supervised constantly and all employees are aware of condition | All employees to be aware of emergency procedures in case of seizure |
| Epilepsy, anaphylaxis | | Students and employee | | High | | Supervision. First-aid training and appropriate advice and training from health professionals in use of emergency medication | All employees to be aware of procedures |

Case study: Risk assessment in relation to school playground equipment in a special school

The problem

New playground equipment was installed, which did not comply with relevant standards. A young person fell from the fireman's pole and broke her leg. Although an assistant had seen the young person climb up the ladder, they were distracted by another young person and did not see the incident. No risk assessment had been carried out regarding the suitability of the equipment.

If a risk assessment had been carried out that identified that the standard was not met, then it is likely this injury would not have occurred.

Solutions/control measures

The school should have carried out a detailed assessment of the potential risks in relation to the playground equipment including students' limitations, and whether the controls were adequate or in place.

The following documents would have helped to identify solutions or control measures for each risk identified:

- industry guidelines, eg relevant standards;
- *Essentials of health and safety at work*, HSE;
- *Management of health and safety at work*, HSE;
- manufacturers' guidelines;
- school accident book – to check trends.

| Hazards | Issues to consider | People at risk | Existing controls | Standard to be reached | Immediate/future actions |
|-------------------|--|----------------|---|--|--|
| Play equipment | Did the equipment meet the BS EN 1176 standards? | Students | New equipment not built to British and European standards | Ensure it is to BS EN 1176 | Manufacturer/supplier to modify the equipment in accordance with standards |
| Resilient surface | Did the resilient surface meet BS EN 1177 standards? Did it meet the students' needs? | | Not suitable as risk of falls from height | Ensure it is to BS EN 1177 standards | |
| Faulty equipment | Was the equipment adequately inspected and maintained? Have findings been recorded? | Students | None | Manufacturer's guidelines | Equipment to be inspected annually and findings to be recorded |
| Supervision | Was the ratio of employees to students adequate? | Students | Supervision was provided but did not take into account students' limitations eg is student able to grip the fireman's pole? | Review statement of special educational needs and students' risk assessments | Review risk assessment |

Further information

(Priced publications may be available for free loan from the public library.)

Useful guidance

Management of health and safety at work. The Management of Health and Safety at Work Regulations 1999. Approved Code of Practice and guidance L21 (Second edition) HSE Books 2000 ISBN 0 7176 2488 9

Work with display screen equipment. Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002. Guidance on Regulations L26 (Second edition) HSE Books 2003 ISBN 0 7176 2582 6

Manual handling, Manual Handling Operations Regulations 1992 (as amended). Guidance on Regulations L23 (Third edition) HSE Books 2004 ISBN 0 7176 2823 X

Safe use of work equipment. Provision and Use of Work Equipment Regulations 1998. Approved Code of Practice and guidance L22 (Second edition) HSE Books 1998 ISBN 0 7176 1626 6

Workplace health, safety and welfare. Workplace (Health, Safety and Welfare) Regulations 1992. Approved Code of Practice L24 HSE Books 1992 ISBN 0 7176 0413 6

Five steps to risk assessment Leaflet INDG163(rev1)
HSE Books 1998 (single copy free or priced packs of
10 ISBN 0 7176 1565 0) (Free download from:
www.hse.gov.uk)

Successful health and safety management HSG65
(Second edition) HSE Books 1997 ISBN 0 7176 1276 7

Managing health and safety. Five steps to success
Leaflet INDG275 HSE Books 1998 (single copy free or
priced packs of 10 ISBN 0 7176 2170 7) (Free
download from: www.hse.gov.uk)

Safety policies in the education sector Guidance
(Second edition) HSE Books 1994 ISBN 0 7176 0723 2

*Health and safety guidance for school governors and
members of school boards* Guidance (Second edition)
HSE Books 1998 ISBN 0 7176 1298 8

Safety representatives and safety committees L87
(Third edition) HSE Books 1996 ISBN 0 7176 1220 1

*University health and safety management. Code of best
practice* Universities and Colleges Employers
Association 2001 ISBN 0 9532431 3 3

*Managing health and safety aspects of research in
higher and further education* Guidance HSE Books
2000 ISBN 0 7176 1300 3

*A pain in your workplace? Ergonomic problems and
solutions* HSG121 HSE Books 1994
ISBN 0 7176 0668 6

*Understanding ergonomics at work: Reduce accidents
and ill health and increase productivity by fitting the
task to the worker* Leaflet INDG90(rev2) HSE Books
2003 (single copy free or priced packs of 15
ISBN 0 7176 2599 0) (Free download from:
www.hse.gov.uk)

Getting to grips with manual handling: A short guide
Leaflet INDG143(rev2) HSE Books 2004 (single copy
free or priced packs of 5 ISBN 0 7176 2828 0) (Free
download from: www.hse.gov.uk)

*Helping Hands: Guidelines for Staff who provide
Intimate Care for Children and Young People with
Disabilities* Scottish Executive 1999 (Available at:
www.scotland.gov.uk)

*Partnership Matters: A Guide to Local Authorities, NHS
Boards and Voluntary Organisations on Supporting
Students with Additional Needs in Further Education*
Scottish Executive 2004 ISBN 0 7559 4391 0 (Available
at: www.scotland.gov.uk)

Other publications

Safe practice in physical education and school sports
(Sixth edition) British Association of Advisors and
Lecturers in Physical Education 2004

Safe supervision for teaching and coaching swimming
Amateur Swimming Association (Available at:
www.isrm.co.uk)

*Access to education for children and young people
with medical needs* DfES/0732/2001 Department for
Education and Skills 2001 (Available from the DfES
Publications Centre Tel: 0845 602 2260, and online at:
www.dfes.gov.uk/sickchildren)

*Managing medicines in schools and early years
settings* DfES/1448/2005 Department for Education
and Skills 2005 (Available from the DfES Publications
Centre Tel: 0845 602 2260, and online at:
www.teachernet.gov.uk/medical)

The administration of medicines in schools Scottish
Executive The Stationery Office 2001
ISBN 0 7559 0146 0 (Available at:
www.scotland.gov.uk/library3/education/amis-00.asp)

Health and safety: responsibilities and powers
Ref DfES/0803/2001 Department for Education and
Skills 2001

Useful websites

Health and Safety Executive: www.hse.gov.uk

General Teaching Requirement and links to the
National Curriculum in
England: www.hse.gov.uk/education/qca.htm
Wales: www.accac.org.uk/english.html
Scotland: www.ltscotland.com/index.asp

Community Transport Association:
www.communitytransport.com

Department for Transport: www.dft.gov.uk

Department for Education and Skills:
www.dfes.gov.uk/index.htm

Scottish Executive: www.scotland.gov.uk

*Disability Discrimination Act Part 4. Code of practice
for schools* Disability Rights Commission:
www.drc-gb.org. Tel: 08457 622 633

Royal Society for Prevention of Accidents:
www.rosopa.co.uk/cms/

Helplines

HSE Infoline Tel: 0845 345 0055
Textphone: 0845 408 9577
(8.30 am to 5.00 pm Monday to Friday)
e-mail: hse.infoline@natbrit.com

ENQUIRE (National advice and information service for additional support for learning in Scotland)
Tel: 0845 123 2303 www.enquire.org.uk

Acknowledgements

Disability Rights Commission

General Synod of the Church of England and Diocesan Resource Centre for Education - Church in Wales

Trades Unions Congress (Association of Teachers and Lecturers)

National Confederation of Parent Teacher Associations (NCPTA)

Trades Unions Congress (UNISON)

Association of National Specialist Colleges

National Union of Teachers

Department for Education and Skills

Council for Disabled Children

Scottish Executive

Greenbank Residential School, Cheshire

HSE produces a wide range of documents. Some are available as printed publications, both priced and free, and others are only accessible via the HSE website, www.hse.gov.uk.

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk.)

For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

This document contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

This document is available on the web at:
www.hse.gov.uk/services/education/information.htm

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