



Involvement, Enjoyment, Achievement

ST. JAMES' C.E.(C) PRIMARY SCHOOL GLOSSOP

Policy for Accessibility
Race Disability Equality May 2009
Disability Discrimination Act 1995 Part 4

Code of Practice for Schools

Duties not to discriminate against disabled pupils and prospective pupils in the provision of education and associated services in schools, and in respect of admissions and exclusions

Introduction: Disability Discrimination Act 1995

Duties, since September 2002, extend various previous acts in law. The duties make it unlawful to discriminate, without justification, against disabled pupils and prospective pupils, in all aspects of school life. The principle behind this legislation is that wherever possible disabled people should have the same opportunities as non-disabled people in their access to education.

An overview of the legislation, England and Wales: The disability discrimination duties

- The disability discrimination duties provide protection for disabled pupils by preventing discrimination against them at school on the grounds of disability.
- Schools and local education authorities are already familiar with disability discrimination duties under the Act. Parts 2, 3 and 4 of the Act have applied to schools in stages from 1996. These duties affect governing bodies and local education authorities in three main areas: employing staff, providing non-educational services to the public and publishing information about arrangements for disabled pupils.

There are two key duties involved in ensuring that schools do not discriminate against disabled pupils. These are:

- not to treat disabled pupils less favourably; and
- to take reasonable steps to avoid putting disabled pupils at a substantial disadvantage. This is known as the reasonable adjustments duty.

The reasonable adjustments duty is limited by a number of considerations. These are

- the reasonable adjustments duty does not require the responsible body to provide auxiliary aids and services;
- the reasonable adjustments duty does not require the responsible body to make alterations to the physical features of the school.

Planning duties in England and Wales

The strategies and plans have to address three distinct elements of planned improvements in access for disabled pupils:

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

In England, the Secretary of State for Education and Skills provides guidance for LEAs and schools on how they should implement the planning duties. The Office for Standards in Education (Ofsted) inspects LA accessibility strategies and school accessibility plans. The Secretary of State for Education and Skills has powers [s 28M] to direct schools and LEAs if it is thought that either a school or an LEA has not complied with the planning duties, or has acted unreasonably in carrying

out the duties. The planning duties also update the requirements on governing bodies to provide information in their annual report about arrangements for disabled pupils at the school. The governing body of a maintained school, in its annual report to parents, must explain the admission arrangements for disabled pupils, how the governing body helps disabled pupils gain access and what it will do to make sure they are treated fairly.

The SEN framework in England and Wales

The duties in the Disability Discrimination Act are designed to dovetail with existing duties under the SEN framework. A child has special educational needs if he or she has a learning difficulty which calls for special educational provision. A child has a learning difficulty if he or she:

- has a significantly greater difficulty in learning than the majority of children of the same age; or
- has a disability which prevents or hinders the child from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the LEA;
- is under five and falls within the definition at (a) or (b) above or would do so if SEN provision was not made for the child.

Special education provision means:

- for a child of two or over, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of the child's age in maintained schools (other than special schools) in the area;
- for a child under two, educational provision of any kind.

Children with a disability

The definition of SEN is widely understood as being primarily about children with learning difficulties, because of the wording in the legislation. It is important to recognise that the definition of children with learning difficulties includes children with a disability where any special educational provision needs to be made. It means that children with a disability have special educational needs if they have any difficulty in accessing education and if they need any special educational provision to be made for them, that is, anything that is *additional to* or *different from* what is normally available in schools in the area.

What is the SEN framework?

The SEN framework consists of the primary legislation, the regulations, and the guidance. The statutory duties that form the core of the SEN framework in England and Wales are set out in Part 4 of the Education Act 1996, as amended by the SEN and Disability Act 2001.

The SEN framework makes an increasing assumption that children with special educational needs will be educated in mainstream schools.

Other parts of the educational framework in England support the increased inclusion of children with SEN: the statutory inclusion statement in the National Curriculum and the inspection of educational inclusion by Ofsted.

Within this framework, which increasingly emphasises inclusion and parental participation, the SEN duties require local education authorities, maintained schools and others to identify, assess and make provision for children's special educational needs. The SEN Codes of Practice in England and the SEN Code of Practice for Wales support schools and local education authorities in interpreting their duties under the SEN framework.

Complaints and appeals

If parents are not satisfied with the provision that a school makes to meet their child's special educational needs, parents can complain to the school. If parents do not agree with decisions

made by the local education authority about the nature of their child's needs or about how their child's needs should be met, parents have a right of appeal to the SEN and Disability Tribunal.

The duties: who is covered, who is responsible, what activities are covered

Who is covered by the duties?

- Disabled pupils and disabled prospective pupils are covered by the duties in the Disability Discrimination Act. A disabled person is defined as someone who has a physical or mental impairment which has an effect on his or her ability to carry out normal day-to-day activities. The effect must be:
 - ✓ substantial (that is more than minor or trivial); and
 - ✓ long-term (that is, has lasted or is likely to last for at least a year or for the rest of the life of the person affected); and
 - ✓ adverse.
- Physical or mental impairment includes sensory impairments and also hidden impairments.
- This Code cannot determine which pupils have or do not have a disability but the following considerations may be relevant:
 - ✓ a child may have significant behaviour difficulties and these may relate to an underlying physical or mental impairment
 - ✓ in addition, a behaviour difficulty may arise from a mental illness. where a child has a behaviour difficulty for a reason other than a disability, for example arising from social or domestic circumstances, it is likely that such a difficulty is not covered by the legislation.

Who is responsible for the schools' duties?

Those responsible for the duty not to discriminate in school education vary depending on:

- ✓ whether the school is in Scotland, or England and Wales;
- ✓ the type of school.

For any school, the body that has responsibility under the duties is called the 'responsible body.' In general, the term 'responsible body' is used throughout the Code. However, much of the Code is illustrated with examples of what might and might not constitute disability discrimination in school education. In the examples and in the discussion of the examples the terms 'school' and 'schools' duties' are used because school is where pupils are and that is where the examples arise. Responsibility lies with the responsible body. In our school this is the Governing Body.

Responsible bodies will need to take steps to ensure that employees and those working with the school's authority:

- ✓ can support the responsible body in meeting their duties to disabled pupils; and
- ✓ do not act in such a way as to render the responsible body liable to a claim of discrimination.

A claim of discrimination cannot be made against an individual working at the school or with the authority of the school. The responsible body is responsible for the actions of employees and for anyone working with the authority of the school, for example, volunteer helpers (including parents), teachers from support services, those providing school meals, after-school clubs, or any other service that is included in the broad definition of 'education and associated services' .

Where the school has a contract with someone to provide a service at the school, the responsible body will need to ensure that the service is provided with due regard to the duties of the responsible body under Part 4 of the Act.

What activities are covered by the schools' duties?

Every aspect of school life is covered by the duties. Responsible bodies must not discriminate:

- ✓ in relation to admissions;
- ✓ in relation to education and associated services; or
- ✓ by excluding a pupil.

Admissions

Three distinct aspects of admission are covered by the duties. Responsible bodies must not discriminate against a disabled person:

- ✓ in the arrangements that they make for determining admission of pupils to the school. This includes any criteria for deciding who will be admitted to the school when it is over-subscribed, and it includes the operation of those criteria;
- ✓ in the terms on which the responsible body offers pupils admission to the school;
- ✓ by refusing or deliberately omitting to accept an application for admission to the school from someone who is disabled.

Education and associated services

'Education and associated services' is a broad term that covers all aspects of school life. This list exemplifies the range of activities that may be covered by the term 'education and associated services':

- ✓ preparation for entry to the school
- ✓ the curriculum
- ✓ teaching and learning
- ✓ classroom organisation
- ✓ timetabling
- ✓ grouping of pupils
- ✓ homework
- ✓ access to school facilities
- ✓ activities to supplement the curriculum,
- ✓ school sports
- ✓ school policies
- ✓ breaks and lunchtimes
- ✓ the serving of school meals
- ✓ interaction with peers
- ✓ assessment and exam arrangements
- ✓ school discipline and sanctions
- ✓ exclusion procedures
- ✓ school clubs and activities
- ✓ school trips
- ✓ the school's arrangements for working with other agencies
- ✓ preparation of pupils for the next phase of education.

Exclusions

The duties make it unlawful for a responsible body to discriminate against a disabled pupil by excluding him or her from the school for a reason related to the pupil's disability. This would be less favourable treatment. The duties apply to exclusions whether they are: in England and Wales, permanent or fixed-term exclusions.

What is discrimination? Less favourable treatment

The Act says that the responsible body for a school discriminates against a disabled child if:

- ✓ for a reason relating to the child's disability, it treats him less favourably than it treats, or would treat, others to whom that reason does not apply, or would not apply; and

- ✓ it cannot show that the particular treatment is justified.

In effect this means that there are three questions to be asked in determining whether unlawful discrimination, in relation to less favourable treatment, has taken place:

- ✓ is the less favourable treatment for a reason that is related to the child's disability?
- ✓ is it less favourable treatment than someone gets if the reason does not apply to him/her? and
- ✓ is it less favourable treatment that can be justified?

A failure to make reasonable adjustments

The Act says that the responsible body for a school must take such steps as it is reasonable to take to ensure that disabled pupils and disabled prospective pupils are not placed at a substantial disadvantage in comparison with those who are not disabled.

Reasonable adjustments must be made for disabled children generally but discrimination only occurs if failure to make adjustments leads to the detriment of an individual child

Substantial disadvantage

Responsible bodies must take reasonable steps to ensure that disabled children are not placed at a substantial disadvantage.

In the reasonable adjustments duty, the comparison to be made is between disabled children and children who are not disabled. Discrimination may occur where a disabled child is at a substantial disadvantage in this comparison, and because the school has failed to take reasonable steps to prevent that disadvantage.

In considering what might constitute a substantial disadvantage, the school will need to take account of a number of factors. These may include: the time and effort that might need to be expended by a disabled child; the inconvenience, indignity or discomfort a disabled child might suffer; the loss of opportunity or the diminished progress that a disabled child may make in comparison with his or her peers who are not disabled.

A continuing responsibility

Schools will need to keep their policies, practices and procedures under continuous review. The need for good information continues after children have been admitted to the school. Schools need to consider on a continuing basis whether disabled pupils may be at a substantial disadvantage.

Exceptions to the reasonable adjustments duty

There are two exceptions to the reasonable adjustments duty. Schools are not required to:

- ✓ provide auxiliary aids or services;
- ✓ remove or alter physical features.

Physical alterations to the buildings in schools in England and Wales

Under the reasonable adjustments duty, schools are not required to remove or alter physical features. Physical alterations are covered by the longer term planning duties.

Lack of knowledge defence and confidentiality

The Act includes provision to prevent responsible bodies from being liable to a claim of unlawful discrimination if they did not know that a pupil was disabled, and if they could not reasonably have been expected to have known. This is known as the 'lack of knowledge defence.'

The Act also says what should happen if a parent asks a school to keep confidential the fact that his/her child has a disability. A child can also request confidentiality and, if the responsible body thinks that the child understands what he or she is asking to be done and what its effect will be, the responsible body should take that request into account.

Redress and conciliation in England and Wales

If a parent considers that a responsible body has discriminated against their child they can make a claim of unlawful discrimination.

The Act says that a claim of unlawful discrimination against a child can be made by the child's parents. Claims are brought by the parent on behalf of the child and there is no provision for children to bring their own case. The claim is made against the responsible body for the school. A parent can claim that their child has been discriminated against on the grounds of their disability.

Admission appeal panels

Admission appeal panels will hear claims of discrimination in relation to refusals to admit to maintained schools and City Academies. In all other cases the claim is made to SENDIST.

A claim of discrimination is made in writing. It should set out the circumstances that have led to the claim being made. There is often a very short time limit in which to appeal but this should not be less than 14 days (that is, 10 working days) from the date of notification to the parents that their application for a place at the school was unsuccessful.

An admission appeal is made in accordance either with the *Code of Practice for School Admission Appeals* issued by DfES for schools in England

All community and voluntary controlled schools maintained by the LEA have the appeal arrangements made for them by the LEA. A claim of unlawful discrimination is made and heard in the same way as other admissions appeals. A letter refusing admission explains how to appeal. The education office in the LEA responsible for admissions can also provide the appropriate information. Admission appeal panels can order that a pupil be admitted.

Independent appeal panels for exclusions

Independent appeal panels will hear claims of unlawful discrimination in relation to permanent exclusions from maintained schools and City Academies. Claims of discrimination in relation to permanent exclusions from other schools and fixed-period (temporary) exclusions from all schools are made to SENDIST. Claims of unlawful discrimination being heard by exclusion appeal panels are made and heard in the same way as other appeals against a decision to exclude.

When a pupil is excluded by the head teacher, the parent is notified immediately (usually by telephone) with a letter to follow within one school day. The discipline committee of the school governing body then meets to review the head teacher's decision to exclude the pupil and decide whether to confirm that decision

A letter to the parents from the clerk to the discipline committee sets out the decision of the committee and explains that, in cases of permanent exclusion where the exclusion has been upheld, there is a further right of appeal to an independent Exclusion appeal panel set up by the LEA. Details of the procedure to be followed are provided in a letter from the LEA.

There are 15 school days from the day the parents are told of the decision of the discipline committee in which to lodge an appeal to the Exclusion appeal panel. The Panel has to meet within 15 school days of the appeal being lodged.

Conciliation

The Disability Rights Commission runs an independent conciliation service for disputes arising from the schools' duties under the Act. The purpose of the conciliation service is to promote the settlement of claims without going to the Tribunal or other body

Agreeing to the conciliation process does not prevent a parent from deciding to pursue a claim of discrimination through the Tribunal or admission or exclusion appeal panel

Complaints

Parents may want to consider making a complaint directly to the responsible body either before or at the same time as making a claim to the SENDIST. In maintained schools in England and Wales the responsible body is usually the governing body.

Support for parents making a complaint may be available locally. Locally arranged parent partnership services may be able to put parents in touch with a range of organisations that may be able to provide information and support at the time of making a complaint.

Victimisation

Victimisation is a special form of discrimination covered by the Disability Discrimination Act 1995. It applies whether or not the person victimised is a disabled person.

The Act says that a person discriminates against another person (the victim) if he or she treats the victim less favourably than he or she treats (or would treat) other people in the same circumstances – regardless of the disability – because the victim has:

- ✓ brought proceedings under the Act (whether or not proceedings are later withdrawn); or
 - ✓ given evidence or information in connection with such proceedings; or
 - ✓ done anything else under the Act; or
 - ✓ alleged someone has contravened the Act.
- Parents and siblings are also protected from victimisation when they are carrying out protected actions under the Act
- ✓ The Act also says that a person discriminates against another person (the victim) if he or she treats the victim less favourably than he or she treats (or would treat) other people in the same circumstances because he or she believes or suspects that the victim had done or intends to do any of the things mentioned above. Such victimisation is discrimination, whether or not the victim is disabled.
 - ✓ However, it is not victimisation to treat a person less favourably because that person has made an allegation if the allegation was false and not made in good faith.

