



## Disabled children, schools and the Equality Act 2010

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The Equality Act 2010 brings together disability discrimination law with other equalities legislation. In October 2010 most of the duties in the Disability Discrimination Act (DDA) were replaced by the Equality Act 2010. Further changes were brought in at the beginning of April 2011 and, in September 2011, new regulations were passed by Parliament, so this is a good time to take stock of how disabled children are protected from discrimination.

The Equality Act applies to nine different aspects of equalities including race, sex and religion or belief. The Act also applies to most aspects of life, including employment, transport and how health and social care services are provided. In this article I want to focus on how the duties apply to disabled children in schools.

### Why do you need to know about the Equality Act?

It is important that you know:

- that the law says discrimination is wrong;
- whether your child is covered by the definition of disability;
- what protection there is for your child from discrimination in school life;
- that schools' duties include making *reasonable adjustments* for disabled pupils; and
- what to do if you think that your child has been discriminated against.

If you were familiar with the Disability Discrimination Act, you may recognise many of the arrangements under the Equality Act.

## Who counts as disabled?

The definition of disability in the Equality Act is the same as the definition in the DDA. But the definition is quite broad and many people do not realise how many children may be included.

The Equality Act 2010 says that a person has a disability if they have:

*a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.*

## What does this mean?

*A physical or mental impairment* includes learning difficulties, mental health conditions, medical conditions and hidden impairments such as specific learning difficulties, autism, and speech, language and communication impairments.

In deciding whether someone is disabled, it is the effect of an impairment that has to be considered. If the impairment has a *substantial* and *long-term* effect on a person's ability to carry out normal day-to-day activities it may amount to a disability. So what do *substantial* and *long-term* mean? *Substantial* means *more than minor or trivial*, and *long-term* means *a year or more*. This rules out broken limbs, which usually heal in less than year, but covers more people than many imagine.

## Special educational needs and disability

You may not think of your child as being disabled because most of us think that the term *disability* applies in the main to people who have a sensory impairment (a hearing impairment or a visual impairment) or a physical impairment. Disability is broader than that.

You may know that your child has a special educational need, but does that mean that they are, or are not, disabled? The definition of special educational needs is set out in different legislation. In the law, SEN and disability are not linked, but in practice many disabled children have special educational needs and many children with special educational needs count as disabled under the Equality Act. Many children with lower level special educational needs may not be covered by the definition of disability, but children with more significant SEN, including those who have a statement are more likely to be covered. Then there are other children who have a range of health conditions, for example epilepsy, diabetes or more severe forms of asthma and eczema, who may not have a special education need at all, but would probably be covered by the definition of disability.

## Telling your child's school about their disability

When your child is admitted to school, the school should ask about whether your child has a disability, a special educational need or a health need, because they will have responsibilities to you and your child if they do. This is difficult. Some parents have concerns about sharing information about their child. But schools need to know about a disability if they are to make changes, or *adjustments*, to what they do: how they teach and how they organise other activities at the school. This is an important moment to share your experience of your child and give the school an insight into how they may best be able to support your child in their learning and in joining in the whole life of the school.

If at this point you think the school may be discriminating against your child because they are disabled, bear in mind that this may amount to discrimination in itself and you may want to challenge the school's behaviour. I'll say more about how you might do this later in the article.

## Does the Equality Act apply to all schools?

The Equality Act applies to all schools: to private schools, academies and schools that are funded by the local authority; to nursery schools, primary schools and secondary schools; to mainstream schools and special schools. It also applies to 6<sup>th</sup> forms in schools. If 6<sup>th</sup> form provision is made in a college, the law still applies, but it is slightly different. In this article I'm just talking about schools.

## What do the duties cover?

Schools must not discriminate against a pupil or a child or young person who might become a pupil at the school. The Equality Act covers:

- admissions
- the provision of education
- access to *any benefit, facility or service*
- exclusion or *other forms of detriment* - that is other forms of disadvantage.

This covers not just teaching and learning in classrooms, but lunchtimes, clubs and activities, school trips, sporting activities - in effect, the whole life of the school.

## What is discrimination?

The two main ways in which schools might discriminate against disabled pupils are by:

- *less favourable treatment*

- *failing to make reasonable adjustments.*

## **What is *less favourable treatment*? - definitions**

The Equality Act says that a school must not treat a disabled pupil *less favourably*:

- because they are disabled. This is called *direct discrimination*;
- by applying a *provision, criterion or practice* that puts a disabled student at a disadvantage compared with someone else who is not disabled. This is called *indirect discrimination*;
- because of something *arising in consequence of their disability*. This is called *discrimination arising from a disability*.

## **The following examples may amount to discrimination:**

1. *A pupil with Down's syndrome is not permitted to go on a trip to a museum because staff think she would not be able to participate in the activities arranged for the visit.*
2. *An academy has a healthy snacks policy. A pupil with diabetes is told she cannot eat her high calorie snack in the playground at break time and has to sit outside the head teacher's office instead.*
3. *A school behaviour policy sets a two-day exclusion for all pupils who are physically violent. A pupil with a communication impairment is excluded when he lashes out at another student following a period of being bullied about his impairment.*

## **A more detailed explanation**

The most common way for schools to discriminate is by applying a blanket policy - a policy that is applied in the same way to all children but puts disabled children at a particular disadvantage compared with children who are not disabled. So, in the second example, the 'healthy snacks policy' was applied in the same way to all children - only the girl with diabetes was placed at a disadvantage. This is likely to be *indirect discrimination*.

Example 3 may amount to *discrimination arising from a disability* because the behaviour that led to the exclusion may have been linked back to the nature of the child's impairment. In this case though the school may be justified in making the exclusion if they can show that the exclusion was an important part of their responsibilities, for example an important part of maintaining good order and discipline at the school. But the school also has a duty to make *reasonable adjustments* so that disabled pupils are

not at a substantial disadvantage. If the school didn't do this, they may not be able to justify the exclusion.

## What are *reasonable adjustments*?

The Equality Act recognises that to treat disabled children equally, it is often necessary to treat them differently, and this may include treating them more favourably.

Where something a school does might put a disabled child at a *substantial disadvantage* compared with other children who are not disabled, schools must take reasonable steps to avoid that disadvantage. This is usually referred to as the *reasonable adjustments* duty. The duty requires schools to think ahead to avoid the disadvantage that might otherwise occur.

In the exclusion example above, *reasonable adjustments* might have included: an alternative form of punishment; a thorough investigation of the bullying incidents; work with pupils to counter the bullying and promote a better understanding of communication barriers and disability more generally.

## Other examples

The following may also be *reasonable adjustments*:

- *The timetable is adjusted to provide time for a student with learning difficulties to reinforce the learning of new skills.*
- *A student with a visual impairment sits at the back of the class to suit her field of vision.*
- *Pupils with dyslexia are given a green card to indicate they may need extra time to complete written tasks.*

More examples of reasonable adjustments can be found on three DVDs in a publication from the Department for Education<sup>i</sup>.

Schools should involve parents and pupils themselves in thinking about what *reasonable adjustments* will work best for them. Most reasonable adjustments cost little or nothing and are relatively easy to implement.

## How can you resolve problems and challenge discrimination?

Challenging discrimination is difficult: most parents are reluctant to challenge their child's school, not least because they worry that it will in some way affect how the school treats their child. But there is a range of ways of doing this.

### *Provide information*

The simplest approach may be to provide the school with some information. The Department for Education and the Equality and Human Rights Commission both provide guidance for schools about the Equality Act. Their guidance covers all aspects of equalities, but there are specific sections on disability because the law provides additional protection for disabled children.

It may also be helpful to provide general information about your child's impairment. You might use information from Afasic about speech, language and communication impairments. Of course this doesn't substitute for the individual information that the school needs from you, but may help to explain some of the general approaches they might consider. It shows that what you are asking for is not unusual or out of the ordinary.

### *Talk to someone at your child's school and try to resolve the problem*

You may want to speak to someone at your child's school. It is a good idea to take someone with you, even if they just take notes. You could take a friend with you, or you could ask your local parent partnership service<sup>ii</sup> or a local voluntary organisation if there is someone who could go with you.

### *Make a formal complaint*

You may want to register a formal complaint to the school using the school's complaints procedures. For maintained schools this is usually to the head teacher in the first instance and, if the complaint is not resolved, to the governing body. The school must publicise its complaints procedure, but you may need to ask for it.

### *Consider involving someone from beyond the school*

It may be possible to involve someone from outside the school to help resolve the problem: this might be someone from the local authority if the school is a maintained school.

### *Go on talking to your child's school*

In the end the solution lies in the school, so throughout any of the routes it will be important to go on talking to the school to try to resolve the problem.

### *Make a claim of disability discrimination to the Tribunal*

If none of these routes work, parents can make a claim of disability discrimination to the First-tier Tribunal (SEN and Disability) which is often called *SENDIST*. It is the same Tribunal that hears an appeal against the decision of the local authority in SEN cases<sup>iii</sup>.

## **Schools have other responsibilities too**

In addition to their responsibilities to individual disabled children, schools have more general duties:

- to look ahead and plan to make their school more accessible to disabled pupils, *the accessibility planning duties*;
- to improve equality of opportunity for disabled people, under the *public sector equality duty*;
- towards other disabled people: disabled teachers employed at the school, disabled parents, carers and other people using the school;
- towards other groups of children and adults who share other *protected characteristics* under the Equality Act, for example sex, race and sexual orientation.

## **What is an accessibility plan?**

An accessibility plan is a plan that sets out how the school is going to:

- increase access to the curriculum for disabled pupils;
- improve the physical environment of the school to increase access for disabled pupils; and
- make written information more accessible to disabled pupils by providing information in a range of different ways.

Schools have to have an action plan showing how they are going to make their plan happen. They can publish their plan as part of another document, for example the school development plan.

## **What is the public sector equality duty?**

The Public Sector Equality Duty is a general duty on schools, and other public bodies, to have *due regard* to the need to eliminate discrimination, to improve equality of opportunity, and foster good relationships between different groups. This general duty includes having *due regard* to the need to tackle prejudice, promote understanding, remove barriers, meet the needs of disabled pupils and encourage their participation in the life of the school. The aim of the duty is to make sure that equality considerations are

taken into account in every day decisions made by schools, and other public bodies. Just a note: this part of the Equality Act does not apply to private schools.

Regulations came into force in September 2011 that require schools to publish both information and objectives to show how they are meeting the public sector equality duty. Schools have to publish the information and the objectives by April 6<sup>th</sup> 2012 and this has to be somewhere that is accessible to the public; most schools will probably use their website. Having *due regard* will mean that schools should consider how their policies and practices affect disabled pupils. It would be good practice to involve disabled pupils in considering what objectives the school should set. The best schools will seek parents' views as well.

## Why are these general duties important for my child?

A really good accessibility plan or set of equality objectives can make a difference. They can mean that, over time, the culture and attitudes of the school community can become more welcoming, outcomes for disabled pupils should improve and the school doesn't have to make so many adjustments for individual children because the school is more accessible for all pupils. Involving disabled pupils in the plan or objectives can help to identify effective improvements. It is a good idea to ask to see your school's accessibility plan and, after April 6<sup>th</sup> 2012, or even before, their equality objectives.

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<sup>i</sup> Department for Education and Skills (2006) *Implementing the DDA in schools and early years settings* (Department for Education and Skills (DfES), 2006)

<sup>ii</sup> You can find out how to contact your local parent partnership service here:  
<http://www.parentpartnership.org.uk/>

<sup>iii</sup> <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/send/index.htm>

**Afasic**  
**Helpline: 0300 666 9410**  
[www.afasic.org.uk](http://www.afasic.org.uk)





## **New Duty on Schools and Local Authorities to Provide Auxiliary Aids and Services to Children with Disabilities**

The existing duty on schools and local authorities to use ‘reasonable adjustments’ to compensate for any disadvantage faced by children with disabilities has now been extended to include the provision of auxiliary aids. This new duty was included in the 2010 Equality Act and came into force on 1 September 2012. It applies to all schools and local authorities in England, Scotland and Wales, including independent schools.

The term ‘auxiliary aid’ refers to either an aid or a service. ‘Aid’ means any form of equipment that would help a disabled person, and might include, for example, signs or symbols to assist communication or perhaps a specially adapted computer. ‘Service’ means help provided by another person, such as someone reading something for you, or, possibly, therapy.

Note that this new duty is subject to cost and practicality considerations. As with other disability discrimination requirements, schools are only obliged to provide what is ‘reasonable’. So, while this new legal entitlement might be a useful bargaining tool in negotiations with your child’s school, it does not give you such strong rights as the SEN legislation, which requires local authorities to arrange any support specified in part 3 of a statement. For the foreseeable future, therefore, it is likely that the SEN route will be a more effective way of accessing the help that children with speech and language impairments need.

Remember that, as a parent:

- ⌚ You are entitled under the 1996 Education Act to request a formal (statutory) assessment of your child’s special educational needs (SEN).
- ⌚ If your request is turned down, or your child’s statement does not clearly specify the help he or she should receive, you can, in most cases, appeal to the Tribunal.
- ⌚ You can also bring to the Tribunal a claim of disability discrimination against your child’s school.

### **Help and advice**

To find out more about your rights under the SEN and Disability Discrimination legislation, please contact the Afasic helpline on 0300 666 9410, or use the enquiry form on our website in the Helpline section (link at top of the page).

## **Some of the Terms in this leaflet are now out of date. Please note that:**

Statements have now been replaced by Education, Health and Care (EHC) Plans

Parent Partnership Services are now called SENDIASS (Special Educational Needs and Disability Information Advice and Support Services)

The 1996 Education Act has now been replaced by the 2014 Children and Families Act

