



## COT/ BAOT Briefings

### Special Educational Needs and Disability 2001- 05

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#### Purpose of this briefing

This briefing describes some of the recent legislation and related policies on education for disabled children and young people and for those with special educational needs. It highlights the areas of particular interest to occupational therapists working with children and young people. It does not represent a legal opinion.

Included in this briefing are:

1. *Special Educational Needs and Disability Act 2001 (England and Wales) and Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)*
2. *Education (Additional Support for Learning) (Scotland) Act 2004*
3. *Education (Disability Strategies and Pupils Educational Records) (Scotland) Act 2002*
4. *Special Educational Need and Disability (Northern Ireland) Order 2005*
5. *Disability Discrimination Act 2005 (England, Scotland and Wales)*
6. *The Five Year Strategy for Children and Learners 2004 (England)*
7. *Removing Barriers to Achievement 2004 (England)*
8. Implications for occupational therapists
9. References

#### 1. **Special Educational Needs and Disability Act 2001 (England and Wales) and Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)**

The Department for Education and Employment published the green paper, *Excellence for All Children: Meeting Special Educational Needs* in 1997, followed by the white paper, *Programme of Action*, in October 1998. These two papers made a commitment to improving the statutory framework and procedures for Special Educational Needs (SEN). This commitment was taken forward in the *Special Educational Needs and Disability Act 2001 (England and Wales)* and the subsequent publication of a new *Special Educational Needs Code of Practice* (Disability Rights Commission 2003).



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The *Special Educational Needs and Disability Act 2001 (SENDA)* amended the SEN framework set out in the *Education Act 1996* and extended the *Disability Discrimination Act (DDA) 1995* to cover the provision of education. The *SENDA* came into force in September 2002 making it unlawful to discriminate against disabled pupils.

Since 2002 three sets of duties have combined to form the statutory framework for equality of opportunity for disabled pupils. These are the:

- disability discrimination duties;
- planning duties in part 4 of the *DDA*; and
- the SEN duties in the *Education Act 1996*.

Together they ensure access to education and inclusion in every aspect of school life.

## 1.1 Discrimination duties

A disabled pupil may be discriminated against in two ways: by being treated less favourably than non-disabled pupils or by the school failing to make 'reasonable adjustments'. The reasonable adjustments duty does not apply to auxiliary aids and services (such as special equipment or assistance) because it is anticipated that this provision will be made through the SEN framework and the new planning duties.

Alterations to school buildings are not required under the reasonable adjustments duty as it is anticipated these will be achieved through a long term strategic approach to improving access to schools in Scotland and through the planning duties in England and Wales.

Local education authorities and schools are now legally required to develop written plans for improving access to education and inclusion in every aspect of school life for all disabled pupils over the three-year period from April 2006 to March 2009.

This includes:

- improving access to the curriculum;
- making improvements to the physical environment;
- making written information accessible in a number of different ways; and
- providing auxiliary aids and services, such as radio microphones and extra tuition.

Once the plan is published the school has a statutory duty to put the plan into action and ensure adequate resources are available.

The new duties apply to early years provision in primary, infant and nursery schools. All early years and childcare settings are required to be accessible to all children, including disabled children, under part 3 of the *Disability Discrimination Act 1995*.

The *Code of Practice* (Disability Rights Commission 2003) applies to all schools and local education authorities in England and Wales and to all schools and education authorities in Scotland. While the *DDA* extends to the whole of the United Kingdom separate legislation is required for Northern Ireland. The *Code of Practice* provides guidance and examples about how the duties operate and how improvements should be made over the next three years. All staff and volunteers must implement the duties in relation to their particular area of responsibility. If



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parents think their child has been discriminated against they have the right to make a claim to the *SEN and Disability Tribunal (SENDIST)*. The Tribunal can order any remedy it sees fit, except financial compensation. However, it does not have the power to hear appeals against schools concerning their responsibilities under the planning duty.

The new planning duties in the *Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)* relate to devolved matters and only apply in England and Wales. Planning duties in Scotland are subject to separate legislation and the *Code of Practice* explains these differences in easily identified separate sections.

It is expected that a new *Code of Practice* for further and higher education will soon be available.

The Code of Practice is available on the Disability Rights Commission website at [www.drc-gb.org](http://www.drc-gb.org) accessed 06/06/2006.

## 1.2 Definition of disability in the Disability Discrimination Act 2005

The *Disability Discrimination Act 2005* extends the definition of disability to include people with HIV/AIDS, cancer or multiple sclerosis, effectively from the point of diagnosis. It also ends the requirement that a mental illness must be clinically recognised before it can be regarded as an impairment.

The definition in the Act defines a disabled person as someone who has a physical or mental impairment, which has substantial (i.e. not trivial or minor) and long-term (i.e. 12 months or more) adverse effect on his or her ability to carry out normal day-to-day activities.

The definition includes a wide range of impairments including hidden ones such as dyslexia, autism and attention deficit hyperactivity disorder (ADHD). Having an impairment does not necessarily mean that a pupil is disabled. An impairment affects normal daily activities if it affects one or more of the following:

- Mobility
- Manual dexterity
- Physical coordination
- Continence
- The ability to lift, carry or otherwise move everyday objects
- Speech, hearing or eyesight
- Memory or the ability to concentrate, learn or understand
- Perception of the risk of physical danger.

Much of this is essential to a child's education and if the effect is long-term and substantial it could amount to a disability. The existence of impairment does not depend on a diagnosis being made by a medical practitioner.

Please note that this is the definition from the *DDA*. There are other definitions but they do not apply here.



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### 1.3 Definition of special educational needs

The definition in the *Education Act 1996* states that 'a child has special educational needs if he or she has a learning difficulty that calls for special educational provision to be made for him or her' (Part IV, 1, 312.1) and that 'a disability which hinders a child from accessing education amounts to a learning difficulty if it calls for special educational provision to be made' (Part IV, 1, 312.2b). Special educational provision is when additional or different provision is made from that which is normally available. A child may have a learning difficulty and not be delayed in their learning.

Many children who have SEN may also be described as disabled and it is considered helpful for planning purposes to include more children in the definition rather than fewer.

### 1.4 Access to the school environment

Occupational therapists are likely to be involved in this area of planning.

Changes and improvements to the school environment might include:

- signage, lighting, colour contrast, acoustics, floor coverings;
- access to toilets, washbasins, showers, changing facilities;
- layout of playgrounds and common areas;
- provision of ramps, lifts, handrails, width of doorways; and
- special furniture or equipment to improve access to education.

A variety of funding may be available for these improvements, such as:

- school Access Initiative funding for major capital work;
- devolved formula capital funding;
- delegated funding for equipment for disabled pupils; and
- access to Work to improve access for disabled teachers.

### 1.5 Access to the curriculum

Occupational therapists may provide training and information for teachers and support staff about the implications of different impairments. They will provide assessments, information, advice and other interventions to enable pupils to access the curriculum. This will include, for example, equipment such as special keyboards, switches, writing materials, special desks and seating; positioning; dressing and handwriting techniques; basic life skills such as eating and drinking; and skills for daily living activities.

Local health and social services have information about the number of disabled children and their individual needs, which can assist local education authorities with planning. Many local authorities employ access officers who will give advice. Occupational therapists already working with disabled children and young people are also well placed to advise school staff about access and other needs.

## 2. Education (Additional Support for Learning) (Scotland) Act 2004

The educational system in Scotland is currently undergoing major change. The *Education (Additional Support for Learning) (Scotland) Act 2004* came into effect in November 2005. It

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introduces the concept of additional support needs (ASN) and extends the right of extra help to more pupils. Education authorities have a new duty to identify and support all children who would benefit from extra help with their learning.

Under the new system, pupils with enduring, complex or multiple needs who require services the education authority cannot provide on their own, for example therapy services, will be entitled to a Coordinated Support Plan (CSP). CSPs will provide coordinated services between education, health and social work. From 2005 education authorities will consider opening CSPs for new pupils and will have two years to review pupils who currently have a Record of Needs with regard to providing them with CSPs.

Parents who find that the education authority decide not to open a CSP for their child will be able to appeal against the decision to the new independent body, the Additional Support Needs (ASN) Tribunal.

The Scottish Executive has made provision under the new legislation to protect children who have a Record of Needs for up to four years.

The Code of Practice that reinforces the Act can be found at [www.scotland.gov.uk/Publications/2005/08/15105817/58187](http://www.scotland.gov.uk/Publications/2005/08/15105817/58187) accessed 06/06/2006.

For information about special educational needs in Scotland go to [www.scotland.gov.uk/library/documents4/edu-00.htm](http://www.scotland.gov.uk/library/documents4/edu-00.htm) accessed 29/03/2006.

### **3. The Education (Disability Strategies and Pupils Educational Records) (Scotland) Act 2002**

Since 2002 the relevant responsible bodies i.e. the education authority, school manager, proprietor or board of management, have had a duty to plan and implement strategies to improve accessibility to the physical environment of schools and to the curriculum for existing and prospective disabled pupils and to improve communication with disabled pupils. The aim is to ensure long-term strategic planning is carried out across all school education in Scotland to improve access for disabled pupils and that schools meet their new duties under the amended *Disability Discrimination Act 1995*.

### **4. Special Educational Need and Disability (Northern Ireland) Order 2005**

The *Special Educational Need and Disability (Northern Ireland) Order 2005 (SENDO)* increases the rights of children with special educational needs to a place in a mainstream school and makes it illegal to discriminate on the grounds of disability. It introduces new duties on educational bodies to make reasonable adjustments to all policies, procedures and practices to ensure that disabled pupils are not placed at a substantial disadvantage compared to pupils who are not disabled.

For schools there is a duty to make the educational curriculum and written information more accessible. This is achieved through the Special Educational Needs framework. Pupils must meet the definition of being disabled to obtain disability rights under *SENDO*. The definition is



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the same as that used in the *Disability Discrimination Act 1995*. However, there is no provision for new or additional ways to get auxiliary aids or services.

For information about *SENDO* go to [www.nicie.org/newsroom/news\\_details.asp?id=84&ntype=news](http://www.nicie.org/newsroom/news_details.asp?id=84&ntype=news) accessed 29/03/2006

The Equality Commission for Northern Ireland has published two *Codes of Practice*, one for schools and one for colleges and universities, describing the duties and giving practical guidance. Complaints may be handled through a *SEN and Disability Tribunal (SENDIST)*.

For detailed information about the *SENDIST* process go to [www.sendist.gov.uk/about.cfm](http://www.sendist.gov.uk/about.cfm) accessed 29/03/2006.

For information about disability discrimination in Northern Ireland go to [www.equalityni.org/](http://www.equalityni.org/) accessed 29/03/2006.

## **5. Disability Discrimination Act 2005 (England, Scotland and Wales)**

This Act amended the *Disability Discrimination Act 1995* and came into effect in September 2005. It applies in England, Wales and Scotland with the exception of section 9, which relates to 'blue badge' parking for England and section 16, which relates to improvements in rented dwelling houses and applies to England and Wales.

Since December 2005 public bodies, including local councils, government departments, universities and hospitals, have had a duty to promote disability equality. Universities and colleges must make 'reasonable' changes to their premises (lecture halls, libraries, information and communication technology (ICT) suites and halls of residence) to make them accessible to disabled students, such as altering steps, providing lifts, dropping kerbs and making sure better lighting and clear signage are provided.

## **6. The Five Year Strategy for Children and Learners 2004 (England)**

This document sets out the government's overarching agenda for all children and learners. *The Five Year Strategy* requires swift and easy referral from every primary school to a wide range of specialised support services for school pupils (for example, to speech therapy, child and adolescent mental health services, or intensive behaviour support), by working through local Children's Trusts.

It mentions, for the first time, Foundation Partnerships, where high performing specialist secondary schools develop collaborative arrangements and take on wider responsibility for assessing and providing for special educational needs, developing materials and training for special educational needs coordinators and other key support staff.

For details about the *Five Year Strategy for Children and Learners* go to [www.dfes.gov.uk/publications/5yearstrategy/](http://www.dfes.gov.uk/publications/5yearstrategy/) accessed 29/03/2006.



## 7. Removing Barriers to Achievement (2004) (England)

*Removing Barriers to Achievement* is the Government's strategy for children with special educational needs and disabilities in England. It builds on the proposals for improving children's services in *Every Child Matters* (Department for Education and Skills 2003) to improve support for children with special educational needs from birth onwards.

It recognises the importance of therapy services (occupational therapy, speech and language therapy and physiotherapy) in supporting early intervention and states the Department for Education and Skills and the Department of Health will work together to explore ways in which therapists can work with and train school staff.

Other key areas are improving the range and quality of equipment for disabled children to meet their communication, mobility and daily living needs and supporting inclusion in all settings where children typically spend their time i.e. in school, at home, in social activities or on short term breaks.

Regional Partnerships are being developed in order to resolve the problem of variations in SEN services across the country. These partnerships bring together all those involved in SEN in each region to share expertise and experience and identify gaps in provision. It includes improved arrangements for information sharing, the integration of health, social care and education services and development of multi-disciplinary teams that focus on the needs of the child.

## 8. Implications for occupational therapists

Occupational therapists will need to understand how the legislation applies to their work with children and young people within education. They should be involved in:

- The planning processes to ensure the needs of disabled children are properly taken into account.
- The plans to promote the inclusion of disabled children in all school activities.
- Ensuring there is no discrimination against disabled children.
- Developing the plans for physical alterations to buildings to ensure they are fully accessible to all disabled children and young people.
- Training school and early years staff.
- Sharing their expertise and knowledge.
- Providing advice and information for staff, pupils, parents and carers.

Occupational therapists are responsible for assessing and providing or recommending the need for equipment. Children and young people often require equipment in all the places where they spend their time, so duplication may be needed. However, there should be no need to duplicate assessments. Many children are helped to access the curriculum by receiving therapy aimed at improving their specific difficulties.

Occupational therapy for children and young people with additional needs should be easily and promptly available through a simple referral system. It should be provided, as far as possible, in the most appropriate setting for the child. This might be at school or at home rather than a



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hospital department. Occupational therapists often work with individual children when they start going to school and can therefore advise school staff about their needs before they start.

Occupational therapists must understand the responsibilities and processes involved in information sharing, which are set out in *Every Child Matters* (Department for Education and Skills 2003) and form part of the strategy of focusing on the needs of the child.

## 9. References

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