

TRANSFER TO SECONDARY SCHOOL – SEPTEMBER 2011 EQUALITY ACT 2010

Guidelines for Requesting Reasonable Adjustments to 11+ Test Materials or Conditions

1. The Legal Framework

The Equality Act 2010 (“the Act”), places a duty upon Local Authorities (“LA”) and schools not to discriminate against disabled people or pupils in their access to education. The relevant provisions of the Equality Act 2010 replace the relevant provisions of the Disability Discrimination Act 1995 that previously applied.

Discrimination may occur by:

- A person treating a disabled pupil or prospective pupil less favourably than it treats or would treat others because of that pupil’s disability; or
- A person treating a disabled person unfavourably because of something arising in consequence of the disabled person’s disability where the treatment in question is not a proportionate means of achieving a legitimate aim
- A person applying to a disabled person a provision, criterion or practice which it also applies to persons who do not share that disability but which puts the disabled person at a particular disadvantage, unless that is a proportionate means of achieving a legitimate aim
- Failing to take reasonable steps to ensure that disabled pupils or prospective pupils are not placed at a substantial disadvantage in comparison with their non-disabled peers. This is known as the ‘reasonable adjustments’ duty.

Three aspects of admissions are covered by the duty:

- In the admission arrangements and rules (and the operation of these rules)
- In the terms of any offer of a place
- By refusing or deliberately omitting to accept an application for admission to a school by virtue of that person’s disability.

Note that the Equality Act 2010 expressly provides that a person does NOT discriminate, so far as relating to disability, only by applying a permitted form of selection. Selection for admission for a grammar school education by way of academic testing is an example of a permitted form of selection under section 28B of the Act and is therefore in accordance with the Education Act 1996 and the School Standards and Framework Act 1998.

However, the duty to make reasonable adjustments for disabled pupils applies to a permitted form of selection. This may include making adjustments to the assessment process.

The duty on schools (and in the matter of the 11+ the LA) to make reasonable adjustments is anticipatory.

2. Definitions

The Act defines a person with a disability 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 Act (and regulations made under the Act) also provide that pupils with cancer, multiple sclerosis or HIV and pupils who certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist are automatically to be considered disabled

'Impairment'	<p>This should be given its ordinary meaning and it is not necessary to establish the underlying cause of the impairment. It is important to remember that not all impairments are readily identifiable. The impairment might include sensory impairments such as those affecting sight or hearing; have fluctuating or recurring effects; be organ specific, including respiratory conditions, such as asthma; be developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia; and include learning difficulties.</p> <p>Certain conditions are specifically excluded from the definition of impairment including addiction/dependency on alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed), hay fever (except where that aggravates the effect of another condition), pyromania, kleptomania, exhibitionism, voyeurism or a tendency to physically or sexually abuse another person.</p>
'Substantial'	<p>More than minor or trivial – beyond the normal differences in ability which might exist among people. If an impairment could well have a substantial adverse effect but for the fact that measures are being taken to treat or correct it, it is to be treated as having that effect (with the sole exception of wearing spectacles or contact lenses). If the impairment has ceased to have a substantial adverse effect, it is to be treated as continuing to have that effect if it could well recur. A person who has a progressive condition will be treated as having an impairment which has a substantial adverse effect from the moment any impairment resulting from that condition first has some adverse effect on his or her ability to carry out normal day to day activities provided that in future the adverse effect could well become substantial.</p>
'Long term'	<p>At least 12 months, likely to be at least 12 months or to last for the life of the child. Note that if an impairment has had a substantial adverse effect on a person’s ability to carry out normal day to day activities but the effect ceases the substantial effect is treated as continuing if it could well recur e.g. a person with rheumatoid arthritis may experience substantial adverse effects for a period of weeks and then go into remission and recur; certain types of depression may be sporadic or recur</p>
'Normal day to day activities'	<p>Normal for many people on a daily or frequent and fairly regular basis. Does it affect one of these areas:</p> <ul style="list-style-type: none"> ▪ Mobility

	<ul style="list-style-type: none">▪ Manual dexterity▪ Physical co-ordination▪ Continence▪ Ability to lift, carry or otherwise move everyday objects▪ Memory or ability to concentrate, learn or understand▪ Perception or the risk of physical danger
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Where parents formally advise a teaching member of staff at a school that they believe their child is disabled, then the school has a responsibility to advise the LA if the child is to sit the 11+ test.

3. Timeline

Summer Term (whilst child is in Year 5)

The LA will ask headteachers for a list of children for whom the normal day-to-day delivery of the curriculum is adapted to meet their particular needs. Headteachers will be specifically asked:

1. To confirm the child's SEN Status.
2. To provide details of the nature of a child's disability and to detail the evidence to support this.
3. To clarify why a non-disabled child should be considered for adjustments and to detail the evidence to support this.
4. To describe the support that the child currently receives in school to enable access to the curriculum. Also, to include details of recent standardised tests relevant to the application.
5. To suggest reasonable adjustments to enable the pupil to access the 11+ tests. This should normally be based on point 4 above.

On receipt of this information from headteachers, together with supporting evidence from the other professionals involved with the child, for example **full copies of reports** from:

- Chartered Educational Psychologist (or an Educational Psychologist registered with the Health Professions Council)
- Physiotherapist
- G.P.
- Medical specialist
- Occupational therapist
- Specialist teacher – appropriately qualified to provide information on a visual, hearing or physical impairment;

and other reports such as an Individual Education Plan with targets or a provision map, the Special Access Panel will consider cases on an individual basis. **The professional reports provided must be up to date (no more than 12 months old)**, clearly dated and where tests have been quoted they must be age appropriate. The only exception is where the report relates to a physical disability or a named medical condition. It should be noted that a case cannot be considered on the basis of a headteacher's submission alone.

The Special Access Panel members consider each case on the basis of the information provided, individually in advance of the meeting and collectively at the meeting. Papers are sent to the panel members seven days in advance of a meeting. The panel is mindful that the 11+ tests are multiple-choice verbal reasoning tests, specially designed to assess a child's potential, that are not directly linked to the National Curriculum.

The non-statutory panel comprises of professionals consisting of an Educational Psychologist, a representative with an understanding of pupils with special educational needs and a representative with experience as a headteacher in a Buckinghamshire primary school.

Autumn Term (of Year 6)

The LA will advise headteachers and parents prior to the commencement/continuation of familiarisation and practice where adjustments can be made. The child will then sit the tests. If possible, decisions will be notified by the end of the summer term.

Should a request for adjustments be received after the published deadlines (23 June, 21 July and 13 September 2010 for September 2011 entry), it will not be considered as it is not possible to delay testing pending the panel's decision. The only exception to this will be where adjustments are requested for a child to be tested by the LA during October half term 2010.

Where it has not been possible to agree to the requested adjustments, alternatives may be offered. It is not possible for a case to be reconsidered or to appeal against the authority's decision at this stage as it was taken by a non-statutory body. Any appeal would be heard after the results of the 11+ tests were known in the following January or February.

Spring Term (of Year 6)

Statutory independent appeal panels consider cases (where the child has not qualified in the tests) brought at selection appeal. On the appeal form parents will be asked if they wish their child's case to be considered within the terms of the Act.

In establishing whether a child is 'disabled' within the terms of this Act, the Appeal Panel will ask, when making a decision in these cases:

1. Does the child have a physical or mental impairment?
2. If so, does the impairment have a substantial adverse effect on the child's ability to carry out normal day to day activities?
3. Are the effects long term?

If the answer is "yes", the Appeal Panel will then consider whether there has been disability discrimination in any of the senses outlined above. The most common question that arises is whether there any reasonable steps that the LA should have taken to ensure that this child was not placed at a substantial disadvantage in comparison with non-disabled peers?

Admission appeal panels will hear transfer appeals against non-admission to LA maintained schools where disability discrimination is alleged to have taken place. The First-tier Tribunal will hear most other claims of disability discrimination against the LA and schools.

4. The Reasonable Adjustment Duty

The LA and schools are required to make reasonable adjustments to ensure that disabled pupils are not placed at a substantial disadvantage in comparison with non-disabled pupils.

There are potentially two exceptions to this requirement:

- The provision of auxiliary aids and services; and
- The removal or alteration of a physical feature.

The legislation is constructed in this way because:

- The SEN framework makes provision to meet the special educational needs of disabled children, if the disability inhibits learning; and

- The LA and schools are required to plan over time to increase the accessibility of schools to disabled pupils, including making changes to the physical environment of schools. They are not required to make physical adaptations that would incur unreasonable costs and would effect the provision of education for other pupils.

The following is a list of reasonable adjustments that the LA will consider making available to a pupil who is sitting the 11+ tests and is considered as disabled within the terms of the Act. This list is by no means exhaustive and the applicability of any given adjustment(s) will depend on the particular circumstances. This list will be updated (where necessary) on an annual basis.

1. Adapting the test materials – question booklets

- What can be done?* – in conjunction with GL Assessment and with the assistance of the Specialist Teaching Service, the LA is willing to consider where it can adjust the 'look' of the test materials. Papers can be reprinted at the request of the head/SENCO of the school, on different coloured paper and/or in larger fonts. The LA has a preferred yellow/enlarged version that has been developed in conjunction with the Specialist Teaching Service. This format can be supplied for familiarisation and practice and the LA will provide, where required, test papers in this format. The availability of any other formats may be possible following discussion with GL Assessment.
- What evidence will be useful?* – Confirmation from the head/SENCO of the normal adjustments undertaken for a child will be relevant as will any evidence as to the child's difficulties e.g. a professional report
- Who would this be appropriate for?* – Children with visual difficulties or a dyslexic child for whom black on white is not the most comfortable reading combination.
- Other matters to consider* – whether the child needs a larger workspace whilst being tested so that enlarged sheets can be accommodated. Classroom light levels need to be considered, to ensure children with visual difficulties are in a well-lit environment.

Note: Where adapted papers are produced by copying, care should be taken to ensure that the materials are of an appropriate quality.

2. Adapting the test materials - answer sheets

- What can be done?* – by agreement with GL Assessment the answer sheets can be enlarged and/or photocopied (by the school with the LA's permission) to facilitate a child completing the answer sheet. The bar coded original can then be completed (and scrupulously checked) by school staff before submitting both the original (to the LA) and the copy to GL Assessment for the marking process.
- What evidence will be useful?* – Confirmation from the head/SENCO of the normal adjustments undertaken for a child will be relevant as will any evidence as to the child's difficulties e.g. a professional report .
- Who would this be appropriate for?* – Either: children who have problems with manual dexterity – so that they can be reassured that the 'neatness' of the answers being marked within the red brackets is not required, or: children who are severely red/green colour blind if they find (usually during familiarisation and practice) that they have difficulty in seeing the red sections of the answer sheet. The sheet can be enlarged as well as converted to black/colour background in the same permutations as 1) above.
- Other matters to consider* – whether the child needs a larger workspace whilst being tested so that enlarged sheets can be accommodated. Classroom light levels need to be considered, to ensure children with visual difficulties are in a well-lit environment.

Note: Where adapted papers are produced by copying care should be taken to ensure that the materials are of an appropriate quality.

3. Use of coloured overlays and coloured filter lenses

- a. *What can be done?* – The coloured overlays or filter lenses used by children in class can be used in the testing session.
- b. *What evidence will be useful?* – Confirmation from the head/SENCO of the normal adjustments undertaken for a child will be relevant as will any evidence as to the child's difficulties e.g. a professional report.
- c. *Who would this be appropriate for?* – Dyslexic children who have found benefit in this strategy in normal class sessions.
- d. *Other matters to consider* – whether the child needs a larger workspace whilst being tested. Classroom light levels need to be considered, to ensure children with visual difficulties are in a well-lit environment.

4. Use of an amanuensis

- a. *What can be done?* - The child would be tested separately from other children in the class and an amanuensis can, at the child's direction, complete the answer sheet on their behalf. The amanuensis would normally be the child's Learning Support Assistant (LSA).
- b. *What evidence will be useful?* – Confirmation from the head/SENCO of the normal adjustments undertaken for a child will be relevant. This provision would normally be made only for a child who was used to working regularly with an amanuensis in the classroom. The Special Access Panel will also consider any evidence as to the child's difficulties e.g. a professional report
- c. *Who would this be appropriate for?* – Children with a severe motor disability that causes discomfort when writing or with visual difficulties.
- d. *Other matters to consider* – testing the child apart from his cohort is necessary because of the need for conversation. They may also require the enlarged question paper strategy if there are also visual problems. Classroom light levels need to be considered, to ensure children with visual difficulties are in a well-lit environment.

5. Use of a reader/prompter

- a. *What can be done?* - The child would be tested separately from other children in the class and the reader would read the instructions for the test and each question type to the child. The reader would normally be the child's Learning Support Assistant (LSA).
- b. *What evidence will be useful?* – Confirmation from the head/SENCO of the normal adjustments undertaken for a child will be relevant. This provision would normally be made only for a child who was used to working regularly with a reader in the classroom. The Special Access will also consider any evidence as to the child's difficulties e.g. a professional report
- c. *Who would this be appropriate for?* – Children with a reading age much lower than their actual age. Use of a prompter may be considered for a child with severe attention difficulties, this would be to ensure that the child keeps on task.
- d. *Other matters to consider* – testing the child apart from his cohort is necessary because of the need for conversation.

6. Permission for a break or breaks during the test

- a. *What can be done?* – The child would be tested separately and one or two short breaks can be agreed during the test period (e.g. at the 25 minute point - which is a point at which the invigilator gives a time warning).

- b. *What evidence will be useful?* – Confirmation from the head/SENCO of the normal adjustments undertaken for a child – i.e. that the child is allowed to rest or take breaks during class tests will be relevant as will any evidence as to the child's difficulties e.g. a professional report
- c. *Who would this be appropriate for?* – Children with physical, motor or visual difficulties that cause the child to suffer from fatigue or other conditions which impair concentration.
- d. *Other matters to consider* – testing the child apart from his cohort will be necessary because of the need for an extended time overall.

7. Permission to extend the test time by up to 25%

- a. *What can be done?* - In exceptional circumstances a child could have up to 25% extra time for each test.
- b. *What evidence will be useful?* –Confirmation from the head/SENCO that this is normally permitted for this child in similar testing/routine classroom situations, plus clear evidence from other professionals (for example an educational psychologist, specialist teacher) as to the impact of a child's disability in relation to similar timed tests. Where a child has slow processing speed, a report from an occupational therapist should normally be provided.
- c. *Who would this be appropriate for?* – Children with significant physical, motor or visual difficulties. Additionally, significantly dyslexic and dyspraxic children might be considered, depending on the evidence put forward.
- d. *Other matters to consider* – testing the child apart from his cohort would be necessary because of the need for an extended time overall.

8. Other reasonable adjustments

Requests for any other reasonable adjustments will be considered in the light of the supporting information provided by the headteacher and the other professionals involved with the child. Where a child has multiple needs or is severely disabled, the panel may agree a number of adjustments.

Please ensure that where adjustments are being requested, the parents of the child concerned receive a copy of these guidelines.