Less favourable treatment

23/07/2003 - v4

A school discriminates against a disabled child if

- For a reason relating to the child's disability, it treats him less favourably that it treats, or would treat, others to whom that reason does not, or would not, apply
- And
- It cannot show that the particular treatment is justified

Questions to ask about the less favourable treatment

- ? Is it related to the child's disability?
- ? Would someone without the disability be treated the same?
- ? Can it be justified?

Relation to disability

- Must be a direct link between reason and disability
- Not an excuse for disruptive behaviour
- ...unless
- .....there is a direct link between the behaviour and the disability

Would someone without the disability be treated the same?

- Make a comparison between the disabled child and non-disabled children
- Would they have been treated the same?
- Comparison can be real or hypothetical

Can it be justified?

- **If it is the result of a permitted form of selection**
- **For a material and substantial reason**
- BUT... must have considered ALL reasonable adjustments