

WIRRAL SEND PARTNERSHIP

Information Advice and Support Service

The Rights of Disabled Students in School and College

Disability Discrimination & The Equality Act

A key principle of the Equality Act is that, wherever possible, disabled people should have the same opportunities as non-disabled people in their access to education. Under the Equality Act, disabled children have the right to be treated fairly at school.

Part 6 of the Equality Act covers disability discrimination in schools. It applies to existing pupils and those who may be pupils at a school in the future. The Act says that schools should not treat disabled pupils less favourably or put them at a substantial disadvantage.

The Equality Act 2010 came into force in October 2010. This is a single piece of legislation that replaces existing separate legislation. The general principles of the Equality Act remain the same as those of the Disability Discrimination Act (DDA) and the procedures for making a claim are the same.

Schools' general duties to disabled children

Making reasonable adjustments

Schools must take reasonable steps to make sure that disabled pupils are not placed at a substantial disadvantage compared with non-disabled pupils. This is commonly known as the reasonable adjustments duty. All schools are covered.

As well as state-maintained schools this includes independent schools, non-maintained schools and pupil referral units. The Act covers admissions, exclusions and 'education and associated services'. These include the day-to-day teaching and learning at the school but also activities, school trips, sports and school meals.

Accessibility plan

Schools have a general duty to plan for the needs of all disabled children. Each school must have an accessibility plan. This will set out how they are going to improve access to education for disabled pupils over time.

The plan must cover

- *Improvements in access to the curriculum*
- *Improvements in physical access*
- *Improvements in providing information to pupils in different formats.*

Planning ahead

As well as a duty to existing pupils, schools also have an 'anticipatory duty'. This duty is to take reasonable steps to make sure that disabled children are not placed at a disadvantage. It means that schools must plan ahead for disabled pupils and should not wait until a disabled child is actually admitted to the school.

Schools' duty to individual children – unlawful discrimination

The Equality Act also makes it unlawful for a school to discriminate against an individual disabled child. Unlawful discrimination takes place if a school discriminates, without justification, against disabled pupils in any part of school life.

Unlawful discrimination

Unlawful discrimination may take place in two ways:

1. A school treats a disabled pupil differently from other pupils and this has a harmful effect and/or
2. A school treats a disabled pupil in exactly the same way as other pupils and this has a harmful effect.

The discrimination can consist of

- Less favourable treatment
- Failure to make reasonable adjustments

Which children are covered?

Before deciding whether there may have been disability discrimination you will need to check that your child would count as disabled under the Equality Act.

For the purposes of the Act, a disabled person is someone who has a physical or mental impairment (difficulty) which has a substantial, long-term and harmful effect on their ability to carry out normal day-to-day activities.

Schools also have to make provision for children with special educational needs. These are children with learning difficulties who need extra help at school. Many disabled pupils have special educational needs. Some pupils with special educational needs are disabled.

Who needs to know?

You are not obliged to tell a school about your child's disability but it will be easier for the school to make adjustments for your child if you inform them. It is generally not unlawful discrimination if the school did not know, and could not have been reasonably expected to know, about a disability. However, it may be unlawful discrimination if the school did not actively seek out information about disability or plan ahead.

Which activities are covered?

Disability discrimination is unlawful in 'education and associated services, admissions and exclusions'. This covers all parts of school life from teaching through to lunch-time activities, after-school clubs and trips.

Dealing with discrimination

If you have a disabled child it will help to keep in close communication with the school. Ask for a copy of the accessibility plan and disability equality scheme so that you know what the school has said it will do. If you think your child is being treated unfairly, talk to the school as soon as possible. You may be able to suggest ways in which the school could do things differently. If the school does not agree to make reasonable adjustments they might be unlawfully discriminating against your child.

Direct discrimination

Direct discrimination is where a pupil is treated less favourably simply by the fact of being disabled.

Discrimination arising from disability

Discrimination arising from disability is where:

- A pupil is treated unfavourably because of something arising in consequence of a disability
- The treatment cannot be justified as a 'proportionate means of achieving a legitimate aim'.

Is it unfavourable treatment?

Unfavourable treatment is anything that puts the disabled pupil at a disadvantage, whether this was the intention or not. This might be exclusion, disciplinary sanctions, failure to admit to a school, being denied access to part of the curriculum or school trips.

Is the reason for the treatment connected with the pupil's disability?

The reason might be something that is the effect or result of a disability or behaviour related to the disability. Discrimination arising from disability can only be justified if it is a "proportionate means of achieving a legitimate aim".

Indirect Discrimination

This is where a provision, criterion or practice is applied in the same way to all pupils or a particular group and the result would be to disadvantage pupils who share a protected characteristic e.g. disability.

This generally means that unlawful disability discrimination occurs if:

- A disabled child is suffering because they are treated in exactly the same way as non-disabled children and
- The suffering would have been avoided if the school had taken certain reasonable steps.

What is substantial disadvantage?

First check whether your child is at a disadvantage. Compared with children who are not disabled:

- Does your child have to spend more time and effort?
- Is your child inconvenienced?
- Does your child suffer indignity or discomfort?
- Does your child have less opportunity or make less progress?

To count as unlawful discrimination the disadvantage must be more than minor or trivial.

Are there reasonable steps to avoid disadvantage?

If there are reasonable steps ("adjustments") that a school could take or could have taken to avoid putting a pupil at a substantial disadvantage, the disadvantage may not be justified. To decide whether a step is reasonable, issues such as "cost", financial and otherwise, are weighed against the treatment of the pupil.

The Equality Act and Post 16 education

Universities and colleges have been covered by the Disability Discrimination Act since 2001 and the Equality Act since 2010. Post-16 education providers of further and higher education are under a legal obligation to make sure that students with disabilities are not treated unfavourably and to ensure that they are not placed at a substantial disadvantage compared to students who are not disabled. This means that they have well developed systems and procedures for admitting disabled

students and making sure they progress in their studies. It would be unlawful for them to refuse you a place or treat you less favourably because of your disability. Each university or college should publish a Disability Statement setting out how it provides support. You can ask to see a copy of this statement, as well as looking on their website to see details of their policies. You may find it useful to contact your university or college's disability adviser or disability coordinator before you make a final decision about where to study.

Taking matters further

From the information given in this booklet you may feel that your child has suffered unlawful discrimination based on their disability. Start by talking informally to the school or college. If this fails there is more formal action you can take.

Who is responsible?

The duty not to discriminate is the responsibility of "the responsible body". For schools and colleges this is generally the governing body. For Pupil Referral Units or maintained nursery schools it is the Local Authority. A claim of discrimination is made against the responsible body not against individual staff.

Making a claim

If you are unsatisfied with the outcome of your claim to the governing body or Local Authority you can make a Disability Discrimination Claim through SEND Tribunal. The claim must be made within 6 months of the alleged discrimination. You can also use the Conciliation Service provided by the Equality and Human Rights Commission.

Possible remedies may include

- An apology.
- Staff training.
- Change in policies or procedures.
- Extra tuition to make up for lost learning or activities to make up for ones your child missed out on.

Remedies do not include financial compensation.

Disability discrimination claims brought by young people against Post-16 institutions are made to the County Courts.

SEND – First Tier Tribunal (SEN and Disability)

Helpline: 01325 289 350

Equality Advisory and Support Service (EASS)

Advice Line (England): 0808 800 0082

Website: www.equalityadvisoryservice.com

For Further Information Please Contact:

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