

Disability Discrimination



Many children and young people who have SEN may have a disability so what is a disability?

The Equality Act 2010 defines a disability as:-

- (1) 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.

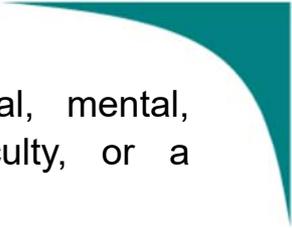
- (2) A reference to a disabled person is a reference to a person who has a disability.

- (3) In relation to the protected characteristic of disability—
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
 - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability

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?





An impairment may be developmental, mental, physical, sensory, or a learning difficulty, or a combination of these things.

Long term means it has lasted or is likely to last 12 months or more.

Substantial means that it affects a person's life on a daily basis. It is more than minor or trivial, it must have a substantial adverse effect on the person's ability to carry out normal day-to-day activities. This may include health needs or SEN, depending on how much it impacts on a person's daily life.

There is a duty on **all** educational establishments and public bodies to make **reasonable adjustments**.

When thinking about whether an action or change is reasonable you need to consider all the circumstances, for instance—

- How effective is the proposed adjustment?
- The size of the organization and the cost.

The Children and Families Act 2014 Part 3 focuses on children and young people with special educational needs and disabilities and gives a description in Section 20 of a special educational need (SEN)

A child or young person may have a SEN or a disability or both.

Children and young people with a disability that is covered by the definition will also be protected under the Equality Act 2010

(www.gov.uk/guidance/equality-act-2010-guidance)

There are different types of Disability Discrimination

Direct Discrimination is:

Treating a person less favourably than someone else because they are disabled. It affects them directly.

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

Indirect Discrimination is:

Putting in place a rule or way of doing something that creates a substantial disadvantage to those with a disability.

It effects everybody in the group but has a greater impact on the person with a disability.

This may be justified if there is a legitimate aim and that aim 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 young person with a disability that affects their health this may put them at a substantial disadvantage as they have appointments in school time.

Can this be justified?

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.



Discrimination arising from a disability is:

Treating a disabled person unfavourably because of something connected with their disability.

- Discrimination arising from a disability can be justified if the treatment is a “*proportionate means of achieving a legitimate aim*”. An example of a legitimate aim is: the health, safety and welfare of individuals.
- Proportionate means that the discrimination must be fairly balanced against the disadvantage suffered because of the discrimination. This means it must be appropriate and necessary. See the duty to make reasonable adjustments at page 7.

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

Violates a person's dignity or creates an environment that the person finds intimidating, degrading, offensive or humiliating.

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 and the Equality Act

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.



Equality Act 2010

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

Discrimination in Educational Settings

All 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.

Example: Sarah is part of a group of students that are going on a school trip. The students have been told not to bring any food with them. Sarah is diabetic and reminds the class teacher of this but is told that the rule has to be the same for everyone.

Reasonable Adjustment: The class teacher allows Sarah to take enough food with her to keep her blood sugar levels up whilst on the trip.

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

If you feel that your child or a young person 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 MEDIATION—03330 062 835



At the meeting there will be an expectation that everybody works together to find a solution to the issues. An example of this would be where a school agrees to allow a child previously excluded from a school trip due to their disability to attend.

You can take more formal action by making a disability discrimination claim and going to tribunal.

The responsibility not to discriminate rests with:

- the Governors in mainstream schools;
- the proprietors in Academy trusts and free schools
- the board of directors/management in colleges

In Further Education Colleges (including a sixth form college) it would be a county court claim instead of SENDIST tribunal.

The SENDIST Disability Discrimination appeal

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

Contact the First-tier Tribunal (Special Educational Needs & Disability) on 01325 289350 or email sendistqueries@hmcts.gsi.gov.uk

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.

How to lodge the appeal



- Google 'SENDIST tribunal' and click on the link "First-tier Tribunal (Special Educational Needs and Disability)-GOV.UK" At the bottom of this page is the link to the 'forms and further guidance.' Click this and then download the form you need.
- The tribunal will register your claim within 10 working days of receipt and send a copy to the educational placement.
- The tribunal 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.
- Your hearing 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.

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).

Public Sector Equality Duty

When public authorities carry out their functions, the Equality Act says they must have due regard to the following points, to:

- Eliminate unlawful discrimination, harassment and victimisation.
- Advance equality of opportunity between people who share a protected characteristic and those who don't. Protected characteristics are:
- Disability, Age, Marriage and civil partnerships, Pregnancy and Maternity, Race, Religion or belief, Sex and Sexual orientation.
- Foster or encourage good relations between people who share a protected characteristic and those who don't.

Having 'due regard' means:

- Removing or minimising disadvantages suffered by people due to their protected characteristics. Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The duty means that the public sector must take steps to take account of disabled people. There is a need for them to consider the impact of decisions before they put them in place. It involves the sector tackling prejudice and promoting understanding between different groups.

This booklet covers a very complex area and is only meant as a guide. For further information and support on your particular circumstances please contact us on 01603 704070.



We also:

- ◆ Produce a newsletter each term
- ◆ Have information leaflets available on our website
- ◆ Ensure the views of children, young people and parent/carers are represented when influencing SEND policy and practice

Contact us:

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**If you need this leaflet in another format or language please contact us
and we will do our best to help.**



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