

A parent's guide to disability discrimination and their child's education



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This book is intended to provide general guidance on the law in the United Kingdom. It does not constitute legal advice and is not an authoritative treatment of the law. Professional advice should be sought before acting on any of the material contained in this book as it may not be appropriate to your circumstances. This book is not intended to be used in place of reading the Codes of Practice or the Equality Act.

This book is available free to download in PDF format from:

www.inclusivechoice.com/parents_book.html

Edition 2.03

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About the author

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She has qualifications in teaching adults, and holds a BA in Learning Disability Studies from the Victoria University of Manchester. She lectures at Manchester University in Disability Education Law, and has carried out post-graduate research projects at the university.

Geraldine has experience of the Special Educational Needs and Disability Tribunal (SENDIST) process both as a volunteer for Independent Parental Special Educational Advice (IPSEA), and as a parent who successfully won a landmark tribunal for her disabled child.

She runs many courses for Manchester City Council as well as other local authorities and also works in collaboration with Sure Start Children's Centres where she is a consultant and trainer in the implementation of the Disability Equality Duty.

Foreword

This book is for you to use in whatever way you need to use it. You may need a better understanding of the Equality Act (2010) and the Disability Discrimination laws that are part of it. You may want a better understanding of how the Equality Act relates to your child within the education system or you may need to compose a letter to your school about the educational treatment your child is receiving.

This book is designed to support parents in their understanding of the Equality Act (EA) and how this relates to the successful inclusion of their disabled child in school. In particular the book looks at and discusses the two key principles behind our disability discrimination laws, which are “Less Favourable Treatment” and “Reasonable Adjustments” and how this works in relation to special educational needs.

Most of all I have written this book to help parents build a stronger partnership with their child’s school, and to provide them with the knowledge necessary to challenge schools in relation to their child’s education.

Words and terms

Throughout this book, the term ‘parent’ is meant as a shorthand way to say ‘parent or carer’. The law sees no difference between a parent and a carer so to keep the text simple, whenever “parent” is written this always includes carers as well.

Also, the term ‘disabled’ is often used to mean ‘Special Educational Needs (SEN) or disabled’, again to make the text simpler. In some occasions, there is a legal difference between SEN and disabled children, and in this case it is specified which term is meant.

Some parents may experience difficulties with schools. However, there may also be problems with nurseries, colleges of further education, and even universities. Again, to simplify the text, the word ‘schools’ is used to represent all forms of education. If there is a difference, then it will be pointed out in the text.

Resources

This book makes references to booklets and leaflets which go into more detail in certain areas. All these references and resources can be found on the Inclusive Choice Consultancy website page for this book, which is:

www.inclusivechoice.com/parent_book.html

Introduction

I don't believe any parent sets out to create conflict, tension or misunderstanding in the lives of their child, but I do believe that the thing parents all have in common is that we love our children and strive to gain what is best for them, and what improves their life chances.

In a recent report on education for disabled children, the author mentioned the phrase 'warrior parents' to describe parents that are fighting for their disabled child's education. Failures by schools to comply with what the law demands of them can cause a situation where parents of children with disabilities are seen as the problem. As a result parents lose confidence in the schools. As the system stands it often creates 'warrior parents'. The parent feels there is a need to fight which often put them at odds with the school and Local Education Authority (LEA). This in turn can create a climate of mistrust and conflict from both parent and professional alike.

I don't think of myself as a 'warrior parent'. I don't like the term "Warrior parent" as to me it implies I am going to 'war', fighting and creating conflict. This is not the case; as a parent I am determined and bound to do the very best I can for my child and to make sure that he gets a fair chance, as any other child would in their education.

Would it not seem strange to read that after years of nurturing a child a parent does not teach that child road safety, or how to survive in the adult world? We all have feelings of wanting to protect our children from every possible perceived danger or wrong-doing towards them, yet we do not hear the term 'warrior parent' when it comes to mainstream parents if they challenge any issues surrounding their child's education.

Conflicts often arise between parents and schools because parents feel they have a lack of involvement. It does not have to be like this. I have experienced winning a tribunal case against a school because of their discriminatory practices against my disabled son. I do not regret taking the stance I did for my child and I would do it again if I had to, but I would urge any parent to try to resolve any issues they have with a school at a local level before they do anything else.

As parents we have a much clearer understanding of our child's disability. Even though our children spend a large part of their time in school, this doesn't mean that the school will fully understand what reasonable adjustments might look like for your child. This is why it is very important that we work in partnership with schools and offer our support as much as possible, because it is the best way that we can be sure that the school is meeting the needs of our child.

Jargon busting

Acronyms are sometimes used to exclude people by talking in a way that only some people know what is being said. If we want to be inclusive then we need to use inclusive language that everyone can understand. I try to use acronyms and jargon as little as possible; however it is inevitable that they will be used in everyday conversation in this area, and so I present their definitions right here at the start...

DDA	Disability Discrimination Act
EA	Equality Act
SENDA	Special Educational Needs and Disability Act
COP	Code Of Practice
SENDIST	Special Educational Needs and Disability Tribunal
IPSEA	Independent Parental Special Education Advice
ED	Equality Duty
DfE	Department for Education
EHRC	Equality and Human Rights Commission
LA	Local Authority

The Equality Act 2010

In 2010, the Equality Act was introduced to organise and collect together the complicated and numerous array of Acts and Regulations, which formed the basis of anti-discrimination law in Great Britain, for example, the Sex Discrimination Act, the Race Relations Act, and the Disability Discrimination Act.

The Equality Act defines eight “Protected Characteristics” for people who use services. These are:

1. Age
2. Disability
3. Gender reassignment
4. Pregnancy and maternity
5. Race
6. Religion and belief
7. Sex (gender)
8. Sexual orientation

This book only describes the legislation governing disability.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *What equality law means for your association, club or society*
- *Equality Act (2010) easy read*
- *Equality Act (2010) - What do I need to know - Disability quick start guide*
- *Equality Act (2010)*
- *Equality Act (2010) - Explanatory Notes*

Models of disability

We all have labels given to us whether we like it or not, fat, slim, black white, clever or stupid. Putting people into groups is a very human thing to do. But when labelling becomes a matter of political policy, when those labels stop people from fulfilling their potential in life, when doors are closed to them due to unfair and biased labelling, then it is time to reassess and account for our attitudes and open ourselves up to new ways of thinking.

The medical model of disability

The medical model of disability promotes the view of a disabled person as dependent and needing to be cured or cared for, and it justifies the way in which disabled people have been excluded from society. The medical model shows the disabled person as the *problem*, rather than our society not being able to cope with disabled people being the problem. This is a line of thinking we must move away from.

The medical model shows disabled people in a negative light and creates a cycle of dependency and exclusion, which is difficult to break. The medical model thinking is common in schools where special educational needs are thought of as the individual being different, faulty and needing to be assessed and made as normal as possible. If people were to start from thinking of all children's right to belong and be valued in their local school we would start by asking "what is wrong with the school?" and looking at the strengths of the child.

What is unhelpful about the medical model?

The medical model is likely to inspire pity, or even fear. Pity is not a useful thing. Many people are scared of impairments. The medical model risks objectifying people, lumping them together because of their condition, not because of who they are. Perhaps the most important consequence of the medical model is that bringing the impairment into the foreground risks pushing the person into the background. They become less of a person, and more a collection of medical symptoms. What is more, it doesn't have very much to say about people's lives and how they live them.

The social model

This second approach is based on the 'social model' of disability. The social model of disability is a different way of thinking about disability. It is often said that a big part of the battle to overcome the barriers faced by disabled people has to do with changing "hearts and minds". The aim is to help people to see the person first, not the disability. That helps remove much of the fear and anxiety that people have about disability, and can clarify what changes need to be made in society.

Instead of emphasising the disability, the social model puts the person at the forefront. It emphasises dignity, independence, choice and privacy.

Why is a social model of disability needed?

The standard way of thinking about disability in the past was the medical model. That remains fine for doctors, but it is less useful for others and certainly when applied in our

schools. Some schools still work in the medical model of disability, laying the problem of inclusion firmly with the child and their disability. If schools were to work from a social model perspective then they would have to look at the school environment, attitudes and overall image of disability.

The fight for the inclusion of all children, however severely disabled, in one, mainstream, education system, will not make sense unless the difference between the social and the medical model of disability is clearly understood. We must address our own fears, pre-conceived ideas or even bias against disability.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *The Medical and Social Models of disability*
- *The social model of disability*
- *Altogether better*

Definitions of disability and SEN

Disability

In the Equality Act, “Disability” is defined as follows:

“A person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.”

There is a common misunderstanding that the EA covers only people who have a sensory or physical impairment. The breadth of the EA definition arises from the breadth of the terms:

- Substantial, defined as “*more than minor or trivial*”
- Long-term, defined as “*a year or more*”.

The definition includes a wide range of impairments, including hidden impairments. If, for example, a child has an impairment affecting their mobility, sight or hearing, or has learning difficulties, mental health problems, epilepsy, autism, a speech and language impairment, asthma, diabetes or HIV, then they may have a disability if the effect of the impairment on the child’s ability to carry out normal day-to-day activities is ‘substantial’ and ‘long-term’.

The test of whether the impairment affects normal day-to-day activity is whether it affects one or more of the following: mobility; manual dexterity; physical co-ordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; or the perception of risk of physical danger.

Questions often arise about whether children with behavioural difficulties are included in the definition. A child may have significant behavioural difficulties and these may relate to an underlying impairment. If they do, the child may count as disabled because of the underlying impairment.

The EA also covers people with:

- Severe disfigurements
- Impairments which are controlled or corrected by the use of medication, prostheses, or other aids (excluding spectacles)
- Progressive symptomatic conditions
- A history of impairment
- Cancer, HIV or multiple sclerosis.

The EA does not cover addiction to or dependence on nicotine, tobacco or other non-prescribed drugs or substances; hay fever; or certain mental illnesses, which have anti-social consequences. It is possible for a child to have special educational needs, but not be disabled for the purposes of the EA, and vice versa, although the majority of disabled children will also have some special educational needs. Figure 1 displays this.

Special Educational Needs (SEN)

Not all children who are defined as disabled will have SEN. For example, those with severe asthma, arthritis or diabetes may not have SEN but may have rights under the EA. Similarly, not all children with SEN will be defined as having a disability under the Equality Act.

The Department for Children and Families defines children with SEN as:

“Having learning difficulties or disabilities, which make it harder for them to learn or access education than most other children of the same age.”

Children have a learning difficulty if they:

- Have a significantly greater difficulty in learning than the majority of children of the same age; or
- Have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority
- Are under compulsory school age and fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them.

Children are not regarded as having a learning difficulty solely because they are not being taught in their first language.

SEN, Disabled, or both?

Though the definition of disability comes from the EA and the definition of SEN comes from the Education Act 1996, there is a significant overlap between the two groups of children. A child may fall within one or more of the definitions.

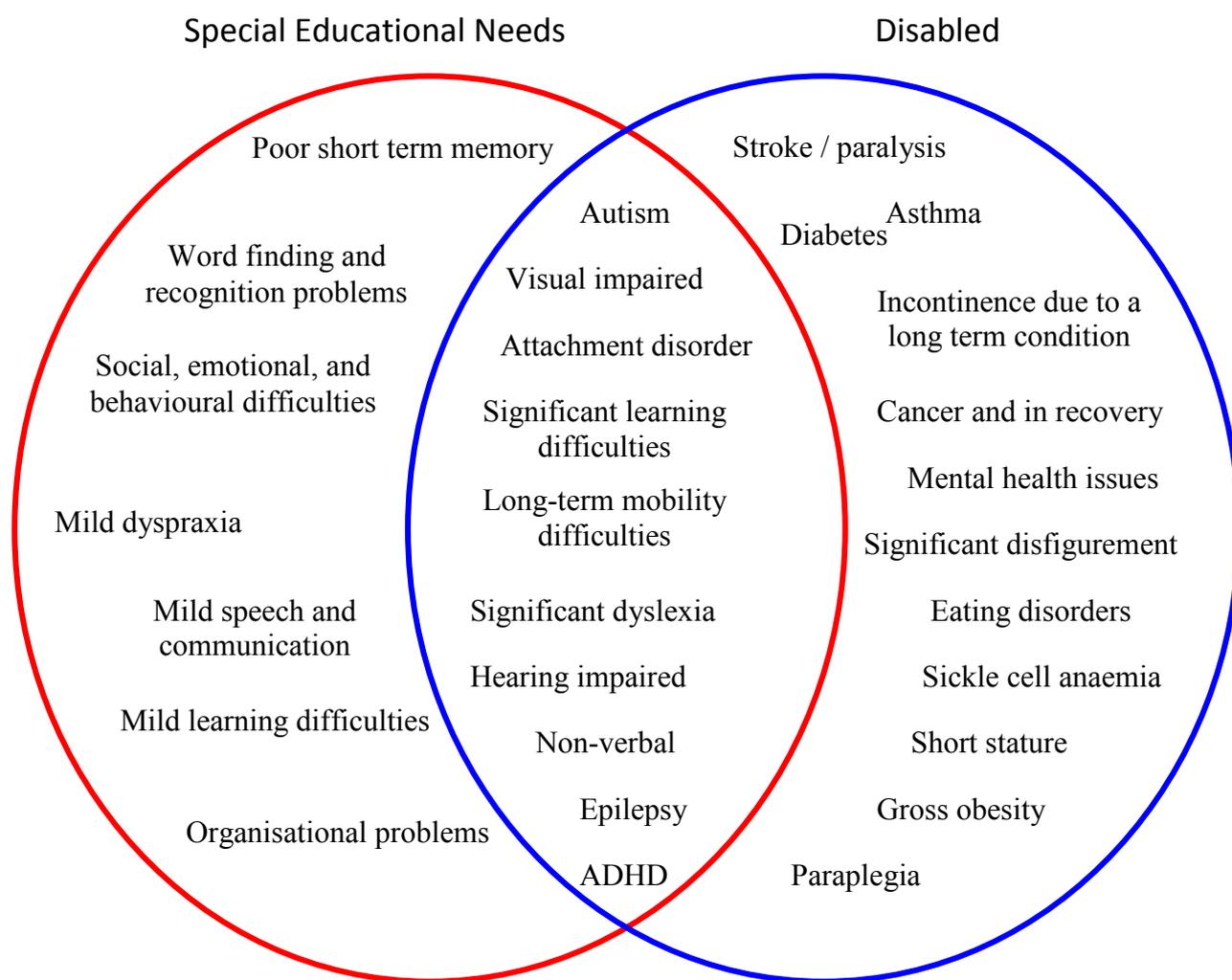


Figure 1

Hidden impairments

Hidden impairments are those, which might not be immediately obvious. However, they are also covered under the definition of disability. Examples include:

- Attention Deficit Hyperactivity Disorder (ADHD)
- Dyslexia
- Autism
- Physical co-ordination
- Incontinence
- Ability to lift, carry or otherwise move everyday objects
- Speech, hearing or eyesight (unless correctable by spectacles)
- Memory or ability to concentrate, learn or understand;
- Perception of risk of physical danger

Disability discrimination

Types of discrimination

I must stress that the ‘names’ of the various types of discrimination as described in the Equality Act are not really important. I’ve defined each type here just in case you come across them in other literature, but I don’t use these terms myself because they make things unnecessarily complicated.

The forms of discrimination that are defined in the Equality Act are:

- Direct discrimination
- Discrimination arising from disability
- Indirect discrimination
- Discrimination by harassment
- Discrimination by victimization
- Discrimination by association
- Discrimination by perception

The meaning of each of these is as follows:

Direct Discrimination

This is discrimination directly related to the child’s disability itself. For example, not allowing a child with a disfigurement to appear in a play because of their looks.

Discrimination arising from disability

This is discrimination for a reason connected to the child’s disability. For example, a nursery requiring all children to be toilet trained before being admitted to the nursery may discriminate against a child with a disability that causes them not to have full bowel control. Discrimination arising from disability has occurred when a disabled child is treated:

- less favourably than someone else;
- for a reason related to the child's disability;
- when it cannot be justified.

Indirect discrimination

This is when a school or nursery put in place rules, policies, or practices which apply to all children, but which particularly disadvantage disabled children.

Discrimination by harassment

Harassment occurs if you engage in unwanted behaviour which is related to a child’s disability, and which violates the child’s dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for the child. We will look at this in more detail on page 29.

Discrimination by victimization

Victimisation is treating someone badly because they are making a discrimination claim, or helping someone else make a claim. We will look at this in more detail on page 29.

Discrimination by association

This is when discrimination occurs because of a victim's *association* with a child with a disability. We will look at this in more detail on page 28.

Discrimination by perception

This is when a non-disabled child is discriminated against because the school or nursery *wrongly believe* them to have a disability, and they are treated less favourably because of that belief. We will look at this in more detail on page 28.

Remember, in practice it is not important to know the 'name' of the type of discrimination; it is enough that you might think your child has been discriminated against.

Discrimination duties

Discrimination has taken place if:

- a child is treated less favourably than someone else, because of their disability; or
- a child who is disabled is placed at a substantial disadvantage because reasonable adjustments have not been made to take account of their disability.

The equality act makes it illegal to discriminate against a disabled child for a reason related to their disability. It also makes it illegal to have rules, policies, or practices which apply to everyone but which particularly disadvantages disabled children. Schools and nurseries must make "Reasonable Adjustments" to allow disabled children to take part in all of the school or nursery activities.

These requirements can be summed up by two duties:

Less Favourable Treatment

Disabled children are entitled not to be treated less favourably than non-disabled children for a reason relating to their disability, without justification.

Reasonable Adjustments

Disabled children are entitled to have reasonable adjustments made with respect to admission arrangements or in the provision of education and associated services, to prevent them being placed at a substantial disadvantage, without justification.

These duties do not mean that disabled children have an excuse for disruptive or anti-social behaviour. There has to be a direct relationship between the reason for the less favourable treatment and the child's disability.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *Equality Act (2010) - What do I need to know - Disability quick start guide*
- *What equality law means for your association, club or society*
- *Code of Practice for Services, Public Functions and Associations*
- *Duties and definitions*
- *Early years and the Disability Discrimination Act*

Less Favourable Treatment

Disabled children are entitled not to be treated less favourably than non-disabled children for a reason relating to their disability, without justification. Less favourable treatment is judged to have occurred when a disabled child is treated...

- less favourably than someone else;
- for a reason related to the child's disability;
- when it cannot be justified.

This is best understood with examples:

1. A parent seeks admission to a school nursery for her child who has a bowel disease. The nursery says that they cannot admit him until he is toilet trained - that is their policy for all children. Some bowel diseases may lead to the late establishment of bowel control. The refusal to admit the child is for a reason related to his disability and may be discriminatory. There may sometimes be justification for less favourable treatment, but it is the blanket policy in this example that is likely to make it discriminatory.
2. A pupil with autism goes to the front of the dinner queue. A teacher standing nearby tells him not to 'barge in'. The pupil becomes anxious but does not move. The teacher insists that the pupil must not 'jump the queue'. The pupil becomes more anxious and agitated and hits the teacher. The pupil is excluded temporarily from the school.
 - a. Was there any less favourable treatment?
 - b. Is the less favourable treatment for a reason related to the pupil's disability?

The reason for the exclusion, hitting the teacher, may be related to the pupil's disability. Particular features of his autism may be that he has difficulty in managing social situations, he has difficulty in understanding the purpose of a queue, he has difficulty in understanding figurative language, such as 'barge in' and 'jump the queue,' or he has difficulty in managing escalating levels of anxiety. If the hitting is related to these features of his autism, then the less favourable treatment, the exclusion, is for a reason related to the pupil's disability.

Case study 1

A girl with Tourette's syndrome is admitted to a school. The school wants her to have all of her lessons in a separate room in case she might distract or frighten other children with her involuntary noises and body movements.

The reasons for placing the pupil in a separate room are the involuntary noises and body movements. These are an intrinsic part of her disability.

The school also claim that the inclusion of the pupil is causing significant disadvantage for the provision of efficient education for other children.

- 1. Is the less favourable treatment related to the child's disability?**

The reasons for placing the girl in a separate room are the involuntary noises and body movements. These are an intrinsic part of her disability. The less favourable treatment proposed is for a reason that relates to the girl's disability.

2. Is the less favourable treatment justified?

The school tries to justify the less favourable treatment on the basis that the girl might frighten the other pupils. In this case the reason is based on general assumptions about the girl and about the other pupils and is unlikely to constitute a material and substantial reason. This is likely to be unlawful discrimination.

Case study 2

A school leaves a girl behind when the rest of her group goes to the park to see a puppet show. The girl has learning difficulties and the staff consider that there is no point in taking her as she will not understand the show, and might be afraid of the puppets.

1. Is the less favourable treatment related to the child's disability?

The reason for not taking the girl to the show is that she had learning difficulties. This is an intrinsic part of her disability. The less favourable treatment proposed is for a reason that relates to the girl's disability and may be discriminatory.

2. Is the less favourable treatment justified?

The responsible body seeks to justify the less favourable treatment on the basis that the girl has learning difficulties and the staff consider that there is no point in taking her as she will not understand the show. In this case the reason is based on general assumptions about the girl and about the other children and is unlikely to constitute a material and substantial reason. This is likely to be unlawful discrimination.

Example

This is a real example of a tribunal case:



This shows that the most important thing a school can have is the right *attitude* towards inclusion. In this case, the reasonable adjustments that the school needed to put in place were very minor, and it was only their attitude which led them into a tribunal case. In that particular tribunal case the school had no real defence of course, and so the parents won the tribunal.

Justification for Less Favourable Treatment

Even though a child may have been treated less favourably than another child the discrimination will not be illegal if the school can show that it was justified in the circumstances. Discrimination may be justified:

- when a disabled child is refused admission to a school, as a result of a ‘permitted form of selection’ – that is, a legal way of choosing pupils;
- because an adjustment would involve providing aids and services or removing or altering a physical feature (these are not included in the definition of reasonable adjustments a school has to make);
- because of the costs and practicality of making a ‘reasonable adjustment’;
- because of health and safety issues.

Less favourable treatment that is justified is not unlawful discrimination. However, before schools seek to rely on a justification for a refusal of provision of services to a disabled child, they should first consider whether there are any *reasonable adjustments* (see page 22) that could be made. They need to give careful consideration as to how they include disabled children and on what criteria disabled children may be excluded from certain activities. Where a decision is taken that the exclusion of a disabled child is justified, the school will probably need to show they have consulted with other relevant professionals to look for ways to overcome the difficulty, otherwise they would leave themselves open to charges of discrimination.

Case Study 4

An eleven-year old girl with learning difficulties applies to go to a grammar school that selects its intake on the basis of academic ability. She fails the entrance test, and is refused admission.

1. Was there less favourable treatment?

The refusal to admit the girl is based on her performance in the test. Her performance in the test is related to her learning difficulties, so this would be a case of *less favourable treatment for a reason that relates to her disability*.

2. If so, was the less favourable treatment justified?

Yes.

3. If so, why is it justified?

The school has operated its selective criteria without regard to the children taking the test, and the less favourable treatment is likely to be justified because it is the result of a *permitted form of selection*. This is then likely to be lawful. Only schools which are allowed to select their intake are permitted to do this however.

Reasonable adjustments

The Equality Act requires schools to make *reasonable adjustments* to ensure that disabled children are not at a substantial disadvantage. This means putting things in place that make it easier for a disabled child to join in with all the activities of the school.

Reasonable adjustments must:

- prevent disabled children being placed at a substantial disadvantage
- be aimed at *all* disabled children
- be anticipatory (they should be put in place *before* the child needs them)

The Act doesn't specify what factors should be taken into account when considering whether or not a step is a 'reasonable' one to take. It will depend on the school's size and resources, and on how the child's disability affects them.

Some of the following factors might be taken into account when schools are considering what is reasonable:

- how effective any steps would be in overcoming the difficulty that disabled children face in accessing the services
- how practicable it would be for the school to take these steps
- how disruptive taking the steps would be
- the financial and other costs of making the adjustment
- the extent of the school's financial and other resources
- the amount of any resources already spent on making adjustments
- the availability of financial or other assistance
- health and safety issues

Schools should not wait until a disabled child requires the use of their services, they should think in advance about what children with a range of impairments might reasonably need, such as children who have a visual impairment, hearing impairment, mobility impairment, or a learning disability.

Schools must also make reasonable adjustments to policies, practices and procedures that make it impossible or unreasonably difficult for disabled children to join in the full life of the school.

Schools cannot operate blanket bans on certain categories of disability. For example, they cannot refuse admission to all children with autism. If a school wishes not to accept a certain disabled child, they must demonstrate that the child's needs are such that they *cannot* be met within that school, even when all reasonable adjustments have been considered.

If a child is refused admission and the reason is felt to be justified, the schools must be aware this decision covers *only this one instance*. It does not mean the school can exclude another child with a similar disability based on the first case. They must take into consideration the specific circumstances of the individual child.

There may be times when disabled children are excluded from activities and services for reasons which are not directly related to their disability. The school should make clear to the parent of the child what these reasons are when this is the case.

Case study 3

Let's look again at Case study 2 on page 19 and think about what reasonable adjustments could have been made:

A school nursery leaves a girl behind when the rest of her group goes to the park to see a puppet show. The girl has learning difficulties and the staff consider that there is no point in taking her as she will not understand the show, and might be afraid of the puppets.

The school does not appear to have considered how the girl might be supported in watching and enjoying the puppet show if she had accompanied the other children, or how they might have prepared her for the show. A number of possible strategies are available, including:

- Puppets played with in advance of the visit, to familiarise the girl with puppets. In real life the staff thought the girl might be afraid of the puppets and this contributed to their decision not to take her. Playing with the puppets in the nursery could help to overcome any fear;
- Finding out in advance what story is going to be told at the puppet show;
- Reading the story before the show, to familiarise the girl with the story;
- Using puppets and props to act out the story before the visit;
- Acting out the story in other ways before the visit, for example: dressing-up;
- Visiting the park beforehand to familiarise the child with the surroundings;
- At the visit itself, deploying staff so that the girl is in a small group with some of the children she knows best.

The nursery would need to have taken action like this to enable the child to participate in the visit. These types of action would not be to the detriment of any of the other children; rather it would benefit all the children.

If reasonable steps of this type could have been taken but were not, it may not be possible for the school to justify its actions.

The key to making reasonable adjustments is thinking ahead - anticipating barriers and how to remove them to enable a disabled child to be included in all school curriculum activities and benefit from it. To do this effectively it is necessary to involve parents and children in sharing information and in thinking creatively.

Examples of Reasonable adjustments and good practice

Example 1

Two hearing-impaired children are going to be admitted to a school. Some typical reasonable adjustments that the school might make include:

- Arranging training for staff in the appropriate use of hearing radio aids.
- Drawing up guidance for staff in the light of the training. This may include guidance on the use of radio microphones, the transfer of microphones to other children at group times, and checking that the children's aids are set correctly for different activities.
- Staff may decide to change the location of the book corner so that at story times and at other times when the children come together as a group, natural light illuminates the face, mouth and gestures of the staff talking to the children.
- Paying particular attention to having visual prompts to hand when they are planning activities with the children and using puppets and other props at story times.

Example 2

A small rural primary school has little experience of disabled pupils. The school is going to admit a five-year-old girl with a rare syndrome involving moderate learning difficulties, poor muscle tone, and speech and language difficulties. The head teacher consults the child's mother and a local voluntary organisation and devises a series of short training events drawing on local expertise. The training enhances staff knowledge and confidence and the girl has a positive start to school. This is likely to be a reasonable step to take to prevent the pupil from being placed at a substantial disadvantage.

Example 3

An eight-year-old girl has severe asthma. This is normally well managed. The school monitors her condition and, at the end of one term, notices that it is worse after literacy and numeracy sessions. It emerges that, at these times, she is sitting near a blackboard and the chalk dust is exacerbating her asthma. The school is concerned that the pupil might be at a substantial disadvantage. The school is in the process of replacing all the blackboards with whiteboards, and some classrooms already have whiteboards. From the beginning of the next term her class is allocated to one of the classrooms that already has a whiteboard. This is likely to be a reasonable step that the school should take

Key factors for success in making reasonable adjustments

These are examples that you may wish to discuss with your child's school and ask as to whether any of this is being implemented in the school in order to achieve successful inclusion of your child.

Vision and values based on an inclusive ethos

An inclusive vision for the school, clearly articulated, shared, understood and acted upon effectively by all, is an important factor in enabling staff to make reasonable adjustments.

A 'can do' attitude from all staff

The attitude of staff is fundamental to achieving successful outcomes for disabled pupils. Where staff are positive and demonstrate a 'can-do' approach, barriers are more easily overcome.

A pro-active approach to identifying barriers and finding practical solutions

Actively identifying barriers as early as possible and exploring solutions using a practical, problem-solving approach has led schools to identify more effective reasonable adjustments.

Strong collaborative relationships with pupils and parents

Schools that are effective at making reasonable adjustments recognise that parents and pupils have expertise about living with an impairment and will be a major source of advice. Pupils can also be the best judges of what is effective. They can be good advocates for what has worked well for them.

A meaningful voice for pupils

Schools are more likely to make effective reasonable adjustments where there are strong consultative mechanisms in place for all pupils and where peer support is well-developed.

A positive approach to managing behaviour

Combined with an appropriate curriculum and a variety of learning activities, a positive approach to managing behaviour can enable pupils to take charge of their own behaviour and support others in taking charge of theirs. Many schools identified the importance of peer support strategies and of mentoring schemes in developing a positive approach to challenging behaviour.

Strong leadership by senior management and governors

Strong school leadership that sets a clear direction, promotes positive outcomes for disabled pupils, deploys the resources of the school to support teachers in identifying and removing barriers and keeps progress under review, makes for schools that are more effective at making reasonable adjustments.

Effective staff training and development

Where staff training and development is given a high priority it can ensure that staff have the understanding, knowledge and skills required to make reasonable adjustments for the range of disabled pupils.

The use of expertise from outside the school

Other agencies supplement and complement what a school can provide on its own. Schools may draw on a wide range of expertise beyond the school: from other local schools, units and support services; from different statutory agencies; and from voluntary organisations.

Building disability into resourcing arrangements

Building disability considerations into everything a school does, including the way it deploys its resources, enables everyone in the school to make reasonable adjustments.

A sensitive approach to meeting the impairment specific needs of pupils

A sensitive approach protects the dignity of disabled pupils, particularly in relation to meeting medical and personal care needs. Reasonable adjustments should not highlight any negative effects on the rest of the class so as to cause any resentment of the disabled pupil.

Regular critical review and evaluation

Regular reviews at pupil level, departmental level and at school level help to ensure that:

- progress is monitored;
- successes and failures are shared and inform the next steps;
- the views of pupils and their parents are sought and incorporated into the reasonable adjustments that the school makes.

The availability of role models and positive images of disability

Where schools use a range of opportunities to provide disabled role models, both children and adults, this can boost the self-esteem of disabled pupils and have a positive effect for all pupils. This can be supported by positive images of disabled children and adults in pictures, books, and a range of materials used in schools.

Case study 4

A school has received a number of complaints from local shopkeepers about the rowdy and disruptive behaviour of some of its pupils. It decides that the pupils in question should be banned from taking part in a school theatre visit because of their behaviour. One of the pupils has a hearing impairment.

1. Was there less favourable treatment by the school?

The rowdy and disruptive behaviour is not directly related to the pupil's impairment. The ban from the trip may be less favourable treatment, but it is not for a reason related to the pupil's disability

2. Can it be justified?

Any less favourable treatment is not for a reason related to the pupil's disability, therefore it can be justified.

Note that the 'less favourable treatment' duty does not mean that disabled pupils have an excuse for disruptive or anti-social behaviour. There has to be a direct relationship between the reason for the less favourable treatment and the child's disability.

Examples of situations schools should avoid

The following are examples of unfortunate situations which schools should avoid. They illustrate the importance of sensitivity to individual needs. Some of the inappropriate school responses described here contravene legislative requirements and could result in the school's actions being subject to challenge.

A pupil is admonished for failure to follow a long and complicated instruction given by an adult, but the pupil has speech and language difficulties and cannot process complex language.

A more appropriate response would be for the adult to make instructions short, and clarify understanding by asking the child to repeat them.

A pupil on the autistic spectrum is disciplined for making personal comments about an adult's appearance. The pupil has no sense that such comments can be hurtful and should be avoided.

A more appropriate response would be for the adult to tell the pupil that the comment was hurtful and inappropriate, to inform the pupil's key worker or the SENCO, but not apply a sanction.

Discrimination by association and perception

The new definition of direct discrimination (see page 15) also covers cases where discrimination occurs because of a victim's *association* with someone with a particular protected characteristic, e.g. a parent or partner. Therefore the Act would protect people who are caring for a disabled child. For example, an employer of the parent of a disabled child must make reasonable adjustments for them. Here are some examples:

A parent of a disabled child, who has to take their child to speech therapy is harassed at work by her boss, and allowed less flexibility than other parents who do not have a disabled children.

Ms Battle applies for a job which involves a lot of travelling. She has the best skills and experience but the company knows that Ms Battle cares for her son who is disabled. The company makes an assumption that she cannot manage because she has a disabled son and so it doesn't offer her the job. This is direct discrimination because Ms Battle is associated with a disabled person. It's against the law to refuse to offer her the job for that reason.

Protection is also provided where someone is *wrongly thought* to have a disability, and is treated less favourably because of that belief, e.g. a school mistakenly believes a potential pupil to be disabled and refuses to admit them.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *What equality law means for your association, club or society*
- *Equality Act (2010) - What do I need to know - Disability quick start guide*
- *Code of Practice for Services, Public Functions and Associations*

Discrimination by harassment and victimisation

Harassment

Harassment occurs if someone engages in unwanted behaviour which is related to a child's disability, and which violates the child's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for the child. It is not necessary for the child to say that they object to the behaviour for it to be unwanted.

Your child is a wheelchair user. When you're trying to buy something in a shop, the shop assistant makes rude remarks about wheelchair users to her colleague, which you find offensive and upsetting. You may have a claim of harassment related to disability, even though you are not disabled.

It also includes situations where the pupil is *associated* with someone who has a disability, or is wrongly *perceived* as having a disability.

Victimisation

Victimisation is defined in the Act as treating someone badly because they have done a 'protected act' (or because you believe they have done or are going to do a protected act).

A 'protected act' is:

Making a claim of discrimination under the Act.

Helping someone else to make a claim by giving evidence or information.

Making an allegation that the school or someone else has breached the Act.

Doing anything else in connection with the Act.

There are additional victimisation provisions for schools which extend the protection to pupils who are victimised because a family member has carried out a protected act. For example, a school must not victimise a child because their brother is the subject of a discrimination claim.

If a school does treat a child less favourably because they have taken such action then this will be unlawful victimisation. There must be a link between what the child (or family member) did and the schools treatment of them.

Information issues

Schools need information about children's disabilities in order to meet their duties. It is important that as parents we pass on information about our child's disabilities and needs so that schools can make those reasonable adjustments that are so important to the successful inclusion of our children. Also if you do not disclose a disability to your child's school this may weaken your chances of bringing about a discrimination claim in the future. Working in partnership with the school will always be the best approach for the successful inclusion of your child.

Lack of knowledge defence

If you choose not to tell the school that your child has a disability, the school may be able to claim they did not know about the child's disability. However the school would only be able to claim this if they had taken reasonable steps to find out about the child's disability.

Confidentiality

If a parent does share information about their child's disability, but asks the head teacher to keep that information confidential, this may limit what reasonable adjustments can be made for this child. If you are requesting confidentially because you are worried how the school might react to a particular piece of information or disability then you can always take someone into a school meeting with you such as Parent Partnership, or any other type of advocate including someone medical knowledge, or a member of your family.

Encouraging disclosure

Your support for your child's education is crucial to their progress. If your child has a disability, it is even more important that you and the school work together so your child can achieve their best, but to do this requires the school to know about your child's disability and for this you need to think about the benefits if disclosing a disability.

The school has a duty under the Equality Act 2010 (EA) to make "reasonable adjustments" for disabled children. In order to make these adjustments, the school needs to know about your child's disability.

Detailed information about the nature of your child's impairments or medical information should not be passed on unless it is relevant to making reasonable adjustments. You can request that no information is passed on to others, or you can request that information is restricted to certain people. However, you should be aware that if you do this it could limit the types of adjustments the school can make for your child. Also if you do request that information is restricted, then this might make it difficult to bring about a claim of disability discrimination to SENDIST because a school might claim "Lack of Knowledge".

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *What equality law means for your association, club or society*
- *Equality Act (2010) - What do I need to know - Disability quick start guide*
- *Code of Practice for Services, Public Functions and Associations*
- *Early years and the disability discrimination act 1995*
- *Code of Practice - Rights of Access*

The Equality Duty

With the introduction of the Equality Act in 2010, an Equality Duty was introduced. This joins together previous equality duties for disability, race and gender into one new duty called the *single public sector equality duty*.

The main purpose of the equality duty is to ensure that all public bodies - such as central or local government, schools, Sure Start Children's Centres, health trusts or emergency services – pay 'due regard' to the promotion of equality for disabled people in every area of their education and work.

Schools are required to write and publish information about their duty which must show how they are meeting their duty to promote disability equality across all its areas of responsibility. If as a parent you are in any doubt as to the services that your school is providing for your child, then you have a right to see this information. The school should have laid out what it is currently doing to promote the achievement and well-being of its disabled children, and what more it is planning to do. If you find yourself in a situation where you do need to file a complaint then referring back to the school's published information can be a good starting point to remind them of their duties towards disabled children.

Many schools publish this information on their website. However, they are not obliged to put it on their website, only to publish it. If you request a copy directly from them they must supply it to you.

The equality duty includes two elements - a general duty and a specific duty.

The General Duty

The general duty requires schools to:

- Eliminate discrimination, harassment and victimisation.
- Advance equality of opportunity between disabled people and non-disabled people.
- Foster good relations between disabled people and non-disabled people.

These are called the *three aims* of the Equality Duty.

By "advancing equality of opportunity", it means they must encourage disabled children to participate in all activities in school, take steps to meet disabled children's needs, and promote equality of opportunity between disabled children and non-disabled children.

The Specific Duty

The specific duty requires the school to show *how* they are meeting the general duty. In effect the general duty sets out *what* schools have to do and the specific duty sets out *how* they have to do it, and what they need to record as evidence of what they have done.

One requirement of the specific duty is that the schools should engage with disabled children and their parents, and involve them in planning how to improve things for disabled children in the school.

The school should ask about your child's disability, and ask your opinion in how your child can get the best out of the school. It will help the school greatly if you can provide them with as much information about your child's disability as is useful for them.

Code of Practice

The SEN Code Of Practice is as good for parents to read as it is necessary for schools. It provides advice to schools on carrying out their statutory duties to identify, assess and make provisions for children's special educational needs.

In addition, the website for this book has many other documents and booklets available for you to read.

Admissions

Instances when it may not be possible to include specific children

Children who have special educational needs but do not have statements must be educated in mainstream schools apart from in exceptional circumstances. The Code of Practice on School Admissions states that admission authorities should not make subjective judgments. If a pupil, once admitted, is found to be seriously and persistently disruptive, then the school may consider disciplinary action, including temporary or permanent exclusion procedures. It is also unacceptable for a school to refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child ought first to be assessed for special educational needs.

Bad practice in admissions

A SENCO reported:

“What I’ve done is I’ve invited parents in, sometimes with the child, sometimes without the child, and I have walked them around the building. Quite fast, sometimes quite deliberately when there’s a lot of movement going on and then I’ve just turned to the parent and said, ‘do you think your child could cope with this?’ So rather than say, ‘no’, I would say to the parent, ‘do you think this is fair?’ I think sometimes you have to let parents realise for themselves that this just isn’t an appropriate placement”.

Most people in this day and age know not to discriminate directly; however, they still make errors like this SENCO. This quotation is taken from a report published in Dec 2006 by the National Children’s Bureau.

Actions such as these could result in the school finding itself in a Tribunal. This SENCO is seeing the prospective pupil as the problem - pursuing reasons why the child *can’t* be included. The Act envisages that schools will adopt an approach of “what can we do to ensure that this child *is* included?”

In a large secondary school where a variety of people may show prospective students round – Year Head, Deputies etc – it is important that everyone realises the implications of seemingly innocent actions and comments.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *Code Of Practice for schools*
- *School Admissions Code*
- *School Admission Appeals Code*

Exclusions

The rules regarding exclusion depend on what period of time the exclusion is for, and whether the child has a statement.

Exclusion for up to 5 days when there is no Statement

The Head must write immediately giving length and reason for exclusion.

The Head must inform the Governors only if

- (a) an external exam would be missed or
- (b) if the total days excluded in the term are more than 5.

The Governors must meet only if

- (a) an external exam would be missed or
- (b) the total days excluded in the term is over 5 and parents ask for a meeting.

Parents have the right to make 'written representations' which **must** be considered by governors and/or to attend the meeting.

The Head must inform the LA only if exclusion means total days excluded in the term are more than 5 or if an external exam would be missed.

If exclusion is more than one day, school must set and mark work for child.

Exclusion for up to 5 days when there is a Statement

The Head must write immediately giving length and reason for exclusion.

The Head must inform the Governors only if

- (a) an external exam would be missed or
- (b) if the total days excluded in the term are more than 5.

The Governors must meet only if

- (a) an external exam would be missed or
- (b) the total days excluded in the term is over 5 and parents ask for a meeting.

Parents have the right to make 'written representations' which **must** be considered by governors and/or to attend the meeting.

The Head must inform the LA only if exclusion means total days excluded in the term are more than 5 **or** if an external exam would be missed.

If exclusion is more than one day, school must set and mark work for child.

Exclusion for between 5 days and 15 days when there is no Statement

The Head must write immediately giving length and reason for exclusion.

The Head must inform the Governors.

The Governors must meet only if:

- (a) an external exam would be missed, or

- (b) the total days excluded in the term are over 15, or
- (c) the parents request a meeting.

Parents have the right to make 'written representations' which **must** be considered by governors, and/or to attend the meeting.

The Head must inform the LA.

If the exclusion is for more than one day the school must set and mark work for the child

Exclusion for between 5 days and 15 days when there is a Statement which is quantified

The Head must write immediately giving length and reason for exclusion.

The Head must inform the Governors.

The Governors must meet only if:

- (a) an external exam would be missed, or
- (b) the total days excluded in the term are over 15, or
- (c) the total is between 5 and 15 and the parents request a meeting.

Parents have the right to make 'written representations' which **must** be considered by governors and/or to attend the meeting.

The Head must inform the LA.

The school must set and mark work for the child.

Exclusion for over 15 days when there is no Statement

The Head must write immediately giving the length of the exclusion and the reasons for it.

The Head must inform the Governors.

Parents have the right to make 'written representations' which **must** be considered by governors.

The Governors have to meet between 6 and 15 days following the exclusion (unless an external exam requires them to meet sooner) & parents may attend.

Exclusion for more than 15 days when there is a Statement which is quantified

The Head must write immediately giving the length of the exclusion and the reasons for it.

The Head must inform the Governors.

Parents have the right to make 'written representations' which must be considered by governors.

The Governors must meet between 6 and 15 days following the exclusion (unless an external exam requires them to meet sooner) & parents may attend.

The Head must inform the LA.

The school must set and mark work for the child

Permanent exclusion when there is no Statement

The Head must write immediately stating that the exclusion is permanent and the reasons for it.

The Head must inform the Governors.

Parents have the right to make 'written representations' which must be considered by governors.

The Governors have to meet between 6 and 15 days following the exclusion (unless an external exam requires them to meet sooner) & parents may attend.

The Head must inform the LA.

The school must set/mark work until the fifteenth day. After that, the LA should provide 21 to 25 hours a week, depending on the child's age

Permanent exclusion when there is a Statement which is quantified

The Head must write immediately stating that the exclusion is permanent and the reasons for it.

The Head must inform the Governors.

Parents have the right to make 'written representations' which must be considered by governors.

The Governors have to meet between 6 and 15 days following the exclusion (unless an external exam requires them to meet sooner) & parents may attend.

The Head must inform the LA.

The school must set/mark work until the fifteenth day. After that, the LA should provide 21 to 25 hours a week, depending on the child's age

These rules are summarised in Table 2. In addition, note that:

Fixed term exclusions cannot total more than 45 days in any one school year.

A lunchtime exclusion counts as a ½ day.

Parents can attend a governor's meeting called to review their child's exclusion if they wish.

Following permanent exclusion, from day 6 on, the LA must provide 'suitable' education for between 21 and 25 hours a week.

Minimum levels of education

Local Authorities have a duty to provide suitable full-time education 'at school or otherwise' for children who are permanently excluded from school. 'Full-time' means supervised education the equivalent to that provided by mainstream schools. The LA should provide suitable full-time education from the sixteenth day after permanent exclusion. For more information refer to IPSEA's website at:

www.ipsea.org.uk/what-you-need-to-know/Exclusion

The minimum number of hours per week is shown in Table 1.

Key Stage	Age	Hours per week
1	5 – 7	21
2	8 – 11	23.5
$\frac{3}{4}$	12 – 14	24
4	15 - 16	25

Table 1

Legal rights of the parents of an excluded child

Homework

Government Guidance says that children should receive homework from the school for the first 5 days of the exclusion and the school should arrange for it to be marked. If the parent hasn't received homework they should get in touch with the school and request some for their child.

Right to full time education

The Local Authority must provide suitable full time education for your child from the 6th school day of a permanent exclusion. Full time means between 21 and 25 hours a week, depending on the age of the child. (Note that if a child has a statement of special educational needs, they should get the number of hours specified on the statement). The LA will normally be in contact with the parent during the first few days to arrange this. The parent can ring the LA to check that something is being done. Looked-after children are entitled to full time educational provision from the first day of a permanent exclusion.

Staying at home

It is very important that the child stays at home and is not in any public place during school hours for the first 5 days of the exclusion. This includes situations like going to see the GP - the fact that the parent might be accompanying their child does not make it lawful. If they are found in a public place without a very good reason, the parent may be issued with a penalty notice, which could include a fine.

Exclusion records

Keeping an accurate record of your child's exclusion may help identify patterns of behaviour or other factors which can contribute to the planning and review of your child's progress and support needs at school. An example exclusion record can be found in the appendix on page 74.

Type of exclusion	Head must write stating type and reason?	Parents can make written representations to governors?	Head must inform governors?	Governors must meet?	LA must be informed?	Work must be set and marked by school?	Parents have right to appeal if governors uphold exclusion?	Parents have right to make claim of disability discrimination?
Up to 5 days not taking total to more than 5 days in the term.	Yes, "without delay".	Yes, and governors must consider it.	Only if external exam will be missed	Only if external exam will be missed	Only if external exam will be missed	Yes	No	Yes, to SENDIST
Up to 5 days not taking total to more than 5 days in the term.	Yes, "without delay".	Yes, and governors must consider it.	Yes, "without delay".	If exam missed or parents request it. Meet in 50 school days	Yes, "without delay".	Yes	No	Yes, to SENDIST
6 - 15 days not taking total to more than 15 days in the term.	Yes, "without delay".	Yes, and governors must consider it.	Yes, "without delay".	If exam missed or parents request it. Meet in 50 school days	Yes, "without delay".	Yes	No	Yes, to SENDIST
6 - 15 days not taking total to more than 15 days in the term.	Yes, "without delay".	Yes, and governors must consider it.	Yes, "without delay".	Yes, in 50 school days.	Yes, "without delay".	Yes	No	Yes, to SENDIST
More than 15 days	Yes, "without delay".	Yes, and governors must consider it.	Yes, "without delay".	Yes, between 6 and 15 school days.	Yes, "without delay".	Yes	No	Yes, to SENDIST
Permanent	Yes, "without delay".	Yes, and governors must consider it.	Yes, "without delay".	Yes, between 6 and 15 school days.	Yes, "without delay".	Yes, until day 6, then by LA	Yes, to the independent appeal panel	Yes, to the IAP as part of the appeal

Table 2

Transport

The Education and Inspections Act 2006 inserted new school transport provisions into the Education Act 1996. It places a duty on local authorities in England to make suitable travel arrangements free of charge for eligible children as they consider necessary to facilitate their attendance at school.

Note that the rules in Wales are slightly different, and this book only covers the rules in England.

Who it applies to – “Eligible Children”

The local authority’s duty to provide transport applies to children up to 6th form age to:

- all those resident in the authority’s area, and receiving education or training; and
- those not resident in the authority’s area, but who travel within it to receive education or training.

Children who are eligible for school transport are referred to as “Eligible Children”. Some children with SEN and/or a disability may be unable to walk even relatively short distances to school, and this makes them Eligible Children. This means that local authorities must make suitable travel arrangements for them.

Example 1

Lilly is a five year old child with cerebral palsy which severely restricts her mobility. Her parents receive higher level Disability Living Allowance (DLA) in recognition of this. Lilly attends his nearest suitable school which is one mile from her home. Receipt of higher level DLA indicates that it would not be reasonable to expect her to walk to school and so she is eligible for free transport.

Example 2

Darren is 12 years old and has an autistic spectrum disorder. He attends his nearest suitable school which is 2.5 miles from his home. He is unaware of danger and has to be accompanied even on very short journeys. Darren’s doctor has confirmed that in her opinion, his carer is unable to prevent Darren from being exposed to the risks arising from his lack of awareness of danger for a journey of this length. To comply with their duty the Local Authority must ensure that suitable arrangements for Darren are in place.

Selection of school

The parents’ preferred school might be further away from the child’s home than another school that can also meet the child’s special educational needs. In such a case, it might be open to the local authority to name the nearer school if that would be compatible with the efficient use of the local authority’s resources. It would also be open to the local authority to name the school preferred by the child’s parents on condition that the parents agreed to meet all or part of the transport costs.

Transport in statements of SEN

If your child has a statement of SEN which has transport requirements written into it, your local authority must provide them.

Transport is normally only recorded in the statement in Part 6 in exceptional cases where the child has particular transport needs. In most cases local authorities will have clear general policies relating to transport for children with SEN that should be made available to parents.

What journeys does it cover?

The duty covers journeys to and from school at the start and end of the day, and also includes attendance at before and after-school activities.

Suitability of arrangements

For a local authority to meet their legal requirements, travel arrangements must be *suitable*. The suitability of arrangements will depend on a number of factors:

- The arrangements must enable the child to reach school without such stress, strain, or difficulty that they would be prevented from benefiting from the education provided. In a court case in 1992, the court decided that the transport provided by the local authority must be “non-stressful” if the child was to benefit from education.
- The arrangements must allow the child to travel in reasonable safety, and in reasonable comfort.
- The journey time must be reasonable. The time will depend on a number of factors, including the age and any individual needs of the child. The maximum length of journey for a child of primary school age should be 45 minutes, and for a secondary school child should be up to 75 minutes each way. A child’s disability might be such that a shorter journey time is appropriate.
- Although the service needn’t be a door to door service, children are not expected to walk an unreasonably long distance to catch a public service bus, or a bus journey that ended an unreasonably long distance from the school.

Arrangements could not be considered to be suitable where, for example, the child must make several changes of public service bus to get to school, which resulted in an unreasonably long journey time.

Government guidance advises on particular issues affecting pupils with severe learning difficulties and it recommends that local authorities:

- ensure drivers and escorts are known to parents
- operator contact numbers are provided for parents
- ensure stability of staffing arrangements for pupils who dislike change
- encourage schools and transport services to use a home-school liaison diary
- ensure that journey times are reasonable to avoid undue stress.

Drivers and escorts

Transport for pupils with disabilities should be provided by drivers and escorts who have enhanced CRB checks completed. Local authorities must ensure that all drivers and escorts working with pupils with disabilities have been CRB checked.

All local authorities should ensure that all drivers and escorts have undertaken disability equality training. It is also good practice for those responsible for planning and managing school transport to have disability equality training. This training must consist of:

- an awareness of different types of disability including hidden disabilities;
- an awareness of what constitutes discrimination;
- training in the necessary skills to recognize, support and manage pupils with different types of disabilities, including hidden disabilities and certain behaviour that may be associated with such disabilities;
- training in the skills necessary to communicate appropriately with pupils with all types of different disabilities, including hidden disabilities; and
- training in the implementation of health care protocols to cover emergency procedures.

Disabled parents

The Equality Act places a duty on local authorities to promote equality of opportunity for disabled people and to eliminate discrimination. This duty is anticipatory, meaning that local authorities must review all their policies, practices, procedures and services to make sure they do not discriminate against disabled people, and to ensure that all their services are planned with disabled people's needs fully considered in advance.

This means that local authorities will be under a duty to amend their home to school transport policy if, for example, that policy relied on disabled parents accompanying their children along a walking route for it to be considered safe, and where the parents' disability prevented them from doing so. In such circumstances, a reasonable adjustment would be for the local authority to provide free home to school transport for the children of disabled parents.

Complaints and appeals

Before complaining, it is good to be armed with as much information as possible. The law requires local authorities to publish their policies relating to school travel. Knowing the local authority's own policies is invaluable if you know they are not adhering to them.

The local authority should consult widely on any changes to their policies on school travel arrangements, with all interested parties included in the consultations. Consultations should last for at least 28 working days during term time. This period should be extended to take account of any school holidays that may occur during the period of consultation. Any such changes should be phased in and come into effect as pupils start school. If the local authority has not done this, or you have not had any opportunity to comment, then this will strengthen your position in any complaint.

Local authorities should have in place a robust appeals procedure for parents to follow should they have cause for complaint or disagreement concerning the eligibility of their child for travel support. The details of appeals procedures should be published alongside travel policy statements. Each local authority may have a different appeals process, so you should contact your local authority, or find the process on their website, before starting your appeal.

If you are unhappy with the way your appeal is dealt with, you can complain to the Local Government Ombudsman. Sometimes complaints and appeals may be made to the Secretary of State or the High Court. The Ombudsman considers the way a decision is reached, not with the merits of the decision itself, so you cannot complain just because you do not agree with a decision. The main test of whether there has been mal-administration is whether an authority has acted reasonably within the law, its own policies and the good practice standards of local administration. The Ombudsman expects complaints to be made first of all to the local authority before they will investigate.

The Local Government Ombudsman website can be found at <http://www.lgo.org.uk>.

Bad timekeeping

The service provided should ensure that your child arrives in good time for the school day. Equally your child should not be expected to leave any earlier than other children at the end of the school day (although a child may leave a few minutes early for safety reasons to avoid the end of the day rush).

The local authority's Disability Equality Duty requires them to ensure they do not discriminate against disabled people, and that all their services are planned with disabled people's needs fully considered in advance. In addition the Equality Act says that they must not provide less favourable treatment to a disabled child for a reason related to their disability. In practice this means that they must ensure that the transport arrangements do not place the child at any disadvantage over non-disabled children. If your child arrives late or is forced to leave early then this clearly places them at a disadvantage.

Example letter of complaint

An example letter of complaint for a local authorities refusal to provide transport to a child who meets all the requirements can be found on page 66.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *Home to School Travel and Transport Guidance*
- *Home to school travel for pupils requiring special arrangements*

Managing medicines

Parents have the prime responsibility for their child's health and should provide schools with information about their child's medical condition. We parents are a valuable resource when including disabled children, as we are often the person that knows how to deal with issues concerning our child, and we may be implementing useful practices at home that we can pass on to the school.

There is no legal duty that requires school staff to administer medicines. A number of schools are developing roles for support staff that build the administration of medicines into their core job description. Some support staff may have such a role in their contract of employment. Schools should ensure that they have sufficient members of support staff who are appropriately trained to manage medicines as part of their duties.

Positive responses by schools to a child's medical needs will not only benefit the child directly, but can also positively influence the attitude of their peers and promote positive images of disability.

It is important to inform schools about children's disabilities and any medication issues because a lack of information could be one reason a school might have for refusing to administer medication to a child. Schools need to understand why they are administering medications, the effects this might have on the child, what training needs to be in place, and what procedures already are in place at home. Without this kind of disclosure from the parent, school may be reluctant to accept responsibility for administering medications.

The policy works best where there is:

- good liaison with parents;
- good links with nursing and medical staff;
- sensitive sharing of information so that staff know the individual signs to watch for with individual children;
- a sound understanding of the pattern of a child's condition and the patterns in their treatment;
- a sound health and safety policy that includes barrier nursing.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *Managing medicines in schools and early years settings – DoH*
- *Managing medicines in schools and early years settings – Unison*
- *Including Me - Managing complex health needs in schools and early years centres*
- *Meeting medical needs in mainstream education*
- *HIV in Schools - Good practice guide to supporting children infected or affected by HIV*
- *Access to Education for children and young people with Medical needs*

Who is the responsible body and what is their role?

Who is responsible for making sure the school acts according to the legislation?

Each school has a 'responsible body' that is responsible for ensuring the school meets the duties of the EA. In maintained schools, the governing body are usually responsible. In Pupil Referral Units and maintained nurseries the responsible body is the local authority (called the Children's Service in some areas), and in independent schools the responsible body is the owner of the school.

Roles and Responsibilities

Maintained Mainstream Schools

In Maintained mainstream schools, the governing body should, in cooperation with the head teacher, determine the school's general policy and approach to provision for children with SEN, establish the appropriate staffing and funding arrangements and maintain a general oversight of the school's work

The governing body may appoint a committee to take a particular interest in and closely monitor the school's work on behalf of children with SEN

The governing body must report to parents annually on the school's policy on SEN

The head teacher has responsibility for the day-to-day management of all aspects of the school's work, including provision for children with SEN. The head teacher should keep the governing body fully informed and also work closely with the school's SEN coordinator or team

All teaching and non teaching staff should be involved in the development of the school's SEN policy and be fully aware of the school's procedures for identifying, assessing and making provision for pupils with SEN

The SENCO (or team), working closely with the head teacher, senior management and fellow teachers, should be closely involved in the strategic development of the SEN policy and provision. The SENCO has responsibility for day-to-day operation of the school's SEN policy and for coordinating provision for pupils with SEN, particularly through School Action and School Action Plus.

Maintained Special Schools

In Maintained special schools, the governing body should, in cooperation with the head teacher, determine the school's general policy and approach to provision for all pupils, establish the appropriate staffing and funding arrangements and maintain a general oversight of the school's work

The governing body must report to parents annually on the school's policy on SEN.

The head teacher has responsibility for the day-to-day management of all aspects of the school's work, and will keep the governing body informed.

All teaching and non teaching staff should be involved in the development of the school's policy and be fully aware of the school's procedures for making SEN provision, and monitoring and reviewing that provision in line with the guidance in the Code.

Community, Voluntary and Foundation Schools

In community, voluntary or foundation schools, the governing body should:

Do its best to ensure that the necessary provision is made for any pupil who has special educational needs.

Ensure that, where the ‘responsible person’ – the head teacher or the appropriate governor – has been informed by the LEA that a pupil has special educational needs, those needs are made known to all who are likely to teach them.

Ensure that teachers in the school are aware of the importance of identifying, and providing for, those pupils who have special educational needs.

Consult the LEA and the governing bodies of other schools, when it seems to be necessary or desirable in the interests of co-ordinated special educational provision in the area as a whole.

Ensure that a pupil with special educational needs joins in the activities of the school together with pupils who do not have special educational needs, so far as is reasonably practical and compatible with the child receiving the special educational provision their learning needs call for and the efficient education of the pupils with whom they are educated and the efficient use of resources

Report to parents on the implementation of the school’s policy for pupils with special educational needs (See Section 317, Education Act 1996).

Have regard to this Code of Practice when carrying out its duties toward all pupils with special educational needs (See Section 313, Education Act 1996).

Ensure that parents are notified of a decision by the school that SEN provision is being made for their child. (See Section 317A, Education Act 1996).

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *SEN code Of Practice*
- *A Guide to the Law for School Governors*
- *Maximising progress - ensuring the attainment of pupils with SEN*
- *Leading on inclusion (multiple documents and PowerPoint slides)*
- *Effective leadership - Ensuring the progress of pupils with SEN and disabilities*
- *Early years and the Disability Discrimination Act*
- *Education Act 1996*

How to complain

If you feel you are not happy with the way in which your school are behaving towards you or your child in relation to inclusion and educational provision, it is important to try and bring about a resolution at a local level first. Most complaints about schools should begin with the school's complaints procedure. By law, schools must have a procedure for parents to complain. If you cannot resolve a problem informally, for example with the class teacher, head of year, deputy head or head teacher, then ask for a copy of the procedure to inform the head and chair of governors of your concerns, and request a meeting.

Now take a deep breath and try to remember that the school may not be aware that what they are doing is discriminatory. Their behaviour maybe based on myth (what they think a particular disability might be like) or lack of correct information, or not enough information.

Your first instinct may be to go at the school all guns blazing, but this is not the way to gain a successful outcome for your child. If it turns out that you are in the right and there has been discriminatory practice towards your child by the school, then you need to stay calm so that you can gather the information which may be necessary if you end up having to make a claim against the school.

If it turns out you were wrong, or maybe the school has acknowledged it has discriminated against your child and is willing to apologise and work towards rectifying this, then it will be difficult to work along-side them if you have been aggressive or verbally abusive.

Above all else whichever way you choose to approach the school it is important that from day one you keep a written record of everything you do. It's no good having informal chats, as any information you tell the school, or they tell you may be lost or distorted unless they are written down clearly at the time. I would strongly advise parents that any concerns they have about the school's practices should be highlighted by written request for meetings stating what your complaint is about. If the worst happens and you end up in a tribunal case, evidence is very important, since this is part of the court system. The school is likely to have plenty of written evidence, so it is important you do also.

I would never recommend a tribunal case as a course of action to a parent. Tribunals are emotional, exhausting, draining and very unsettling. However if you feel you have exhausted all avenues open to you, from written complains to the responsible body of the school, meetings and mediation, then going to tribunal may be your last remaining option. Bear in mind that it may be difficult for your child to continue at that school after a tribunal case against them. In theory if you won, the school should apologise and put in place all reasonable adjustments and include your child correctly. In practice much of successful inclusion is about the attitude of the school. Just because legally they are obliged to put in place certain procedures, this is unlikely to change their attitude fundamentally.

What Can I Claim About?

The SENDIST tribunal service takes claims of discrimination in certain circumstances.

Admissions

Schools and local authorities must not discriminate because of a child's disability:

- In the way they decide who will get a place in schools. This includes any rules they apply when schools are ‘over subscribed’ (more people apply than there are places), and how they use these rules.
- In the terms on which they offer pupils a place at the school.
- By refusing to accept, or deliberately not accepting, an application from a disabled pupil for admission.

Education and associated services

A school must not discriminate in the education and associated services it provides for disabled pupils. This covers all aspects of school life and the teaching provided to pupils. It also includes what happens at lunchtime and other breaks and activities such as after-school clubs, school trips and school orchestras. (Note: Adult education provided in schools and services to parents are not dealt with by the Tribunal.)

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 whether it is a permanent or fixed term exclusion and includes lunchtime exclusions.

But not in every case, for example:

Local Authority admissions appeal panels will consider a Claim of disability discrimination in the case of a child who does not have a statement and who has been refused a place at a Local Authority maintained school that you want your child to attend.

Independent appeal panels consider disability discrimination in relation to all permanent exclusions from Local Authority maintained schools.

If you are claiming disability discrimination in either of the above cases, you will need to contact the Local Authority for information about this.

Time limits

There is a time limit for making a claim to SENDIST. You must send your claim to the tribunal within 6 months of the alleged discrimination, or, if you have used the Equality and Human Rights Commission conciliation service, within 8 months of the alleged discrimination.

School complaint: complaining to the governing body

Most complaints about schools should begin with the school complaints procedure. By law, schools must have a procedure for parents to complain (Section 29 of the Education Act 2002). If you cannot resolve a problem informally, for example with the class teacher, head of year, deputy head or head teacher, then ask for a copy of the procedure.

Formal complaints usually end with the governing body, although some schools and local authorities may offer a further stage of complaint to the local education authority, or access to a mediation service.

A complaint to the governing body should be addressed to the chair of governors care of the school. If the school is a community or voluntary controlled school (i.e. local authority maintained, run by the council) you could also send a copy of the letter to the director in charge of local education services, often called children's services.

In very serious cases, you could ask a solicitor to help with a letter. A solicitor might be able to add some legal points which could strengthen your case.

Try to include precise details of dates, times, meetings and decisions that may help the governing body understand the substance of your complaint. Explain what harm you or your child have suffered as a result of the school's action or inaction. Say what you would like the governing body to do to put things right, for example:

- Offer an apology
- Provide extra support for your child
- Change a school policy

The governing body is likely to pass your complaint to a panel of three or five governors. They may invite you to a meeting to put your case in more detail. They should follow the rules of *natural justice*. These say that:

- No member should have a vested interest in the outcome or any involvement in an earlier stage of the procedure
- Each side should be given the opportunity to state their case without unreasonable interruption
- Written material must have been seen by all parties.

If new issues arise, parties should be given the opportunity to consider and comment on it.

In many cases where you can complain to an outside body, you must first exhaust the school's complaints procedure before the relevant body will consider your complaint.

The SENDIST Tribunal process

This section describes the process of an alleged act of discrimination against a school, and how it may be resolved, up to and including the SENDIST tribunal process. The process is shown as a flow diagram in Figure 2.

A word about a SENDIST tribunal process. As in my own tribunal case I found this process to be extremely stressful and lengthy. I did not realise at the start that a tribunal process is also time-consuming and there are strict time lines to adhere to. All this taken in to consideration, I would still do it again if I had to. You do however need to be aware that parents are expected to provide evidence to support their claim of discrimination. Preparing your claim may involve you gathering evidence to support your case which might consist of documents supporting your claim and possibly witnesses. It is important that you seek support when bring about a claim, such as Parent Partnership.

The tribunal process as it involves schools starts when a parent of a disabled child believes that the school has discriminated against their child because of the child's disability. The school should have internal procedures for dealing with parent's complaints, and this should be used first of all.

The website www.sendist.gov.uk provides information for parents wishing to bring about a claim of Disability Discrimination in schools or appeals against LA decisions on children's special educational needs.

Internal processes

At this point the school governors should review the child's treatment, and together with the SEN Code of Practice and any other relevant documents, decide whether their school has conformed to the Equality Act. At this point you may want to remind schools that going to tribunal is likely to be very time consuming and expensive, so if you or the school have any doubts as to whether you acted correctly, admitting mistakes, apologising, and making appropriate changes is by far the best outcome for all involved.

From my own experience of having to taken a school to tribunal, I would strongly recommend that you try to resolve any issues you have with the school at local level first. However it is important that parents understand the process they may need to go through should they need to take their complaint against a school further.

Conciliation Service

If you are not happy with the school's response, you should try to use a conciliation service before lodging a claim with SENDIST. The Equality and Human Rights Commission provide a free disability conciliation service. You may want to lodge a claim of discrimination with SENDIST as soon as possible, since you must normally do this within six months of the alleged discrimination. However, if you use the EHRC disability conciliation service this time limit is extended to eight months so it is everyone's interest to use the service before going to tribunal.

The disability conciliation service offers an effective alternative route to court action, when a breach of the Equality Act may have occurred. Disability Conciliation uses a rights-based

approach that ensures settlements are quick and effective. The focus is on changes to practices, policies and procedures.

The EHRC help-line identifies appropriate cases for conciliation and refers them to an internal conciliation management unit. The conciliation management unit assesses the viability of cases and encourages the parents and school to agree to conciliation.

Although it is generally in children's best interests for their parents' complaints to be resolved at local level and at the earliest possible stage, when the issues involve schools' and local authority's legal duties to meet children's special educational needs it is crucial that the formal processes of complaint and appeal are not side-lined by efforts at mediation. The risk is that the mediator's drive to establish a 'middle position', combined with the LA's drive to limit expenditure, will result in parents being pressured to accept an outcome which disregards their child's actual needs and their entitlement under SEN law.

IPSEA

If you are still not happy, you may lodge a claim of discrimination with SENDIST. Since the tribunal is a legal body, and the question of whether the school has broken the law or not can be very difficult for lay people to understand, parents are advised to use the service provided by the Independent Parental Special Education Advice (IPSEA) for legal advice. IPSEA actively discourages parents from going to tribunal except as a last resort, but will of course advise and support parents where needed. If IPSEA believe that the school is in the wrong, and the school still does not accept any wrong-doing, then IPSEA will provide legal representation for the parents at tribunal.

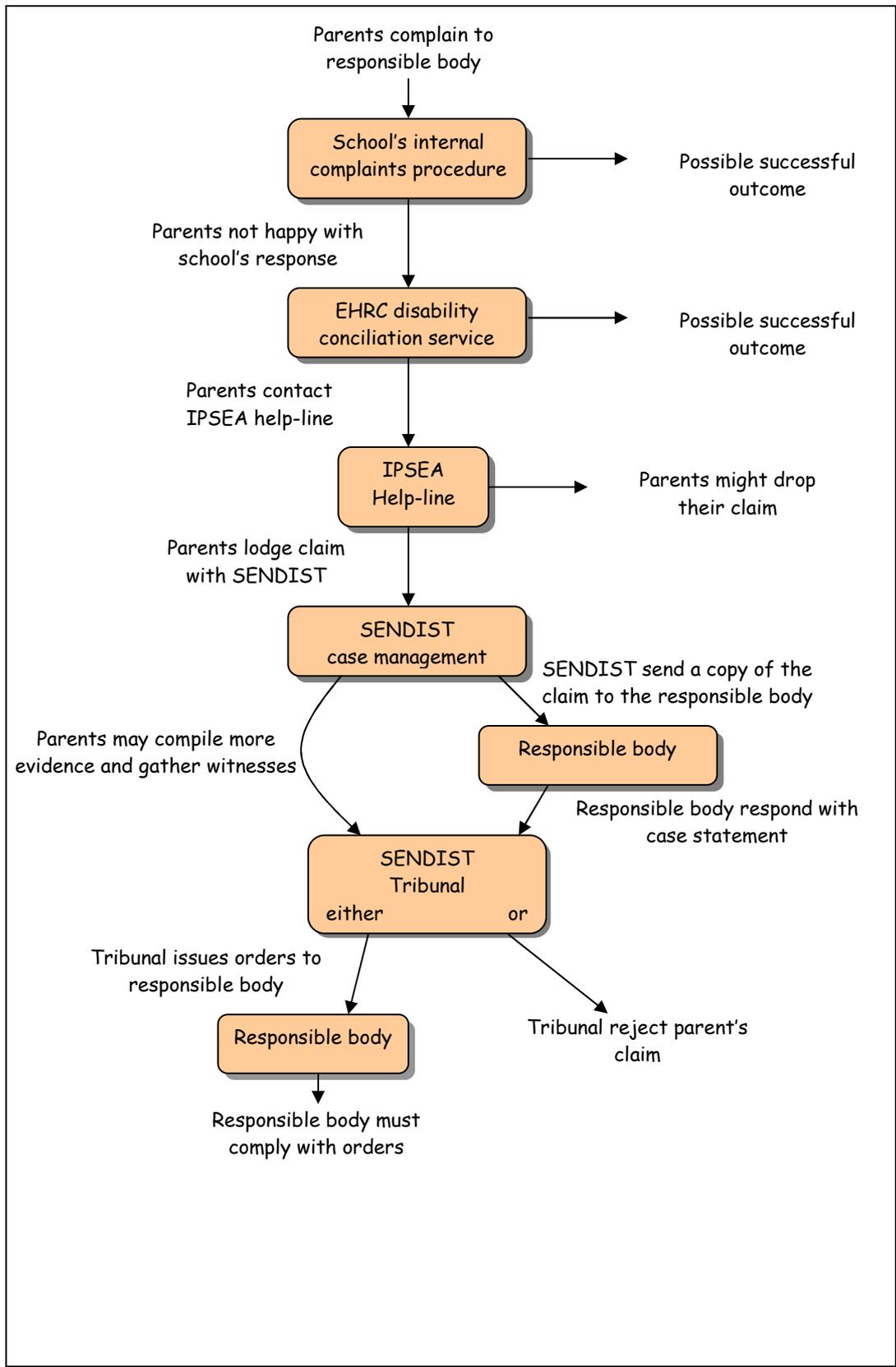


Figure 2

SENDIST

The parents lodge a claim of discrimination against the responsible body (i.e. the school governing body) to SENDIST by completing a claim form, which includes their Case Statement. This should describe what happened, preferably with dates, and how they think their child has been discriminated against. They must show that their child is disabled, that the alleged discrimination was connected to the child's disability, and that it was not justified. They also detail what it is they are asking the tribunal to do.

SENDIST then send a copy of the claim to the responsible body. The responsible body must respond to the claim with their own case statement and any evidence with which they want to reply, within 30 days of receiving the copy of the claim. This response is copied to the parents by SENDIST. At this point the responsible body must choose how they want to deal with the claim:

- Do they intend to dispute the claim?
- Will they seek to resolve it without the need for a hearing?
- How will they present their case at a hearing?
- What case will they make in written evidence?

The parents' claim form includes a box in which they say how they would like to see things put right. These may be things the responsible body is prepared to do without need for a tribunal. If the responsible body agree that there has been discrimination but plan to put things right, the parents may be prepared to withdraw their claim. It is best if disputes can be resolved by agreement between the responsible body and the parents. It is quite proper to discuss the matter while a tribunal claim is pending. Communication difficulties may well have been a factor in the dispute.

SENDIST arrange a date for an initial hearing within 10 weeks of the submission of the parent's claim. Both the parents and the responsible body can bring up to five witnesses to the hearing. The hearing normally takes one day but can take longer. The tribunal's decision is normally received within about 10 days of the final hearing.

The order in the SENDIST decision is binding on the responsible body. The responsible body has a duty to do what has been ordered, and normally has a limited time within which it must carry out the order. The time runs from the day after the order is sent out. The period allowed varies depending on the kind of order. The tribunal chairman normally includes the time limits for carrying out the order within the written decision. SENDIST's role ends at this point. They have no power to supervise how and when the order is carried out.

If the responsible body does not do what has been ordered within the time limit stated in the decision, the parents can appeal directly to the Secretary of State for Education.

It is important that schools realise that whereas an appeal to SENDIST against a decision made regarding a pupil's *Special Educational Needs* is an appeal against the local authority and must be defended by the local authority, appeals against *Disability Discrimination* is against the school's responsible body and therefore must be defended by them not the local authority.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *IPSEA Annual Review 2006-2007*
- *Disability discrimination in schools - how to make a claim - a guide for parents*
- *Disability discrimination in schools - how to make a claim - a guide for responsible bodies*
- *How do I make a claim - A guide to taking a Part 4 schools DDA case*

Some common misconceptions about the Equality Act

- ***The EA only applies to people with a physical or sensory impairment; true or false?***
False. The EA does apply to people with a physical or sensory impairment but also to people with a wide range of other impairments, including learning difficulties and a range of medical conditions such as HIV and cancer.
- ***Alterations to improve access only apply to the physical environment; true or false?***
False. Physical alterations are only a small part of the changes that may be needed to allow disabled people to access services. Attitudes, policies and aspects of the organisation are more likely to restrict access.
- ***Reasonable adjustments are likely to be costly; true or false?***
False. Whilst some reasonable adjustments may be costly, most reasonable adjustments cost little or nothing. In a 2007 study of organisation's responses to the EA, the majority of those who had made adjustments found them to be easy, with 69% of employers reporting no difficulties. Costs may be borne by the LEA for a statemented child, or by other organizations such as council visual/hearing impaired support or charities.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *Extending Inclusion*

Commonly raised issues

‘Who’s going to pay for it?’

Provision for individual pupils comes through the SEN framework. It usually consists of ‘auxiliary aids and services’ or the equipment and the human resources that are needed to support pupils who have SEN. Provision is funded by the school, from its own resources including the additional educational needs element in the school budget, and, in the case of a pupil with a statement, by the LEA as well, though this funding is often devolved or delegated to the school. In some areas schools also have funding delegated to them for the purchase of support services.

Making reasonable adjustments is usually about how resources are used, about how schools are organised, about policies, practices and procedures. It would be a mistake to think that reasonable adjustments will automatically cost a lot.

‘He can’t go on the school trip. It’s health and safety requirements.’

The Department for Education and Skills provides guidance on the safe conduct of school trips. This guidance emphasises the need to both:

- ensure the inclusion of all pupils: *‘Every effort should be made to ensure that school journeys and activities are available and accessible to all who wish to participate...;’* and
- ensure that suitable arrangements have been put in place to ensure their safety: *‘The group leader should discuss the visit with the parents of pupils with SEN to ensure that suitable arrangements have been put in place to ensure their safety.’*

Health and safety considerations are a crucial part of the planning of any school trip. They do not bar disabled pupils from participating. In line with the guidance, a risk assessment needs to be carried out for any school trip. Reasonable adjustments for disabled pupils should be part of this risk assessment. Failing to make reasonable adjustments may amount to discrimination. The Code of Practice explains how this may arise.

‘Not all of these children are disabled.’

The definition of disability in the Equality Act is broad and includes many more children and young people than is normally thought. The EA says that someone has a disability if they have:

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

Long-term means a year or more and substantial means *more than minor or trivial*. Both terms set quite a low threshold and therefore increase the number of pupils who are covered by the definition. A report from the Cabinet Office suggests that there may be about 772,000 children under 16 in the UK who are disabled. That’s about seven percent of the population.

Many pupils may not think of themselves as being disabled. Their parents may not think of them as being disabled either. That does not stop them being covered by the EA. All the pupils shown in the clips are likely to be disabled under the EA definition.

‘We can’t change this because of the National Curriculum.’

Integral to the National Curriculum is a statutory statement, “Inclusion: providing effective learning opportunities for all pupils”. This is usually known as The National Curriculum Inclusion Statement. It sets out three principles that are essential to the development of a more inclusive curriculum:

- setting suitable learning challenges;
- responding to pupils' diverse learning needs;
- overcoming potential barriers to learning and assessment for individuals and groups of pupils.

Rather than constraining what schools can do, the National Curriculum requires schools to adapt their approach to enable all pupils to access the curriculum.

‘We can’t take this child unless he has a full-time support assistant.’

A support assistant may be an important part of a pupil’s special educational provision, but placing conditions on the admission of a disabled pupil, or potential pupil, may amount to discrimination. The Code of Practice provides examples of Less Favourable Treatment that may amount to discrimination.

It is important not to jump to conclusions about what support a pupil will need without having made a careful assessment. Schools proceed from an assessment of a pupil’s special educational needs to the identification of the special educational provision that is needed to meet the pupil’s needs, on the basis of all the available evidence and not on the basis of a hasty judgment. Where a child is transferring from another school there may already be significant evidence of the appropriate provision being made through *School Action* or *School Action Plus* of the SEN Code of Practice or a statement, under the SEN framework.

If a full-time support assistant is the most appropriate form of provision, it will be important to ensure that the support assistant is deployed to support the pupil’s learning, their social interaction with their peers and the development of their independence. A lot of pupils with special educational needs count as disabled under the EA.

‘We can’t take your child because of the league tables.’

Many schools find that the changes that they make for disabled pupils make the school a better place for teaching and learning. This can lead to better outcomes for all children. Many schools also focus on improving measures of pupil progress, and the value-added measures tables reflect that.

‘I’m worried about the impact on other pupils.’

Many schools find that the changes that they make for disabled pupils can make the school a better place for other pupils too.

‘We can’t take this child. My staff are not allowed to give out medicines.’

The EA cannot require staff to administer medicines. Where staff agree to manage the administration of medicines or to administer them, schools should follow the Department for Education and Skills/Department of Health guidance, *Managing medicines in schools and early years settings*. This provides essential advice on the development of policies on the management and administration of pupils' medicines. It states clearly:

“Children with medical needs have the same rights of admission to a school or setting as other children. There is no legal duty that requires school or setting staff to administer medicines. A number of schools are developing roles for support staff that build the administration of medicines into their core job description. Some support staff may have such a role in their contract of employment. Schools should ensure that they have sufficient members of support staff who are appropriately trained to manage medicines as part of their duties.”

The Equality and Human Rights Commission’s Code of Practice also explains schools’ duties and states:

“Where the administration of medicines is not in someone’s contract, it is entirely acceptable for staff to volunteer to administer medicines. It may place a disabled pupil at a substantial disadvantage if a school forbids staff to volunteer.”

‘If we ask parents what their child needs, they’ll ask for the earth.’

Parents are a crucial source of expertise on their child’s impairment. Involving parents early in thinking about what barriers their child may encounter is likely to involve them constructively in a problem-solving approach. Making reasonable adjustments is often a matter of changing the way something is done, rather than expensive solutions. It may not be so easy to engage the parents at the last minute or when things have started to get difficult. If relationships deteriorate, parents may expect more in order to put things right.

‘We can’t do this without specialist support.’

Drawing on specialist support is an important part of making reasonable adjustments. Many schools draw on external expertise: to inform what they do, to train staff, to train pupils, or to provide specific advice. But specialist support is only part of the picture. Other players are important too: school staff, parents, pupils themselves.

‘If we exclude the child the LEA will have to do something about it.’

Exclusion is not a reasonable adjustment and would put the pupil at a substantial disadvantage. If the exclusion is for a reason related to the pupil’s disability it may amount to discrimination. The Code of Practice explains the circumstances in which this may be the case. Many of the schools that have been most successful at including disabled children demonstrate a positive approach to managing behaviour and report low or no exclusions.

Additional resources

These booklets can be found on the website at www.inclusivechoice.com/parent_book.html:

- *Making reasonable adjustments for disabled pupils*
- *Managing medicines in schools and early years settings – DoH*
- *Managing medicines in schools and early years settings - Unison*

Appendix A: Example letters

This appendix shows some example letters that you can base your own letters on. They will need adjusting to your particular needs and circumstances. More letters may be found on the Inclusive Choice Consultancy website parent pages at...

www.inclusivechoice.com/parent_book.html

IPSEA also has a section with guidance and letters on their website, which can be found under “Common Problems” here:

<http://www.ipsea.org.uk>

Schools' refusal to admit disabled child

Dear Sir/Madam

I wish to inform you that I am considering making an appeal against the decision not to give my child, <name>, a place at <name of school>. I would also like to make a claim under the Equality Act (2010) of Disability Discrimination. My grounds for appeal are described below.

I consider that the decision not to give my child a place was less favourable treatment of my child for a reason related to his disability and that the less favourable treatment of my child cannot be justified.

Schools have a legal duty to comply with parent's request unless they can show that either:

- a) the school they want is unsuitable to their child's age, ability, aptitude or special educational needs; or
- b) that their child's attendance at the school would affect the education of other children; or
- c) that their child's attendance at the school would not be an "efficient use of resources."

I would like <Name of school> to put in writing:

- a) Why they felt they could not meet my child's need.
- b) Any evidence to back this up.

I have sought educational discrimination advice and I will be making a claim of Disability Discrimination to the Admission Appeal Panel. This is not something I wish to do so I would appreciate it if you could contact me and discuss this matter. I wish to thank you in advance and I look forward to your support and assistance in this very stressful matter.

Yours faithfully

Special education provision is not being made

Dear Sir or Madam,

Re: <Child's name> <date of birth>

I am writing as the parent of the above child, who has a Statement of Special Educational needs and attends <school name>.

Under the Equality Act (2010), the Statement specifies the special educational provision my child should receive and I understand that you have a legal duty to "arrange" this provision.

I am sorry to have to inform you that you are in breach of this duty, on the grounds that the following provision is currently not being made:

Please reply to this letter as soon as possible, but in any event within 5 working days of receiving it, confirming the steps that you will take to ensure that the special educational provision specified in my child's Statement will, in fact, be made.

I look forward to an early reply and trust that it will not be necessary to take this matter further.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Complaint that a disabled child is not included in a school club

Dear <headteacher or governor>,

I am writing concerning your school's treatment of my child, <child's name> in the <club or event>. I believe he/she was discriminated against, and I would like this situation to be rectified with immediate effect.

The Equality Act (2010) demands that in "extended services" such as this run by the school for its pupils, schools are required to make "Reasonable Adjustments" to include disabled children, and must not provide "Less Favourable Treatment". Under the act, "Less Favourable Treatment" is defined as having occurred when a disabled child is treated less favourably than someone else, for a reason related to the child's disability. In this case it seems quite evident that you are treating <child's name> less favourable than the other children because of his/her disability.

You are required under the act to make any Reasonable Adjustments to ensure that <child's name> is included in this <club or event>. Under the act, the Reasonable Adjustments you make must act to prevent disabled pupils being placed at a substantial disadvantage, must enable pupils to participate in education and associated services, and must be anticipatory. I would appreciate your co-operation in this matter by fully including <child's name> in the <club or event> with no pre-conditions and with immediate effect, as is your statutory duty.

Thank-you very much.

Your sincerely,

Complaint that a disabled child is not included

Dear <organisation's representative>,

I am writing concerning your <organisation>'s treatment of my child, <child's name> in the <club or event>. I believe he/she was discriminated against, and I would like this situation to be rectified with immediate effect.

The Equality Act (2010) demands that all services to the public such as this are required to make "Reasonable Adjustments" to include disabled children, and must not provide "Less Favourable Treatment". Under the act, "Less Favourable Treatment" is defined as having occurred when a disabled child is treated less favourably than someone else, for a reason related to the child's disability. In this case it seems quite evident that you are treating <child's name> less favourable than the other children because of his/her disability.

You are required under the act to make any Reasonable Adjustments to ensure that <child's name> is included in this <club or event>. Under the act, the Reasonable Adjustments you make must act to prevent disabled pupils being placed at a substantial disadvantage, must enable pupils to participate in education and associated services, and must be anticipatory. I would appreciate your co-operation in this matter by fully including <child's name> in the <club or event> with no pre-conditions and with immediate effect, as is your statutory duty.

Thank-you very much.

Yours sincerely,

Detention is being used as a form of punishment for a disabled child

Dear head-teacher or governor,

I am writing concerning your school's treatment of my child, (name)

I am concerned that the school is using detention as a form of punishment to incidents that happen in school that are directly related to my child's disability <name of disability>. My child has been officially diagnosed with <disability>. Therefore he has protection under the Equality Act 2010.

The Equality Act demands that schools are required to make "Reasonable Adjustments" to include disabled children, and must not provide "Less Favourable Treatment". Under the act, "Less Favourable Treatment" is defined as having occurred when a disabled child is treated less favourably than someone else, for a reason related to the child's disability. In this case it seems quite evident that you are treating <name> less favourably than the other children because of his/her disability, in that you are imposing detention on him for a reason that is directly related to his/her disability.

You are also required under the act to make any Reasonable Adjustments to ensure that <name> is included in all activities. Under the act, the Reasonable Adjustments you make must act to prevent disabled pupils being placed at a substantial disadvantage, must enable pupils to participate in education and associated services, and must be anticipatory. I do not feel that <name> is being fully included in school life and I would very much like to work along side you to improve things for (Name)

I would like to request a meeting with the school as soon as possible so that we can discuss what reasonable adjustments the school has/can make thus ensuring (Name) is progressing and achieving in his school environment and also to offer my support as the parent to the school.

Please note that I have copied this letter to the chair of governors.

Thank-you very much,

Yours sincerely,

Failure to provide school transport

Dear <head of transport at LA>,

I am writing to you to complain that my child, <name> has not been provided with transport to and from his/her school <school name>. <child name> has a disability, <disability name> which means he/she cannot walk very far. The school is approximately <distance> away so without transport he/she cannot access his/her education.

The local authority's Disability Equality Duty requires you to ensure you do not discriminate against disabled people, and that all your services are planned with disabled people's needs fully considered in advance. In addition the Equality Act (2010) says that you must not provide less favourable treatment to a disabled child for a reason related to their disability. Your decision not to provide transport has placed my child at a substantial disadvantage compared with his/her peers, and therefore you are currently in breach of the Equality Act.

Therefore I request that you re-consider your decision, and put in place transport arrangements for my child as soon as possible.

Yours sincerely,

Transport taking too long to get to school

Dear <head of transport at LA>,

I am writing to you to complain that the transport to school for my child, <name> is failing to get him to school within a reasonable time.

Regularly the transport takes over <time taken>. I'm sure you are aware that government guidelines suggest that for a <primary/secondary> school child the transport should take no longer than <45 minutes/75 minutes>. This situation is not a one-off event, and happens most days.

The local authority's Disability Equality Duty requires you to ensure you do not discriminate against disabled people, and that all your services are planned with disabled people's needs fully considered in advance. Government guidance also states that transport arrangements must enable the child to reach school without such stress, strain, or difficulty that the child would be prevented from benefiting from the education provided. The excessive time that it takes my child to get to school is affecting his concentration once there, and so the arrangements are not suitable.

Please could you look at the transport arrangements for my child again with immediate effect, and ensure that the time taken for him/her to get to school under your new plan is within the guidelines set by the government.

Yours sincerely,

Ask for a statutory assessment

Dear Sir or Madam,

<child's name> <date of birth>

Request for formal assessment

I am writing as the parent of the above child to request an assessment of his special educational needs under the 1996 Education Act.

<child's name> attends <school name>.

I believe that <child's name> special educational needs are as follows:

<list of special educational needs>

My reasons for believing that the school cannot on their own make the provision required to meet my child's needs are:

<list of reasons>

I understand that you are required by law to reply to this request within six weeks and that if you refuse I will be able to appeal to the Special Educational Needs Tribunal.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Ask your LEA for re-assessment

Dear Sir or Madam,

<child's name> <date of birth>

Request for formal re-assessment

I am writing as the parent of the above child to request a "re-assessment" of his special educational needs under the 1996 Education Act. <child's name> has a Statement of Special Educational needs and attends <school name>.

I believe that <child's name's> special educational needs have changed as follows:

<list of changes>

I believe that the provision in Part 3 of the Statement is no longer suitable because

<reason>

I believe that the school is no longer able to meet his needs because

<reason>

I understand that you are required by law to reply to this request within six weeks and that if you refuse I will be able to appeal to the Special Educational Needs Tribunal.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Ask for a meeting on the proposed Statement and express a preference for a school

Dear Sir or Madam,

<child's name> <date of birth>

Request for a meeting to discuss a proposed Statement

I am writing as the parent of the above child to acknowledge receipt of the proposed Statement of Special Educational Needs and to ask for a meeting with the Responsible Officer to discuss it.

Please note that the school we wish to be named on the Statement when it is finalised is <school name>.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Ask for the name of the school on your child's Statement to be changed

Dear Sir or Madam,

<child's name> <date of birth>

Request for a change of the school named on a Statement

I am writing as the parent of the above child, who has a Statement of Special Educational Needs and attends <school name>.

I am writing to request a change of the school named on my child's Statement. At present his Statement names <old school name>. I would like this changed to <new school name>.

I understand that you have a legal duty to comply with this request unless you can show that either:

- a. the school I want is unsuitable to my child's age, ability, aptitude or special educational needs; or
- b. that my child's attendance at the school would affect the education of other children; or
- c. that my child's attendance at the school would not be an "efficient use of resources."

I do not believe that any of these is the case and therefore look forward to hearing back that you agree to this change of school.

Also, I understand that you are required by law to reply within eight weeks of receiving this request and that if you refuse I will be able to appeal to the Special Educational Needs Tribunal.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Object to the amendments the LEA is proposing to make to your child's Statement

Dear Sir or Madam,

<child's name> <date of birth>

Representations on proposals to amend a Statement

I am writing as the parent of the above child, who has a Statement of Special Educational Needs and attends <school name>.

I acknowledge receipt of your Amendment Notice and wish to request a meeting with an Officer to discuss the changes being proposed. I wish to make the following comments:

<your comments>

<Note: If the Amendment Notice is proposing a change to the school named in Part 4 then you can also express a preference for the maintained school you wish to be named on the Statement.>

I understand that I will be able to appeal to the Special Educational Needs Tribunal if you amend the Statement and I remain unhappy, and I hope that by meeting to discuss this matter we will be able to avoid involving the Tribunal.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Ask your LEA to arrange an early review of your child's Statement

Dear Sir or Madam,

<child's name> <date of birth>

Request for an early review of a Statement

I am writing as the parent of the above child, who has a Statement of Special Educational needs and attends <school name>.

I would like the LEA to arrange an immediate review of the Statement. My reasons for making this request are:

<reasons>

I look forward to an early reply.

Yours sincerely,

More guidance on this situation can be found on IPSEA's website at:

<http://www.ipsea.org.uk/What-you-need-to-know/Common-problems.aspx>

Appendix B: An example exclusion record

Keeping an accurate record of your child's exclusion may help identify patterns of behaviour or other factors which can contribute to the planning and review of your child's progress and support needs at school. You may find this Exclusion Record will help you get a clearer picture of your child's exclusions. This may be useful for your child's next annual review or as part of other planning and consultation meetings with your child's school.

Name of Child: _____

School attended: _____

Type of School: _____

Date of exclusion: _____

How has this exclusion been recorded by school? (Please circle one of the following)

Internal / Lunchtime / Fixed Term / Permanent

How were you informed about this exclusion? Phone / Letter / Other

Date / time you were contacted: _____

Please give the name / role of the member of staff who contacted you:

Please give details of what was said or written to explain the reason for the exclusion. If this refers to an internal exclusion, was your child given any work to complete?

Reason for Exclusion - if you are in any doubt please clarify the reason for this exclusion with your child's school.

Code	Reason	Tick	Comment
PP	Physical assault against a		
PA	Physical assault against an		
VP	Verbal abuse / threatening		
VA	Verbal abuse / threatening		
BU	Bullying		
RA	Racist abuse		
SM	Sexual misconduct		
DA	Drug and alcohol related		
DM	Damage		
TH	Theft		
DB	Persistent disruptive		
OT	Other		

Comments _____

Name of Parent or Carer: _____

Contact details: _____

ANNUAL EXCLUSION RECORD

Name of Child: _____

Year group: _____

School: _____

Local authority: _____

Date of Exclusion	Type of Exclusion	Comments

Name of Parent or Carer: _____

Contact details: _____

If you would like any more information about the Constructive Campaigning Parent Support Project please

Contact: Project Manager, TreeHouse, Woodside Avenue, London N10 3JL , email

losman@treehouse.org.uk or telephone 020 8815 5443