



# 1. Understanding Inclusive Education

## 1.6 Legal duties and responsibilities

## Introduction

It is unlawful for schools to discriminate against students because they are disabled. While this may seem a straightforward idea, the details of the law and associated duties can also seem complicated. However, they are very important to understand, so this section lays out the obligations and provides resources to help schools and staff to understand what they need to provide.

## Other content

The UK has come a long way in recognising and enshrining educational inclusion of disabled children and young people in its laws and policies. Recent legislation, including the Special Educational Needs and Disability Act (2001) and Equality Act (2010), clearly outline the responsibilities of all public bodies – including schools – to include disabled people when they provide services. While they do not guarantee the quality of inclusion or its implementation in all cases, they do offer structures, guidance and expectations that support inclusion to happen.

The legislation supporting inclusion is underpinned by a commitment to human rights and to reducing the barriers in society that cause discrimination. On a global level, the UK has ratified both the [UN Convention on the Rights of the Child](#) and the [UN Convention on the Rights of People with Disabilities](#), the second of which explicitly protects the right to an inclusive education in mainstream schools.

While all local authorities and schools will manage their work towards inclusion differently, there are national standards that prohibit discrimination in education and support inclusive provision. As stated on the [Centre for Studies on Inclusive Education](#) web site:

*It is unlawful for any education provider, including a private or independent provider, to discriminate between pupils on grounds of race, sex, disability, sexual orientation, gender reassignment, pregnancy and maternity, and religion or belief in admissions, access to benefits or services, exclusions, and in the employment of staff.*

Therefore schools must not treat disabled students less favourably than their non-disabled peers.

In England and Wales, the legislative framework for today's child protection system is founded in The Children Act 1989. In Northern Ireland it is founded in the Children (Northern Ireland) Order 1995; and in Scotland in the Children (Scotland) Act 1995.

## Children Act (1989) and its guidelines

The Children Act 1989 established the 'welfare checklist' which provides that the welfare of the child is paramount. In making decisions pertaining to the protection and what may be 'in the best interest' of the child, the court must take into consideration each factor in the checklist in every case.

## Sources of Special Educational Needs (SEN) law



**We should not accept that 'change of school' is an option. There is no earthly reason why a child with a spinal cord injury should not go back into their own school with their peers – that should be a prerequisite!**

Nigel Utton, Headteacher, Bromstone Primary School and Chair, Heading for Inclusion

## **Education Act (1996) part 4**

The Education Act 1993 made some very important changes to the Education Act 1981 and the law relating to children with special educational needs. These changes are now consolidated in the Education Act 1996. The Code of Practice and the SEN Tribunal were the major innovations from this act, as was the enforcement of strict time limits for completing assessments of special educational needs by Local Education Authorities.

## **Special Educational Needs and Disability Act (2001)**

Made further provisions against discrimination on grounds of disability in schools and other educational establishments. Schools, colleges, universities, adult education providers, statutory youth services and local education authorities were required to make the same sort of reasonable adjustments for disabled people as stipulated in the Disability Discrimination Act 1995. It further strengthened the rights of children with SEN to attend mainstream education.

## **Children and Families Act (2014)**

Under this new Act (part 3 deals with SEN) statements of special educational needs for children in schools will be replaced with a combined Education, Health and Care Plan (EHC plan). [Whizz Kidz](#) and [KIDS](#) and [IPSEA](#) all have resources to help people navigate the new Act and reforms.

## ***Sources of SEN Guidance***

### **SEN Code of Practice (April 2014)**

Provides statutory guidance relating to Part 3 of the Children and Families Act 2014.

### **Supporting pupils at school with medical conditions (April 2014)**

Section 100 of the Children and Families Act 2014 places a duty on schools to support pupils at their school with medical conditions. Schools must have due regard for this guidance. They must ensure that all children with medical conditions, in terms of both physical and mental health, are properly supported in school so that they can play a full and active role in school life (including school trips and physical education), remain healthy and achieve their academic potential.

## **The Equality Act 2010**

Other legislation that applies to schools regarding SEN includes the Equality Act 2010. A number of anti-discrimination laws (eg Disability Discrimination Act and Race Relations Act) have been passed in the UK to prohibit discrimination of different groups in different areas across the country. Introduced in October 2010, the Equality Act has now amalgamated those laws into one.

The [Equality Act](#) applies to all schools in England, Wales and Scotland regardless of how they are funded. Under the Equality Act, behaviour, or policies and practices that result in pupils with a particular characteristic being treated worse than other pupils can be seen as direct or indirect discrimination. The Act identifies four definitions of discrimination, as drawn together by the [Centre for Studies on Inclusive Education](#)

- *Direct discrimination* occurs when a pupil is treated less favourably than another

pupil because of a protected characteristic. It is nearly always unlawful.

- *Indirect discrimination* occurs when treating all pupils in the same way results in putting pupils with a protected characteristic at a disadvantage. It depends on a number of conditions.
- *Discrimination arising from disability* occurs when a disabled pupil is treated unfavourably because of something related to his/her disability (as distinct from being because of the disability itself, which would be direct discrimination as above) and such treatment cannot be justified.
- *Failure to make reasonable adjustments for disabled people* – Schools have a legal duty to make ‘reasonable adjustments’ for disabled students.

## Reasonable adjustments

As of the Disability Discrimination Act 1995, schools must make ‘reasonable adjustments’ so as to avoid as far as possible the disadvantage a disabled pupil experiences due to his or her impairment.

The duty to make reasonable adjustments relates to these three areas:

- deciding who is offered admission as a pupil
- the provision of education
- access to any benefit, service or facility



Reasonable adjustments could include:

- changes to practices or procedures
- changes to physical features
- changes to how learners are assessed
- providing extra support and aids (such as specialist teachers or equipment)

Schools are not necessarily required to make changes to their premises, but they are expected to include access improvements in their long-term building plans, in accordance with planning duties. The Equality Act stipulates that schools must not discriminate in their admission policies or in the way they afford pupils access to a benefit, facility or service, which includes school trips. Schools must make any reasonable adjustments to ensure there is no discrimination.

From 1st September 2012 the reasonable adjustment duties for schools and education authorities includes a duty to provide auxiliary aids and services for disabled pupils. The EHRC guidance [Reasonable adjustments for disabled pupils](#) focusses on the practical implementation of the reasonable adjustment duty. The EHRC has produced more [non-statutory disability discrimination guidance](#)

## An expectation to be proactive

What is clearly outlined across the different duties and requirements is the expectation that schools are pro-active in their work towards inclusion and anti-discriminatory practice. As the EHRC web site states:

*The [reasonable adjustments] duty is an anticipatory and continuing one that you owe*  
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*to disabled pupils generally, regardless of whether you know that a particular pupil is disabled or whether you currently have any disabled pupils. You should not wait until an individual disabled pupil approaches you before you consider how to meet the duty. Instead you should plan ahead for the reasonable adjustments you may need to make, regardless of whether you currently have any disabled pupils. By anticipating the need for an adjustment you will be best placed to help disabled pupils who come to your school. You are not expected to anticipate the needs of every prospective pupil but you are required to think about and take reasonable and proportionate steps to overcome barriers that may impede pupils with different kinds of disabilities.*

## Putting the law into practice

Schools and local authorities have legal duties and requirements to show how they are addressing issues in the Equality Act. As outlined in [guidance from the Department of Education](#), schools must publish a report on the school's policy for pupils with SEN, including details of:

- 1) school's admission arrangements for pupils with SEN or disabilities
- 2) the steps the school has taken to prevent pupils with SEN from being treated less favourably than other pupils
- 3) access facilities for pupils with SEN
- 4) the accessibility plan the governing body has written in compliance with paragraph 3 of schedule 10 to the Equality Act 2010

## National Curriculum

In addition to the protections included in law, inclusion is also a national curriculum requirement, as outlined in the [National Curriculum Statutory Inclusion statement](#), which is one of the 'general teaching requirements' set out in the curriculum. The statement says that the curriculum 'should provide relevant and challenging learning to all children' according to these three principles:

- 1 Setting suitable learning challenges
- 2 Responding to pupils' diverse learning needs
- 3 Overcoming potential barriers to learning and assessment for individuals and groups of pupils.

## Ofsted

Ofsted considers inclusion in their school inspections and also provides guidance for schools. Inclusion in schools is considered by Ofsted through the three following questions:

- 1 Do all pupils get a fair deal at school?
- 2 How well does the school recognise and overcome barriers to learning?
- 3 Do the school's values embrace inclusion and does its practice promote it?

The guidance is aimed at inspectors and the governors and staff of schools and addresses what it means to be an inclusive school and what improvements in the area may be suggested.

## Exclusions

The [EHRC guidance](#) makes it very clear that schools must not exclude a pupil because of their disability: “*you have a duty to disabled pupils to make reasonable adjustments to your procedures*”

## Academies

All schools, including academies, have a clear legal duty to do their best to meet the needs of children with SEN. The Department for Education has produced an [Academy SEN Factsheet](#) Section 1 of the [Academies Act 2010](#) requires academy funding agreements to contain equivalent SEN obligations to those placed upon the governing bodies of maintained schools by Chapter 4 of the Education Act 1996.

## Inclusive ethos

Adhering to the legal requirements of the Equality Act and other legislation may still not be sufficient to ensure a student feels fully included. After all, inclusion isn't just about accommodating an impairment. Working with the child or young person and their family is the best way to understand their full set of requirements and ensure the policies, practices, services and facilities do not treat them any less favourably than they do other students. An inclusive ethos and culture of a school will have as much to do with a positive experience of inclusion as the provision of physical access will.

Working to include a student with a spinal cord injury or another type of impairment requires a lot of coordination and shared commitment from a local authority and a school and its staff. Some schools and families have reported resistance from local authorities to a child or young person's re-inclusion at the same school after an spinal cord injury or to providing auxiliary aids and equipment.

Understanding the legal requirements and having a clear vision for inclusion will help a school challenge such resistance and ensure the student receives appropriate and fair provision.

## How Back Up can help

The schools inclusion service at Back Up can support you as a school, the child and the family, to ensure that children and young people are fully included back into school post injury. Please contact Ella, schools inclusion coordinator, should you like to talk about any aspect of support for a child with a spinal cord injury at school. You can reach her on 020 8875 1805 or by email: [ella@backuptrust.org.uk](mailto:ella@backuptrust.org.uk)