

Disability Discrimination

The Equality Act 2010 sets out a number of ways in which a pupil may be discriminated. If someone is treated unfairly because of their disability, or because of something arising from their disability, this may be disability discrimination.

Direct Discrimination

When the school treats the pupil worse than a non-disabled pupil in a similar situation because of their disability. Example: A boy who has ADHD has been told he cannot join the school's chess club because he finds it difficult to concentrate and sit still.

Indirect Discrimination

When the school treats the pupil worse than a non-disabled pupil in a similar situation because of their disability. Example: A boy who has ADHD has been told he cannot join the school's chess club because he finds it difficult to concentrate and sit still.

For a child or YP with a disability that affects their health this may put them at a substantial disadvantage as they have appointments in school time. There is a legitimate aim to improve attendance. Is it proportionate? It could be said that because the 100% attendance rate cannot be reached, it is not proportionate and the school should set a realistic target for the individual child/YP.

Unfavourable treatment arising from a disability

When a school treats a pupil badly because of something connected to their disability, such as not allowing their assistance dog into the school or penalising them for needing time off for medical appointments, and the school does not have a good reason for doing so.

Example — Unfavourably: A child who has brittle bones has been told she cannot go to watch the school hockey team. The reason given is that she will never be able to play and it is only for those who may be part of the team in the future. This is not a proportionate means of achieving a legitimate aim. It is neither appropriate for this pupil nor necessary to stop her watching the team.

Example — Favourably: A child who has epileptic fits at least daily has been told they have to wear additional safety equipment to their peers when wall climbing.

The legitimate aim is the safety of the child with epilepsy ; the harness is proportionate to the aim.

Harassment

When the pupil is treated by a staff member in a way that makes them feel humiliated, offended or degraded.

Example: A pupil has to take regular medication. The class teacher has been asked not to draw attention to this but continually asks loudly if the pupil is OK and mutters under their breath after they have done so. The pupil feels this is making the fact they could be seen to be different as obvious and believes the teacher is making nasty comments about them.

Victimisation

This is when a person is treated badly because they have made a complaint of discrimination under the Equality Act.

Example: A parent makes a disability discrimination complaint against their child's school. Since their complaint, they believe he has been victimised because the school has been treating their son differently and not giving him the support he requires to meet his needs.

It is not unusual for discrimination to fall under more than one type of discrimination.

To make a complaint against disability discrimination, you will need to complete a claims form. This must be received by the SEND Tribunal within six months of the alleged discrimination taking place. If you send your complaint more than 6 months later, you'll be asked to explain why. You can include details of up to 5 witnesses who you'd like to bring to the hearing on your form.

Your complaint can include events which happened more than 6 months ago, as long as these directly relate to events that have taken place in the last 6 months. The Tribunal must be able to treat events as a single complaint about one ongoing issue. For example, if your child was permanently excluded from school after a series of fixed-term exclusions which you believe were all because of the child's disability, the tribunal could treat them as a single complaint.

You would submit the form to send@Justice.gov.uk You can contact the tribunal service if you have any questions about completing the form, but they cannot give you legal advice. Useful links: If you're a parent making a complaint on behalf of a child you will need to complete a [SEND 4A form](#). If you're a young person above school leaving age making a complaint for yourself by completing a [SEND 4B form](#). Independent Provider of Special Education Advice (IPSEA) has further information about: types of disability discrimination, things to consider before making a disability discrimination claim and procedure for disability discrimination claims. This can be found [here](#).

