

It is unlawful for a school to discriminate against a disabled pupil in the arrangements it makes for determining admissions, in the education or services it provides or by excluding pupils from school.

Discrimination claims, even if not ultimately upheld, are costly, time consuming and not good publicity for the school, so should be avoided where possible.

It is not always easy to determine what counts as a 'disability', but you should be mindful that the definition is broad and includes any physical or mental impairment which has a substantial and long term effect on a person's ability to carry out normal day-to-day activities. Conditions such as Autism and ADHD fall within this definition.

You can discriminate in two ways:

1. By treating disabled pupils less favourably than other pupils;
2. By failing to take reasonable steps to avoid putting disabled pupils at a substantial disadvantage.

Discrimination is not unlawful if it is justified. If there is a substantial reason for a decision that is material to the circumstances, it may be possible to justify it. Health and safety of other pupils is a good example of this.

Unfortunately, the law in the area is not clear. The Tribunal is not always consistent in its findings and cases turn very much on their individual facts.

There are a few things you should keep in mind to try to protect yourself against a claim for discrimination or, if a claim is brought, reduce the risk of the claim being upheld:

Do take all reasonable steps to accommodate a disabled pupil.

Do carry out risk assessments and keep them on file.

Do keep clear and detailed records of your reasons for your decisions or actions. If violence or health and safety of other pupils are your concerns, note them as such.

Do keep records of all relevant incidents that cause concern. This may help you to justify a decision at a later stage.

Do engage on open discussion with the parents. What do they think could be done to better accommodate their child?

Do seek advice from specialist organisations.

Do not take the easy option. Be flexible and apply some thought to trying to solve a problem.

Do not exclude disabled pupils from lessons or activities unless there are no reasonable adjustments that can be made to allow them to be safely included. Thinking that they will not enjoy an activity is no excuse.

Do not ignore a problem if you are not sure. Even if you do not know that a child is disabled, if you could or should have known then less favourable treatment is still discrimination.

Do not take lightly decisions to expel disabled pupils from school permanently. Poor behaviour of a child may be related to a disability and, therefore, you are under a duty to make reasonable adjustments so as to avoid a pupil being excluded.

This briefing is intended as a summary of legal developments only. It is not a substitute for advice, which will take account of specific circumstances.

To discuss disability discrimination further, please contact:



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