

Disability Rights Commission

Education

A guide for parents

Part 4 of the Disability Discrimination Act 1995



Scotland

Making rights a reality

The Disability Rights Commission

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

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

Introduction

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

Since September 2002, we have offered advice, information and support to parents, children and schools. If you decide to make a claim against a school the DRC may also be able to legally represent your child. The Disability Rights Commission (DRC) Helpline can give you more advice and information.

Please also note that in addition to the legislation about discrimination in schools, there is separate legislation covering additional support for learning and improving accessibility.

Section One: The law

Who is responsible for meeting the new duties?

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

Please use this table for reference.

Type of School	Responsible Body
School managed by an education authority	The Education Authority
Independent school	The proprietor*
Self-governing school	The Board of Management
Grant-aided school**	The managers of the school

* Those responsible for the management of the school depending on the type of school.

** A grant-aided school is one that is receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.

Does my child have rights under the DDA?

The DDA defines disability as 'a physical or mental impairment, which has a substantial and long term adverse affect on a person's ability to carry out normal day-to-day activities'. For example, if your child has mobility impairments, sensory impairments, learning disabilities, mental health conditions, epilepsy, Aids, asthma, diabetes or progressive conditions such as muscular dystrophy, then he or she may be covered under the DDA.

If you and the body responsible for a school disagree about whether your child has a disability or not then ultimately the court can decide.

How can the DDA help my child?

Since September 2002, it has been against the law for the responsible body of a school to discriminate against your child for a reason related to his/her disability in:

- Admissions (including placing requests)

- Education and associated services, including:
 - school trips
 - the curriculum
 - teaching and learning
 - school sports
 - the serving of school meals
- Exclusions.

There are two aspects to discrimination:

1. Less favourable treatment

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

For example:

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

Justification for less favourable treatment

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

Less favourable treatment may also be justified if it is the result of a permitted form of selection. In Scotland, education authority schools may only select pupils for admission if such arrangements have been approved by Scottish Ministers. Subject to the laws on sex and race discrimination, independent schools and self-governing schools may select on grounds of ability and aptitude.

2. Failure to take reasonable steps

A responsible body can also be accused of discriminating if it does not take 'reasonable steps' to ensure your child is not at a substantial disadvantage compared to the other pupils at the school.

For example:

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

How do the DDA duties differ from the rights of children with 'special educational needs'?

The Additional Support for Learning Act 2004 removes the term 'special educational needs' and introduces the new concept of 'additional support needs'. This refers to any child or young person who, for whatever reason, requires additional support for learning. Additional Support Needs (ASN) can arise from any

factor which causes a barrier to learning, whether that factor relates to social, emotional, cognitive, linguistic disability, or family and care circumstances. For instance, additional support may be required for a child or young person who is being bullied; has behavioural difficulties; has disabilities; is a parent; has a sensory or mobility impairment; is at risk; or is bereaved.

Your child may be included within this definition and be defined as having a disability under the DDA. However, not all disabled children have Additional Support Needs. For example, if your child has severe asthma, he or she may not be identified as having ASN, but may well be defined as having a disability under the DDA. Alternatively, your child could have ASN, but not come within the particular definition of 'disability' used in the Act.

For further information on ASN contact Enquire (contact details can be found at the end of this booklet).

Can my child access auxiliary aids and services under the DDA?

No, the DDA does not require responsible bodies to provide 'auxiliary aids and services' such as sign language, interpreters or information in formats such as Braille or audiotape.

If your child has a disability and requires any auxiliary aids or services to facilitate their education they may be regarded as having ASN and therefore be covered under the ASN legislation and guidance. Provision should be available under this framework.

Strategies to improve accessibility

Since October 2002 responsible bodies have been required to prepare and implement accessibility strategies to improve, over time, access to education for disabled pupils. This duty has been introduced by the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002.

These strategies should include:

- improving access to the curriculum
- improving the physical environment of the school to increase access
- improving communication with disabled pupils eg producing school information in a range of formats. This may include Braille, audiotape or large print.

Responsible bodies should make these strategies available for parents to see. They will also be sent to the Scottish Executive who will maintain an overview of progress being made throughout Scotland through accessibility strategies.

The strategies will also be monitored by Her Majesty's Inspectorate of Education in their routine inspections of schools and education authorities.

For more information about the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002, please contact the Scottish Executive (contact details can be found at the end of this booklet).

Section Two: The law in practice

What do schools need to do?

Schools will be expected to take 'reasonable steps' to meet the needs of disabled children who might become pupils. So schools should think about the broad range of needs of pupils with different types of disabilities.

Responsible bodies for schools do not have a duty under the DDA to make changes to the physical environment to increase access or to provide 'auxiliary aids and services'. These issues should be dealt with under the Additional Support for Learning legislation and guidance (the ASN framework) and the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 described above.

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

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

Yes, it may be the best thing to do. If you decide not to tell them and your child is discriminated against, the responsible body may be able to claim in its defence that it did not know about the disability. Responsible bodies are advised to ask parents if their child has a disability before he or she starts school.



Section Three:

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

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

Information and advice

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

Casework and conciliation

Your dispute may be referred to and investigated by the DRC Education Casework Service. If we can help, we will try and resolve your child's case on his or her behalf. We may be able to get a satisfactory result without taking the case further.

However, if you do need to take the matter further, please remember that any action must be lodged in the court and served on the responsible body within six months of the alleged discriminatory incident.

Alternatively, if the responsible body for the school agrees, we may refer the dispute to the DRC Conciliation Service (DCS). The aim is to reach an agreement that both sides accept. This does not stop you from taking legal action at the same time or later on if you are unhappy with the outcome from conciliation. If your claim is referred to conciliation, you will have an additional two months to take legal action – ie eight months from the alleged discriminatory act.

Taking legal action: The Sheriff Court

If appropriate, you can take your child's dispute further than the DRC Casework and Conciliation Services and make a claim for unlawful discrimination. You would do this by raising an action in the Sheriff Court. Either you or your child (if they are 12 or over) can do this. You might

be financially eligible for Legal Aid to pay for a solicitor although the limits are low. Your child is quite likely to be eligible themselves (see Casework and conciliation above for timescales).

If your claim is successful, the court can make any order, except financial compensation. For instance, it might order the local authority to arrange disability awareness training for staff or to change a policy or procedure.



Section Four: Further information

For further information on **ASN** contact:

Enquire

The Scottish advice service for additional support for learning.

Princes House
5 Shandwick Place
Edinburgh EH2 4RG

Helpline: 0845 123 2303
Textphone: 0131 222 4239
Typetalk: 0800 959598
Fax: 0131 228 9852
Administration: 0131 222 2425
Email: info@enquire.org.uk
Website: www.enquire.org.uk

Scottish Executive

Support for Learning Division

Victoria Quay
Edinburgh EH6 6QQ

Telephone: 0131 224 0747
Email: Jennifer.Stoddart@scotland.gsi.gov.uk

For further information and advice on disability and to order more copies of this publication or the Code of Practice for Schools or Post-16 providers of education and related services contact:

Disability Rights Commission (DRC)

DRC Helpline

FREEPOST

MID 02164

Stratford upon Avon

CV37 9BR

Telephone: 08457 622 633

(Monday to Friday 08:00 – 20:00)

Textphone: 08457 622 644

Fax: 08457 778 878

Website: **www.drc-gb.org**

You can contact the DRC Helpline by voice, text, fax or by email via the website.

You can speak to an operator at any time between 08:00 and 20:00, Monday to Friday.

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

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You can email the DRC Helpline from our website:
www.drc-gb.org



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