

Disability Rights Commission



Policy

EDU2/WBL

A Guide for Parents

Part 4 of the Disability Discrimination Act 1995
as amended by the Special Educational Needs
and Disability Act 2001 – schools

Wales

 Educating For Equality

Change by • advice • conciliation • legal enforcement

The Disability Rights Commission

The Disability Rights Commission (DRC) is an independent body, established by Act of Parliament to eliminate the discrimination faced by disabled people and promote equality of opportunity. When disabled people participate – as citizens, customers and employees – everyone benefits. So we have set ourselves the goal of “a society where all disabled people can participate fully as equal citizens.”

The DRC has offices in England, Scotland and Wales. For further details of how we can help you, please contact our Helpline – contact details are featured on the back cover of this publication.

Introduction

From September 2002, if your child has a disability and has been discriminated against in education, you may be able to challenge this under the Disability Discrimination Act (DDA).

The Disability Rights Commission (DRC) Helpline (see back cover) can give you more advice and information. From September 2002, we will offer advice, information and support to parents and schools to help in sorting out problems. If you decide to make a claim against the school the DRC may also be able to legally represent your child.

Please also note that in addition to the legislation about discrimination in schools, there is separate legislation covering special educational needs and improving accessibility (see pages 7 and 8).

Section One: The law

Who is responsible for meeting the new duties?

The “responsible body” for your child’s school is ultimately responsible in law for meeting the new duties and may be different depending on which school your child attends.

Please use this table for reference.

Type of school	Responsible body
Maintained school	The governing body, in general
Pupil referral unit	The local education authority
Maintained nursery school	The local education authority
Independent school	The proprietor
Special school that is not maintained by a local education authority	The proprietor

Does my child have rights under the DDA?

The DDA defines disability as “a physical or mental impairment, which has a substantial and long-term adverse affect on a person’s ability to perform normal day-to-day activities”. For example, if your child has problems with mobility, seeing or hearing, learning disabilities, mental health problems, epilepsy, Aids, asthma, diabetes or a progressive condition such as multiple sclerosis, then he or she may be covered under the DDA.

How can the DDA help my child?

From September 2002, it will be against the law for schools to discriminate against your child for a reason related to his/her disability in:

- admissions
- education and associated services, including:
 - school trips
 - the curriculum
 - teaching and learning
 - school sports
 - the serving of schools meals
- exclusions.

There are two aspects to discrimination.

1. Less favourable treatment

A school may be discriminating if it treats a child “less favourably” for a reason related to his/her disability, and it cannot justify that treatment.

For example:

- refusing your child’s application to go to the school because of his/her disability
- refusing to let your child go on a school trip because he has diabetes.

Justifying less favourable treatment

In some cases, the school may be able to justify treating your child “less favourably” if it can show that it did so for a “material and substantial” reason. This means that the reason must relate to your child’s particular case and be significant enough to justify discrimination.

Less favourable treatment may also be justified if it is the result of a permitted form of selection.

2. Failure to take reasonable steps

The school can also be accused of discrimination if it does not take “reasonable steps” to ensure your child is not at a substantial disadvantage compared to the other pupils at the school.

For example:

- a secondary school fails to make the arrangements necessary for your child to be able to sit public exams
- a deaf pupil who lip-reads is at a substantial disadvantage because teachers continue speaking while facing away from him to write on the board
- a pupil with dyslexia is told she cannot have her teacher’s lesson notes, and that she should take notes during lessons “like everyone else”.

How does this differ from the rights of children with “special educational needs”?

The Educational Act 1996 says “a child has special educational needs if he or she has a learning difficulty which calls for special educational provision”. However not all disabled children have special educational needs. For example, if your child has severe asthma, he/she may not have special educational needs, but may have a disability under the DDA.

The DDA does not require schools to provide “auxiliary aids and services” such as sign language, interpreters or information formats such as braille or audiotape. These can be provided through the Special Educational Needs (SEN) Framework, which individually assesses your child’s special educational needs.

Please note that the Department for Education and Skills (DfES) says that schools have a duty under the DDA to make reasonable adjustments for disabled parents. For example, by providing interpreters at parents’ evenings.

Making access to school buildings and the curriculum easier for disabled children

Local Education Authorities (LEAs) and schools will also have new duties that mean they must gradually implement plans to improve access for disabled children.

These plans should include:

- improvements in access to the curriculum
- physical improvements to increase access to the school buildings
- improvements in information in a range of formats for disabled children. This may include braille, audiotape or large print formats.

Schools should make these plans available to parents.

Section Two: The law in practice

What do schools need to do?

Schools will be expected to take “reasonable steps” to meet the needs of disabled children who might become pupils. So schools should think about the broad range of needs of pupils with different disabilities. However, this does not include making changes to school buildings to make them accessible, or providing specialist equipment or support. Both these areas are dealt with via different routes – the new planning duty for schools and LEAs and the Special Educational Needs Framework respectively. See pages 7 and 8 for more details.

Schools should regularly review their policies, practices and procedures to ensure that disabled children are not at a disadvantage because of their disability.

Should I tell the school about my child's disability?

Yes, it may be the best thing to do. If you decide not to tell, and your child is discriminated against, the school may be able to claim in its defence that it did not know about the disability. Schools are advised to ask if your child has a disability when he/she starts school.

Section Three:

What should I do if I think my child has been discriminated against?

The DRC advises that your first point of contact if you feel your child has been discriminated against in school is the Head Teacher. If a discussion with the Head Teacher does not resolve the issue, the school and the education authority should have complaints procedures that you can follow. If not, you may wish to contact the DRC Helpline.

Information and Advice

The DRC Helpline should be able to provide you with information and advice at any point in this process.

Casework and Conciliation

The DRC Helpline should be able to help. It may refer your dispute to the DRC Casework Service. If we can help, we will take up your child's case on your behalf. We may be able to get a satisfactory result without taking the case further.

Alternatively, if the responsible body for the school agrees, we may refer the dispute to the Disability Conciliation Service (DCS). The aim is to reach an agreement that both sides accept. This does not stop you from taking legal action at the same time or later on if you are unhappy with the outcome of conciliation.

If your claim is referred to conciliation, you will have an additional two months to take legal action – ie eight months from the alleged discriminatory act.

Special Educational Needs and Disability Tribunal

You may be able to take your child's dispute further than the DRC Casework and Conciliation Services and claim for unlawful discrimination. In England and Wales, most claims of disability discrimination are heard by the Special Education Needs and Disability Tribunals (SENDIST). But claims against maintained schools of discrimination in admissions and exclusions are heard by admission appeal panels and exclusion appeal panels.

You need to make the claim to SENDIST within six months of the date when the alleged discrimination took place. If your claim is referred to conciliation, you have another two months to do so.

If your claim is successful, SENDIST can order the school to use any "reasonable" remedy, except financial compensation. For example, SENDIST might order the school to arrange disability training for staff or to change a policy or procedure.

SENDIST has produced a leaflet detailing how to make a claim. See below for SENDIST's contact details.

Section Four: Further information

Educating for Equality

The DRC is campaigning to improve choice and opportunity for disabled children and their parents in education.

For more information about the DRC Educating for Equality campaign please contact our Helpline.

For more information and advice contact:

Disability Rights Commission (DRC)

✉ DRC Helpline
Freepost MID 02164
Stratford-upon-Avon
CV37 9BR

☎ **Helpline** 08457 622 633
(Monday to Friday
08:00 – 20:00)

☎ **Textphone** 08457 622 644
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Email

enquiry@drc-gb.org

Website

www.drc-gb.org

Special Educational Needs and Disability Tribunal (SENDIST)

✉ SENDIST
7th Floor
Windsor House
50 Victoria Street
London SW1H 0NW

☎ **Telephone** 020 7925 5750
Fax 020 7925 6786

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