



Policy

EDU4/WBL

A guide for Schools

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

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, it will be unlawful for any school to discriminate against disabled pupils (current or prospective), and parents will have means of redress via the new SEN and Disability Tribunals and via admissions and exclusions appeal panels.

These new duties sit alongside the Special Educational Needs Framework and new planning duties which require LEA's to develop strategies and schools to develop plans to improve accessibility for disabled pupils over time.

Together, these changes in the law and regulation are designed to provide a stronger legal framework to underpin the inclusive practice that many schools are already working towards. Schools that are committed to and striving for equal opportunities and inclusion are unlikely to face difficulties in meeting the new duties.



ESTYN will be inspecting schools compliance with the new duties from September 2002.

A Code of Practice has been produced including a wide range of helpful examples to illustrate the new duties. All schools will receive a copy of the Code.

This leaflet is aimed at those with managerial or coordinator roles in schools. The first part of this booklet is a summary of schools' duties. The second part makes suggestions for implementing the new law.

Section One: The new duties

What does the new law cover?

From September 2002, it will be against the law for schools to discriminate in:

- admissions
- education and associated services
- exclusions.

Admissions

Responsible bodies must not discriminate against a disabled person:

- in the way they decide who can get into the school. This includes any criteria when it is over-subscribed, and the way it operates those criteria
- in the terms for offering people a place at the school
- by refusing or deliberately not accepting an application from a disabled person for admission to the school.

Education and associated services

The Act covers all education and associated services for pupils and prospective pupils – in essence, all aspects of school life, including extra-curricular activities and school trips.

Exclusions

It is against the law to discriminate against a disabled pupil by excluding him or her from the school because of their disability. This applies to exclusions whether they are permanent or fixed-term.

Who is responsible for the new duties?

All schools are covered, including independent schools and pupil referral units. The “responsible body” for a school is ultimately liable and responsible for the actions of all employees and anyone working with the authority of the school.

Responsible bodies

| 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 |

How is discrimination defined under the new law?

A disabled pupil can be discriminated against in two ways:

1. Less favourable treatment

If a school treats a disabled pupil or prospective pupil less favourably than another because of his or her disability without justification, they may be breaking the law.

Example 1:

Parents who want their daughter with epilepsy admitted to a primary school are told that the school cannot take her unless she stops having fits. This is likely to be deemed less favourable treatment for a reason related to the child's disability and might therefore be against the law.

Example 2:

A disabled boy is admitted to a secondary school. The school wants him to have all his lessons in a separate room in case other children are frightened by his muscle spasms and involuntary noises. This is likely to be deemed less favourable treatment for a reason related to his disability and might be against the law.

Justification for less favourable treatment

In some cases, the school can treat a disabled pupil “less favourably” if it can provide justification that is both material and substantial to the particular case.

Example 1:

A pupil with cerebral palsy who uses a wheelchair is on a trip with her school to an outdoor centre. The teachers arrange for the school children to go on a 12-mile hike over difficult terrain, but having carried out a risk

assessment, they decide that the disabled pupil can't go on the hike for health and safety reasons. In this particular case, the school may be able to justify the less favourable treatment for a material and substantial reason, although they are likely to be expected to arrange an alternative activity for the disabled pupil as a reasonable adjustment.

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

Example 2:

A child with learning difficulties applies to attend a school that selects its intake on the basis of academic ability. She fails the schools entrance exam. Even though the reason for her performance in the exam was for a reason related to her disability, because the school has applied objective criteria, the less favourable treatment is likely to be justified.

2. Failing to make a “reasonable adjustment”

Schools can also be found to have discriminated where they have failed to take “reasonable steps” which leads to disabled pupils and prospective pupils being placed at a “substantial disadvantage” compared to non-disabled pupils.

Example 1:

A deaf pupil who lip-reads is at a disadvantage because teachers continue speaking while facing away from him to write on a whiteboard.

Example 2:

A pupil with severe dyslexia is told she cannot have her teacher’s lesson notes, and that she should be taking notes during lessons “like everyone else”.

Justification for failing to take “reasonable steps”

Not taking “reasonable steps” to avoid putting pupils at a substantial disadvantage can only be justified if there is a reason which is both material and substantial to the particular case.

What is “reasonable”?

The Act does not define “reasonable” – this depends on individual cases and will be a matter for the Tribunal and/or appeal panels to decide. However schools can take account of the:

- need to maintain academic and other standards
- money available
- practicalities of making the particular adjustment
- health and safety of the disabled pupil and others
- interests of other pupils.



What is a “substantial disadvantage”?

The school needs to take account of a number of factors. These might include:

- the time and effort that the disabled child might need to expend
- the inconvenience, indignity or discomfort a disabled child might suffer
- the loss of opportunity or lack of progress that a disabled child may make compared to other non-disabled children.

When do schools need to take action?

Schools have a duty to all disabled pupils and potential pupils, not just individuals. Schools cannot wait until a disabled pupil has arrived before making adjustments as they may find themselves already in breach of the law. They need to think ahead to what they might need to do, and should keep policies under review to ensure that they do not discriminate against disabled children.

The DRC advises schools to begin preparing for the new duties in advance of September 1st 2002, to look at the sort of reasonable steps they might need to take as complaints can be brought under the Act from this date.

The key tests are that policies, procedures and practices do not lead directly to less favourable treatment or substantial disadvantage and that they provide the school with the flexibility required to respond to individual needs as they arise.

Schools are advised to make reasonable enquiries to find out whether children seeking admission to their school or existing pupils have a disability.

Some practical suggestions for action are provided later in this booklet.

Do schools need to provide “auxiliary aids or services” under Part 4 of the DDA?

No. The special educational needs (SEN) framework is designed for this. Schools’ duties under the DDA are designed to sit alongside the SEN framework and are not an additional route of access to auxiliary aids and services. Auxiliary aids and services might include the provision of information in formats such as Braille or audio tape, or personal assistance.

Do schools need to make “reasonable adjustments” to buildings and the physical environment under Part 4 of the DDA?

Schools do not have to remove or alter physical features as part of the “reasonable adjustment” duty. Physical alterations are covered by the longer-term planning duties for LEAs and schools.

The National Assembly for Wales and the Secretary of State for Education and Skills will issue guidance to LEAs and schools, on the planning duties. There are three distinct elements:

- improved access to the curriculum
- physical improvements to increase access to education and associated services
- improved information in a range of formats for disabled pupils.

Who has rights under the new law?

The Disability Discrimination Act 1995 (DDA) defines a disabled person as:

“someone who has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities” .

This definition covers pupils with physical (including sensory), intellectual or mental impairments. The definition is broad and might include children with a learning disability, sensory impairment, severe dyslexia, diabetes or epilepsy, pupils who are incontinent, or who have AIDS, severe disfigurements or progressive conditions like Muscular Dystrophy.

How is this different from Special Educational Needs?

The Education Act 1996 says that “a child has special educational needs if he or she has a learning difficulty which calls for special educational provision to be made for him or her.” This is provided under the SEN Framework, including in some cases a statement of special educational need (SEN). A disability might give rise to a learning difficulty that calls for special educational provision to be made if it prevents or hinders the disabled child from accessing education.

The SEN Framework is there to identify and meet any additional educational needs of children. The duties under the Disability Discrimination Act are there to ensure that disabled pupils are not discriminated against and so seek to promote equality of opportunity between disabled and non-disabled pupils.

Many children who have SEN will also be defined as having a disability under the DDA. However, not all children who are defined as disabled under the DDA will have SEN. For example, those with severe asthma, arthritis, or diabetes may not have SEN, but may have rights under the DDA. Similarly, not all children with SEN will be defined as having a disability under the Disability Discrimination Act. This is why whole school approaches aimed at inclusion are likely to work best.

What can parents do if they feel that their child has been discriminated against?

Parents can take a case to an SEN and Disability Tribunal, or in certain cases an Admissions Appeal Panel or Exclusion Appeal Panel. Parents and schools can both use the DRC's conciliation service if both parties agree to conciliation.

It is important that schools internal complaints procedures cover cases of discrimination in order to prevent or deter further action.

Schools duties under Part 2 (employment) and Part 3 (the provision of goods, facilities and services to the public) of the Disability Discrimination Act 1995 (DDA)

Since 1996, schools have had duties under the Disability Discrimination Act to avoid discrimination in relation to employment and the provision on non-educational goods, facilities and services.

The new duties in relation to access to education complement, rather than replace, these existing duties.

Schools can get advice and information concerning all their duties under the DDA from the Disability Rights Commission Helpline (contact details can be found on the back of this leaflet).

Section Two:

Implementing the new duties

What sort of action might schools take to prevent discrimination against disabled pupils or prospective pupils?

In your school:

- Is the “responsible body” aware of their duties under the Disability Discrimination Act?
- Do senior members of staff take their responsibilities under the Act seriously?
- Are all staff aware of the new duties, including managers, teaching staff, learning support assistants, catering staff, caretakers and others involved in providing or supporting learning?

- Are you sure that the policies covering admissions, education and associated services, and exclusions will not put disabled children at a substantial disadvantage?
- Has the school begun reviewing its policies, procedures and practices to ensure that it will not discriminate against disabled pupils or prospective pupils?
- Has the school begun the process of making “reasonable adjustments” in order to comply with the new law?
- Has the school held training on the new law and/or broader issues of disability equality?
- Are there enough procedures in place to ensure that discrimination by staff will be picked up on and dealt with properly?
- Do the school’s general plans take account of the need to make “reasonable adjustments”?
- Has the school an adequate and accessible internal complaints procedure?

Educating for Equality

The Disability Rights Commission is campaigning to improve choice and opportunities for disabled children and their parents in education.

For more information about the DRC Educating for Equality campaign or to become involved, please contact our Helpline.

The Disability Rights Commission

You can contact the DRC Helpline by voice, text, fax, post or email. You can speak to an operator at any time between 08:00 and 20:00, Monday to Friday.

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If you require this publication in an alternative format and/or language please contact the Helpline to discuss your needs. It is also available on the DRC website: www.drc-gb.org