

## Disability and Discrimination Policy



### **Legislation and Guidance that inform this document**

- SEN and Disability Act (2001) ... this extended the
- Disability Discrimination Act (DDA 1995) to cover education
- Disability Equality Duty (2006)
- Equality Act (2010)
- Disability Discrimination Act (2005)

### **Other Red Balloon policies to be read in conjunction with this one**

- Staff Code of Conduct
- Behaviour for Learning
- PSHEE

### **Statement of intent**

Red Balloon strives to ensure that all young people, regardless of disability, gender, sexual preference or race are able to thrive and learn within its centres. It acknowledges the legal requirements now placed upon it.

### **Responsibility for Implementation**

It is the responsibility of everyone working at Red Balloon to ensure that no member of a Red Balloon community is ever discriminated against, and to promote positive attitudes towards any person who has a disability.

### **Current requirements**

Since September 2002, every school has had three key duties towards disabled students (Part 4 of the DDA):

- not to treat disabled students less favourably than their peers for a reason related to their disability;
- to make reasonable adjustments for disabled students, so that they are not at a substantial disadvantage;
- to plan to increase access to education for disabled students.

Schools are required to produce an 'Accessibility Plan' that identifies the action the school intends to take over a three year period to increase access for those with a disability in three key areas. This plan must be evaluated annually and made available either through publication or on the school website. Each Red Balloon Centre will generate its own plan.

The three areas are:

- increasing the extent to which disabled pupils can participate in the school curriculum;
- improving the environment of the school to increase the extent to which disabled students can take advantage of education and associated services;
- improving the delivery to disabled students of information which is provided in writing for students who are not disabled.

In addition, the Disability Equality Duty (2006) requires all schools to:

- eliminate discrimination that is unlawful under the DDA;
- eliminate harassment of those with a disability;
- promote positive attitudes towards disabled persons;
- encourage participation by disabled individuals;
- take steps to take account of disabilities even if this involves treating disabled persons more favourably than their peers.

To fulfil their duties under the 2006 Act schools should involve those with a disability in producing a Disability Equality Scheme (DES) and Action Plan, and ensure that the scheme and plan are readily available.

Within the plan a school should:

- identify desired outcomes;
- demonstrate action taken to achieve those outcomes;
- report annually on the progress made and review the scheme and plan in light of that progress.

*Red Balloon Centres produce a three year plan and report annually against that plan. Initial plans were written in 2012.*

## **Definitions of 'disability' and subsequent prescribed practice that must inform Red Balloon provision**

The definition of disability in the DDA ('definition' may be misleading but the Act identifies those students covered by the Act) is not the same as the definition for SEN. The DDA covers only those who have 'a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities'. This definition is considered in detail in guidance produced by the Disability Rights Commission. The DDA also covers those with:

- severe disfigurements,
- impairments which are controlled or corrected by the use of medication, prostheses, or otherwise,
- progressive symptomatic conditions,
- a history of impairment,
- cancer, HIV or multiple sclerosis.

The DDA does not cover addiction to or dependence on nicotine, tobacco or other non-prescribed drugs or substances, hay fever, or certain mental illnesses that have anti-social consequences. Accordingly, it might be possible for a student to have special educational needs, but not be disabled for the purposes of the DDA, and vice versa (although the majority of disabled students will also have special educational needs).

### **Protection from discrimination**

A student who is disabled is protected from discrimination in two ways:

1. They are entitled not to be treated less favourably than a non-disabled student for a reason relating to their disability.
2. They are entitled to have reasonable adjustments made with respect to admission arrangements or in the provision of education and associated services, to prevent them being placed at a substantial disadvantage, unless the refusal to make those adjustments is 'justified'.

Such adjustments may be to policies, practices, or procedures of a school, but generally will not include adjusting premises (such as putting in ramps, lifts etc), nor will they usually include providing additional staff or equipment. Although these kinds of adjustments are covered in other parts of the DDA, they are expressly excluded from the schools' part of the DDA since it is

generally intended that additional staff or equipment should be obtained through the SEN route and, at present, it would be too financially burdensome on schools to have an obligation to undertake rebuilding.

The *Equality Act 2010* describes a disabled person as follows:

“A person (P) has a disability if –

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.”

The following definitions of each of the terms used in this description offer guidance to help determine whether a person is disabled or not:

- *Physical impairment* - includes sensory difficulties such as visual or hearing impairments.
- *Mental impairment* - includes learning difficulties, autism, dyslexia, speech and language difficulties, attention deficit hyperactivity disorder (ADHD).
- *Substantial* - means more than minor or trivial, but it may helpfully be thought of as meaning 'having some substance'.
- *Long-term* - includes those who have an impairment that:
  - has lasted 12 months or more,
  - is likely to last 12 months or more.

So while an autistic spectrum disorder (ASD) is a lifelong condition, impairments such as a broken leg, which would be expected to heal in less than a year, would not be covered.

#### *Normal day-to-day activities.*

These are not listed in the Equality Act. They include activities that people carry out often and regularly such as:

- mobility (eg moving around, getting to and from school, moving about the school or going on school visits);
- manual dexterity (eg holding a pen, pencil or book, using tools in design and technology, playing a musical instrument, throwing and catching a ball);
- physical co-ordination (eg washing or dressing, taking part in games and physical education);
- continence (eg adult support for toileting);
- ability to lift, carry or move everyday objects (eg carrying a full school bag or other fairly heavy items);

- using speech, hearing or eyesight (eg communicating with others or understanding what others are saying), hearing what class teacher is saying, the ability to see clearly (with spectacles or contact lenses where necessary);
- memory or ability to concentrate, learn or understand (eg work in school including reading, writing, number work or understanding information);
- understanding the risk of physical danger, inability to recognise danger (eg when jumping from a height, touching hot objects or crossing roads).

Schools / providers should give careful consideration to all the above 'areas'.

Unlawful discrimination can apply to every aspect of school life. It covers all school activities, including:

- extra-curricular activities,
- leisure activities,
- after-school clubs,
- homework clubs,
- sports activities,
- centre trips,
- centre facilities (for example, libraries and IT facilities).

Unlawful discrimination against a disabled student can occur in several ways:

- direct discrimination,
- indirect discrimination,
- discrimination arising from disability,
- harassment.

### Direct discrimination

Direct discrimination occurs when a school treats a disabled student less favourably than a non-disabled student. An example might be a school refusing to admit disabled students.

Direct discrimination is unlawful whether it is intended or not and regardless of the motive. However, it is not discrimination to treat a disabled student more favourably than a non-disabled student because of their disability.

### Indirect discrimination

Indirect discrimination might occur when a school has a policy or rule that puts, or would put, disabled students at a disadvantage. An example might be a school having a rule that all students must be able to make their own way to and from after school clubs independently.

Schools also have a duty to make 'reasonable adjustments' (see below) for disabled students – in effect making an exception to the rule if the rule would put the disabled student at a disadvantage.

### Discrimination arising from disability

Discrimination arising from disability might happen when a school treats a disabled student unfavourably because of something that is a consequence of their disability. An example might be a school refusing to allow a student with attention deficit hyperactivity disorder (ADHD) to go on a class visit to the theatre, because that student has attention difficulties and may disrupt the performance. The student's attention difficulties are a consequence of their disability.

### Harassment

Harassment occurs when a member of centre staff engages in conduct that either:

- violates a student's dignity,
- or
- creates an intimidating, hostile, degrading, humiliating or offensive environment for a student.

An example might be a teacher shouting at a student for failing to carry out an instruction because, as part of their autism, the pupil has receptive language difficulties and may have either misunderstood what has been asked or needs more time to process the instruction.

### Reasonable adjustments

Schools have a legal duty to take positive steps to make sure that students with disabilities can participate in all aspects of school life. Failure to make reasonable adjustments to ensure that disabled and non-disabled students have equal access in admission arrangements and to education services is unlawful. The 'reasonable adjustments' duty requires schools:

- to think ahead;
- anticipate the barriers that disabled pupils may face;
- remove or minimise them before a disabled pupil is placed at a substantial disadvantage.

***All Red Balloon Centres will strive to meet the legal requirements of the legislation described here with the caveat that availability of finance will inevitably impact upon what it is possible to do in terms of modifications to buildings or the purchase of costly 'aids'.***

Policy updated Sept 2018 by Bob Sproson, Director of Education - for annual review.