

# Disability Discrimination



## What is Disability Discrimination?

A child or young person (YP) is disabled if they 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 (section 6 of the Equality Act 2010). “Substantial” means more than minor or trivial and “long term” means lasting more than one year or likely to last more than one year. This is a wide definition, and can cover physical or mental health problems, as well as conditions such as dyslexia or autism.

When considering if someone may fall within the Act, think about:

- Do they have a physical/mental impairment?
- Has it lasted 12 months or is it likely to do so?
- Does the impairment have, or has it had, a more than minor or trivial impact on their normal day-to-day activities?

Early years settings, schools, colleges and Local Authorities have legal duties to prevent unlawful discrimination. They must ensure that they do not treat children and YP with disabilities less favourably than others. They also have a duty to make reasonable adjustments – to change what they do or were proposing to do – to ensure a child or YP is not disadvantaged. This includes the provision of aids and services to support a child or YP.

### Disabilities that are always covered under the Equality Act 2010;

- Cancer
- HIV infection
- Multiple sclerosis
- Severe disfigurement—this does not include tattoos and piercings
- Those certified blind or diagnosed as severely sight impaired.

The IPSEA website has a useful checklist. You can use this to see if a student may meet the criteria for being disabled as described under the Equality Act 2010.

[www.ipsea.org.uk/what-you-need-to-know/disability-discrimination](http://www.ipsea.org.uk/what-you-need-to-know/disability-discrimination)



## Discrimination in Educational Settings

Educational settings must not:

- Refuse to offer a disabled student a place because of their disability
- Treat a disabled student less favourably in any aspect of their education including trips, after school/college clubs and extra-curricular activities
- Exclude a disabled student because of their disability
- Refuse to provide reasonable support to a student with a disability

Educational settings and Local Authorities must carry out accessibility planning for disabled students. These are aimed at:

- Making sure disabled students can fully participate in the curriculum. If a child’s class is up a flight of stairs and they have mobility problems, placing the class downstairs would make it accessible
- Improving the environment of schools to enable disabled students to access the education available. This could be done by constructing a seating plan that would support a student with a visual impairment, changing the layout of a classroom to accommodate a student with a wheelchair/walking aid or creating a supportive environment for a student with ASD

Educational settings do not have to make structural changes to any part of the building to accommodate a student with a disability e.g. make doorways bigger or install a lift, but they do have to make reasonable adjustments such as ramps or handrails.

### Duty to make reasonable adjustments for disabled students

Educational settings have a responsibility to take reasonable steps to avoid any disadvantage a disabled student could experience. The adjustments are anticipatory and so must be considered and made before the student has started at the setting. If the setting is aware of the student’s disability, then failure to make reasonable adjustments cannot be justified.

There are some specific duties that an educational setting must comply with:

- Where a disabled student is placed at a disadvantage compared to other students, the setting must take reasonable steps to try to avoid that disadvantage
- All educational settings will be expected to provide reasonable auxiliary aids or services that the disabled student requires e.g. specialised computer equipment, adapted desks, coloured overlays, or speech and language therapy. They have to do this when it would be reasonable to do so, and to remove any disadvantage that the student faces

## Who can a claim be brought against?

A claim of disability discrimination against a school of any type (whether state funded or independent), or against a maintained nursery, can be made to the First-tier Tribunal (Special Educational Needs and Disability) (the “SEND Tribunal”). A claim against a private nursery, a further education college or a local authority would need to be brought in the County Court.

## What do I do if I feel my child is being subject to Disability Discrimination in school

Firstly you will need to decide what type of disability discrimination you believe has happened.

## The Equality Act 2010 sets out a number of ways in which a pupil may be discriminated against because of disability:

### Direct Discrimination is:

When the school treats the pupil worse than a non-disabled pupil in a similar situation because of their disability.

Example: A boy who has ADHD has been told he cannot join the schools chess club because he finds it difficult to concentrate and sit still.

### Indirect Discrimination is:

Where a school has a particular policy or way of working that has a worse impact on disabled people compared to people who are not disabled. This is unlawful unless the organisation or employer is able to show that there is a good reason for the policy and it is proportionate.

**Example:** A school has a scheme to improve attendance rates. It offers a reward of a trip to the cinema for 100% attendance over the year.

*For a child or YP with a disability that affects their health this may put them at a substantial disadvantage as they have appointments in school time. There is a legitimate aim to improve attendance. Is it proportionate? It could be said that because the 100% attendance rate cannot be reached, it is not and the school should set a realistic target for this child/YP.*

## Unfavourable treatment arising from a disability is:

When a school treats a pupil badly because of something connected to their disability, such as not allowing their assistance dog into the school or penalising them for needing time off for medical appointments, and the school does not have a good reason for doing so.

Example—Unfavourably: A child who has brittle bones has been told she cannot go to watch the school hockey team. The reason given is that she will never be able to play and it is only for those who may be part of the team in the future.

*This is not a proportionate means of achieving a legitimate aim. It is neither appropriate for this pupil nor necessary to stop her watching the team.*

Example—Favourably: A child who has epileptic fits at least daily has been told they have to wear additional safety equipment to their peers when wall climbing. *The legitimate aim is the safety of the child with epilepsy; the harness is proportionate to the aim.*

### Harassment is:

When the pupil is treated by a staff member in a way that makes them feel humiliated, offended or degraded.

Example: A pupil has to take regular medication. The class teacher has been asked not to draw attention to this but continually asks loudly if the pupil is OK and mutters under their breath after they have done so. The pupil feels this is making the fact they could be seen to be different as obvious and believes the teacher is making nasty comments about them.

### Victimisation is:

This is when a person is treated badly because they have made a complaint of discrimination under the Equality Act.

Example: A parent makes a disability discrimination complaint against their child’s school. Since their complaint, they believe he has been victimised because the school has been treating their son differently and not giving him the support he requires to meet his needs.

It is not unusual for discrimination to fall under more than one type of discrimination.



## What do I do if I feel my child is being subject to disability discrimination at school

If you feel that your child is being treated unfairly due to their disability, it will help to keep communication open with the educational setting.

After having discussions, if you are still not happy, then follow the setting's complaints procedure and make an official complaint: you should find details of their complaints procedure on their website, if not, ask.

You can use Dispute Resolution, also known as mediation, which is a way to help people to reach an agreement about something they are not happy about. If all parties agree to use dispute resolution, a meeting can be organised between yourself and the educational setting. An impartial mediator will lead a conversation between yourself and the setting in a safe and constructive environment. This is a free service delivered by:



**KIDS SEND Mediation & Disagreement Resolution  
Service - 03330 062 835**

If you still feel that the situation is unresolved you can lodge an appeal with the SEND tribunal.

## How to appeal to the SEND Tribunal

There is a time limit to appeal. The claim must be received by the tribunal within six months of the last act of the alleged discrimination. Before you appeal you need to prepare your claim, this will involve gathering as much evidence as possible to support your case. The tribunal will first decide if the child has a disability as described by the Equality Act 2010 before going further with the claim. You will not be charged any money to bring a case to appeal.

Go to the 'SENDIST tribunal' website and click on the link "First-tier Tribunal (Special Educational Needs and Disability)-GOV.UK" and follow the instructions. The tribunal will register your claim within 10 working days of receipt and send a copy to the educational placement. They will then notify you when the claim is registered and tell you the date when the hearing will take place.

Your claim should normally be heard around 20 weeks after it is registered. August is not recognised as a working month by the tribunal rules and should not be taken into account. It will be heard by a tribunal panel, which could consist of a judge and up to two specialist members who have knowledge and experience of children with special educational needs and disabilities. You

can present the case yourself or if you prefer you can arrange for somebody to represent you. You can take family or witnesses with you, this must have been arranged during the preparation for the hearing. Written decisions and orders are sent by post, usually within 10 working days of the hearing.

## Important documents you may want to take to tribunal with you;

- Medical letters from GP/Paediatrician.
- Letters from CAMHS (Children and Adolescent Mental Health Service).
- Medical or professional diagnosis.
- Relevant information from the school detailing anything that may support your case e.g. emails or letters.
- Letters or referral forms from health and social care.
- You should explain how the disability affects day-to-day activities. If your child or the young person has an Education Health and Care Plan you should include it.
- State what decision you would like to resolve the situation. This cannot be financial.

## What can you expect from a decision?

If a tribunal decides that there was an unlawful discrimination they will say so in their decision letter. A tribunal can order the educational placement to do anything reasonable to remedy the discrimination other than paying financial compensation as, by law, this is not allowed. A tribunal can order actions that will help to make up for any opportunities that your child or the young person may have missed or prevent future discrimination. Examples include:

- Training of school staff
- Changes to school policies
- Extra tuition, to make up for lost learning
- Changing the location of lessons or activities (but not changing physical premises)
- Trips or other opportunities to make up for activities that the child or young person may have missed.

The tribunal will order the educational setting to take the action it specifies within a given time. The tribunal has no powers of enforcement to ensure that the actions are carried out, but there are other steps that can be taken to enforce the tribunal's order. If the educational setting cannot give a satisfactory reason as to why they have not carried out the actions, the tribunal can complain to the Department for Education (DfE).





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