

# Disability Law in Education

## Disability Law in Education No-nonsense Guide

November 2022

**Sean Kennedy** and **Mandy Aulak** Talem Law



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# DISABILITY LAW IN EDUCATION GUIDE

November 2022

**Support SEND Kids are delighted to introduce the Disability Law in Education No-nonsense Guide. This is intended to be a first draft guide to allow SEND families, educators and practitioners to understand the relationship between the SEN and Equality Law with respect to education and disability discrimination.**

Framed through Q&A we are aiming to give answers to common questions on the intersection between the SEN framework (already covered in the **Noddy No-nonsense Guide to SEN Law**) and Disability Discrimination in Education (the D in SEND). We hope to show how the law applies and how all stakeholders can work to get reasonable adjustments for pupils who need it and actively prevent discrimination in education for children with SEND.

Authors, Mandy Aulak and Sean Kennedy (founders of Talem Law) have advised on the Equality Law for many years in the context of employment of adults but also specialise in the area of disability discrimination in schools and post-16 provision. In their practice they work with parents of children and young

persons with special educational needs and disabilities and so bring a wealth of knowledge and experience to producing this guide. Mandy and Sean are passionate about creating true equality and inclusion of children and young persons in education.

**Disability Law in Education No-nonsense Guide** covers (at very high level and only with respect to Education):

- The Equality Act 2010 .
- The Disability Regs 2010.
- Equality Act 2010 Guidance.

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**Comments on any aspect of this Guide are welcome:**

**[Mandy Aulak](#)/ [Sean Kennedy](#)**



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## GLOSSARY

**Academy** A type of independent school (i.e. not a school maintained by an LA) which has been set up in accordance with the Academies Act 2010 (i.e. through a Funding Agreement between the school and the Secretary of State for Education) and which is therefore state funded. Other independent schools are referred to here as “private schools”.

**Annual review** The process of yearly review of an EHCP. See [CFA2014 s44\(1\)](#) and [Regs2014 r18](#).

**Authorities** The collective term for decided case law, which constitutes previously decided cases (in the form of decisions and judgments) by the UT and Courts. These can be relied upon for particular legal propositions to show that a particular decision should be taken in a certain way. Where we mention an authority as being the reference for a particular legal proposition, the text includes a hyperlink to an on-line copy of its text.

**Caselaw** See above ‘Authorities’.

**CFA2014** Children and Families Act 2014 – the principal piece of legislation which governs SEN law in England.

**CCG** Clinical Commissioning Group. These are the local NHS bodies generally responsible for providing health care provision in their area, including therefore to a CYP.

**Child** A person who is not over compulsory school age: [EA1996 s579\(1\)](#) (definition still applies by virtue of [CFA2014 s83\(7\)](#)).

**COP2015** SEN Code of Practice. For more information: [Noddy No-nonsense Guide to SEN law](#). Detailed advice: [What is the SEN Code of Practice?](#)

**CYP** Child or young person up to the age of 25.

**DDA1995 / Disability Discrimination Act 1995** – the legislation which provided the framework in relation to disability in England, Scotland and Wales (and was one of the forerunners of the Equality Act 2010 ([EqA2010](#))). The Special Educational Needs and Disability Act 2001 inserted new provisions in Part 4 of the DDA 1995 in connection with disability discrimination in schools and other educational establishments. The DDA was

replaced by the [EqA2010](#) in England, Scotland and Wales but is still in force in Northern Island.

**Disability Regs 2010** The regulations promulgated under the [EqA2010](#) which re-enacted with amendments provisions which were previously made under the Disability Discrimination Act 1995 (c.50) and which are revoked by these regulations including new Regulation 6 which contains provision for assessing the ability of a child under six years of age to carry out normal day to day activities.

**Disability** The Protected characteristic of disability in [s6 EqA2010](#) (England, Scotland and Wales) and in [S1 The Disability Discrimination Act 1995](#) (Northern Island only).

**Discrimination EqA2010** defines disability discrimination in education as being one or more of the following – direct discrimination in s13; indirect discrimination in s19; discrimination arising from disability in s15; failure to make reasonable adjustments in s20; victimisation in s27; and harassment in s26.

**Direct payment** Payments representing all or part of a personal budget made to a child’s parent or young person (or other prescribed person) to secure provision to which the budget relates. See [CFA2014 r49](#) and [The Special Educational Needs \(Personal Budgets\) Regulations 2014](#).

**DoE** The Government Department of Education is responsible for children’s services and education, including early years, schools, higher and further education policy, apprenticeships and wider skills in England.

**DoE Guidance for SEND 19-25** DoE’s guidance ‘SEND: 19-25 year olds’ entitlement to EHC plans, available [here](#).

**EA1996** Education Act 1996 – the legislation which used to govern SEN in England (and was the basis for Statements of SEN). The SEN aspects are now covered by CFA2014, but some other elements of EA1996 (such as in relation to home-school transport) are still in operation.

**EAT** Employment Appeal Tribunal. The superior court which handles appeals against decisions made by the Employment Tribunal.

**EBD** emotional and behavioural difficulties/disabilities.

**EHCP(s)** Education Health and Care Plan(s).

**EHRC Guidance** What equality law means for you as an education provider: s1.8 (Positive Action) states it is never unlawful to treat disabled pupils (or applicants) more favourably than non-disabled pupils (or applicants). That is, a school is permitted to positively discriminate in favour of disabled pupils (applicants).

**EHRC Technical Guidance** This is non-statutory guidance from the EHRC in the absence of a code of practice. It provides formal, authoritative, and comprehensive interpretation of the legal framework including the PSED and education sections of the [EqA2010](#).

**EHRC Technical Guidance for Schools** In England outlines the requirements of the Equality Act 2010 for schools in relation to the provision of education and access to benefits, facilities or services, both educational and non-educational. An authoritative, comprehensive and technical guide to the detail of the law. It is aimed at those working in schools, lawyers, advocates, courts and tribunals, and everyone who needs to understand the law in depth or to apply it in practice.

**Equality Act 2010 (EqA2010)** – the principal piece of legislation which governs equality in England, Scotland and Wales.

**EqA2010 Guidance** On the definition of disability that applies in England, Scotland and Wales (separate guidance applies to Northern Ireland). This guidance is issued by the Secretary of State under s6(5) of the EqA2010 about matters to be taken into account in determining whether a person is a disabled person.

**ET** Employment Tribunal. An independent specialist tribunal which makes decisions in legal disputes in employment law including claims of discrimination. Their decisions are not binding on the FTT although can be helpful.

**FTT** First Tier Tribunal. The independent court-like body to which parents (in relation to a child) or a young person (on their own account) can appeal in relation to decisions about the EHCP process and EHCPs. The term “SENDIST” or “SENT” or “tribunal” is also used by

some people and in some contexts. The FTT also handles claims of disability discrimination against schools and/or possibly local authorities due to a [child's disability](#) under the EqA2010.

**FTT (HESC) Rules** First Tier Tribunal (Health, Education and Social Care) Rules 2008; i.e. the rules that specify the processes for FTT appeals and claims of disability discrimination.

**HCP** health care provision, which is “the provision of healthcare health care services as part of the comprehensive health service in England continued under [section 1\(1\) of the National Health Service Act 2006](#)”: [CFA2014 s21\(3\)](#).

**Impairment** The term mental or physical impairment must be given its ordinary meaning and does not necessarily equate with a diagnosed medical condition. It can be caused by an injury, illness or condition that means that part of your body or brain does not work as expected. It is a functional concept and the emphasis of the definition is more on the fact that the ability to carry out normal day-to-day activities is reduced rather than on the cause of the “impairment”.

**Independent living skills** this includes finding employment, obtaining accommodation and participation in society ([Regs2014 r2\(2\)](#)), and will include basic living skills such as (for example) dressing, washing, food preparation etc.

**Independent school** Means (by virtue of [EA1996 s463](#)) a school which is not maintained by the LA (this includes Academies and private schools).

**LA** Local Authority. The relevant LA responsible for education provision for a particular child is set out in [CFA2014 s24](#). In an area with a “county council”, it is likely to be the County Council. Where there is a “unitary authority” (such as a “borough council”) it is likely to be that body. The previous expression “local education authority” (LEA) no longer exists so it should only appear in old documents.

**Maintained** in general terms is an educational institution which is funded by, and operates under the oversight of, an LA. More legalistically: (a) a community, foundation or voluntary school, or (b) a community or foundation special school not established in a hospital: [CFA2014 s83\(2\)](#).

**Mainstream** means (by [CFA2014 s83\(2\)](#)): (a) a maintained school that is not a special school, or (b) an Academy school that is not a special school.

**MLD** moderate learning difficulties.

**National Trial** The FTT procedure currently being operated as an experiment by which health and social care needs and provision can be considered by the FTT alongside consideration of educational matters. More: [Can I appeal to the FTT about health or social care provision when I appeal the education provision?](#)

**Paramountcy principle** The principle that the child's welfare shall be the Court's paramount consideration, see [Children Act 1989 s1\(1\)](#).

**PCP** The phrase 'provision, criterion or practice' (or PCP as it is often referred to) is not defined in the [EqA2010](#) but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A PCP may also include decisions to do something in the future such as a policy or criterion that has not been yet applied, as well as a 'one-off' or discretionary decision.

**Peer group** The other children who a CYP interacts with including in class.

**Personal budget** The amount an LA has identified as available to secure particular provision which is specified with a view to the child's parent or the young person being involved in securing the provision. See [CFA2014 s49](#) and [The Special Educational Needs \(Personal Budgets\) Regulations 2014](#).

**Post 16 Provision** means any technical education or training provided to individuals over compulsory school age

**Private school** A school that charges fees. Often referred to as an "independent school", however the legal definition of independent school includes Academy schools, which are not fee-paying.

**Protected Characteristics** are set out in the Equality Act ([s4 EqA2010](#)). Disability is one of the specified protected characteristics.

**PSED / Public sector equality duty** (sometimes also referred to as the 'general duty') is the legal duty placed on all public authorities to consider the need to promote equality in everything they do, as defined in [s149 EqA2010](#). It applies to public bodies, including maintained schools and academies (including Free Schools), and extends to all protected

characteristics including disability. All schools should have an accessibility plan which promotes disability inclusion in schools.

**Reasonable Adjustments** A concept that originated in the DDA1995, and is now set out in [s20 EqA2010](#). An education provider has a duty pursuant to [s20 EqA2010](#) to make 'reasonable adjustments' to make sure disabled students are not disadvantaged as a result of the effects of their impairments. This duty means taking an active approach requiring education providers to take steps to remove barriers from student participation and thus avoid being disadvantaged. These steps could include changing procedures, providing auxiliary aids such as additional support or equipment. Schools are not subject to the reasonable adjustment duty to make alterations to physical features, like adding ramps but it is certainly the case that they must make education accessible for their disabled pupils and this is something which should be monitored in a school's accessibility plan.

**SEN Regs2014** Special Educational Needs Regulations 2014.

**SEN** Special Educational Needs. A CYP is said to have SEN if they have a learning difficulty or disability which calls for SEP to be made for them: [CFA2014 s20](#). For more information: [Noddy No-nonsense Guide to SEN law](#). Detailed advice: [Are there particular rules about whether a child or young person has special educational needs?](#)

**SEP** Special Educational Provision. SEP is educational or training provision that is additional to, or different from, that generally made for others of the same age in mainstream provision: [CFA2014 s21](#). More: [Is there a rule specifying what counts as SEP?](#)

**SCP** Social Care Provision, which is "provision made by a local authority in the exercise of its social services functions": [CFA2014 s21\(4\)](#); such provision is sometimes called "social care" or "community care".

**Section 41 School** [CFA2014 s41](#) allows independent special schools and special post-16 institutions to apply to be approved (and then to be approved) as schools which can be the focus of a parental or young person's request for a particular placement in circumstances where there is then a qualified presumption in favour of that request.

**Special school** Means (by [EA1996 s337](#)) a school which is specially organised to make SEP for pupils with SEN that is maintained by the LA, an Academy [special] school or a non-maintained special school.

**Statement [of SEN]** The (now historic) document under the EA1996 which was previously the equivalent of what is now an EHCP.

**Statutory Guidance** sets out what schools and local authorities must do to comply with the law

**UT** Upper Tribunal. The court-like body to which a parent or LOA can appeal to if they believe the FTT has made an error of law. The principles in its decisions are binding on the FTT.

**Young person** A person who is over compulsory school age but under 25: [CFA2014 s83\(2\)](#)

## 01 Context of Equality Law

**Can you explain where to find the legal definition of disability in Britain in relation to education and how it works?**

**Yes.** The law in the UK includes something called the protected characteristic of disability and that is defined in [s6 The Equality Act 2010 \(EqA2010\)](#). This applies to all disabled adults, children and young persons.

In Great Britain (England, Scotland, Wales) this definition replaces the definition that was given in [s1\(1\)The Disability Discrimination Act 1995](#) although in Northern Ireland this definition still applies.

A child or young person who has impairments that satisfy the definition in [EqA2010](#) is often said to have a “statutory disability”.

The EqA2010 is a broad piece of legislation and applies well beyond education. Unlike under the [Children and Families Act of 2014 \(CFA2014\)](#) which has a [SEN Code of Practice](#) there is no separate “statutory guidance” or code of practice in relation to [EqA2010](#) in schools.

The DoE published the [EqA2010 Guidance \(on matters to be taken into account in determining questions relating to the definition of disability\)](#) which helps in identifying the protected characteristic of disability in education. In addition the Equality and Human Rights Commission produced the [EHCR Technical Guidance for Schools in England](#), the [EHRC Guidance: What equality law means for you as an education provider](#) and other advice which is both informative and authoritative for parents as well as schools.

Because of the wide applicability of the [EqA2010](#), cases involving disability can be considered by a wide range of courts. The issue of disability is understandably relevant in employment, which is why the ET and EAT decisions can be relevant to the issue of disability in education and other areas.

**More: If I want my disabled child to have all the support they need in school, do I just rely on the special educational needs framework?**

**Glossary: Disability Discrimination Act 1995, EHRC Technical Guidance for Schools in England, EqA2010, EqA2010 Guidance.**

## Is there a “test” to prove that my child has a disability?

**Yes.** All elements of **s6 (EqA2010)** need to be satisfied if a child or young person can be said to have a “statutory” disability. The **EqA2010 Guidance** assists with this.

In summary each of the elements have the following meaning:

**Physical or mental impairment** – The definition requires that the effects which a person may experience must arise from a physical impairment such as muscular dystrophy or mental impairment such as dyslexia. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. Some impairments such as stealing, and arson cannot be considered as impairments in this context this was clarified in the **Disability Regs 2010**.

**Adverse** – this is given an ordinary meaning such as unfavourable.

**Normal day to day activities** – this means what children and young people do regularly which of course includes being educated and taking exams.

**Substantial** – means more than minor or trivial. **S212, EqA2010**

**Long term** - (means to have lasted for 12 months already or likely to last for 12 more months). (**Sch.1 para 2, EqA2010**).

It is important to stress that when determining whether a child or young person satisfies the definition of disability in **s6(1) EqA2010** it is essential that relevant evidence is obtained. This evidence would perhaps compare the difficulty a potentially disabled child or young person has carrying out a day-to-day activities such as transcribing verbal information into a written form or the ability to organise tasks as compared to someone who does not share their impairments. When determining whether an impairment such as diabetes is to be treated as having an adverse effect, **Sch.1 para,5 EqA2010** states that, other than when spectacles or contact lenses are used, measures to treat or correct the impairment are to be ignored.

A child or young person who has a statutory disability may have SEN but this is certainly not always the case. For example, a child who has cancer or a cardiac condition, may have a statutory disability but not have SEN, but it should be remembered that each case must be considered on its facts.

**Glossary: EqA2010, EqA2010 Guidance.**

**Does a child need a “medical” diagnosis of a condition or disorder to satisfy the definition of disability in the Equality Act 2010?**

No. The [EqA2010](#) is very clear that you don’t need a formal diagnosis to satisfy the definition in [s6\(1\) EqA2010](#), the emphasis being on quantifying the negative consequences of the child or young person’s impairments.

Determining whether a child or young person has a disability means collating relevant evidence. A diagnosis from a relevant professional would be of assistance as this would highlight areas of difficulty for the child or young person.

[EqA2010 Guidance](#) part 2 explains that some progressive conditions such as HIV infection impairments, multiple sclerosis and cancer (even in the early stages: [Mrs C Lofty v Mr S Hamis t/a First Café: UKEAT/0177/17/JOJ](#)) automatically satisfy the definition contained in [s6\(1\) EqA2010](#), and people who are severely sight impaired are deemed disabled. The **Disability Regs 2010** identifies some conditions which are not to be treated as impairments, albeit for disabled children within education “a tendency to physical abuse of other persons” needs to be considered in light of a decision in where it was decided that it would be unfair to automatically remove this condition from the disability framework.

**Glossary:** [Disability Regs 2010](#), [EAT](#), [EqA2010](#), [EqA2010 Guidance](#).

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## 02 Relationship of Disability Discrimination with the SEN Law

**For detailed advice on SEN law:**

Download our companion publication [Noddy No-nonsense Guide to SEN law](#)

**Does the Equality Act 2010 afford a disabled child or young person any protection in education?**

Yes. [Sch. 2 of the EqA2010](#) places obligations on schools and post 16 provisions in relation to disabled pupils and students. This includes taking positive action by making reasonable adjustments. This means modifying procedures or process or providing axillary aids to a disabled pupil or student to avoid them being disadvantaged as result of their impairments when compared to those who are not disabled: [s20 EqA2010](#). A failure to make reasonable adjustments is disability discrimination.

The following conduct is also prohibited and can also be standalone claims of disability discrimination:

**Direct discrimination** – this means treating a disabled child or young person less favourably than a child or young person would be in the same circumstances simply because they have the protected characteristic of disability - [s13 EqA2010](#)

The disabled child or young person can only be treated unfavourably as a consequence of something arising from their disability if the treatment is an objective proportionate means of achieving a legitimate aim, [s15 EqA2010](#). In practice when determining whether the unfavourable treatment can be justified will mean first making all relevant reasonable adjustments and considering all alternatives which involve less unfavourable treatment.

**Indirect discrimination** - this may occur when, for example, a school applies an apparently neutral provision, criterion or practice which puts pupils sharing the protected characteristic of disability at a particular disadvantage and this cannot be justified as being a proportionate means of a legitimate aim. The phrase 'provision, criterion or practice' (or PCP as it is often referred to) is not defined by in [EqA2010](#) but it should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision, criterion or practice may also include decisions to do something in the future such as a policy or criterion that has not yet been applied, as well as a 'one-off' or discretionary decision.

**Harassment, s.26(1)(a) and (b) EqA2010.** This is a dignity-based concept and occurs when a school or post-16 provision engages in unwanted conduct which is related to the protected characteristic of disability, and which has the purpose or the effect of:

- violating the pupil or student's dignity or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil or student

**Victimisation.** This occurs when a pupil or young person is subject to a detriment because they (or their parent or sibling - [s86\(2\) EqA2010](#)) has done a 'protected act' or because the school or post-16 provision believes that they have done or may do so in the future [s27\(1\) EqA2010](#). A protected act in this case means seeking redress as allowed by [EqA2010](#).

## Glossary: EqA2010

### Example

The following are examples of reasonable adjustments:

A visually impaired pupil is provided with a number of ways to take notes in lessons i.e. an MP3 player or a recording device, or voice to text software - these would be auxiliary aids.

A disabled pupil who is a wheelchair user, is provided with an assistant to help them get around the school or post-16 provision. This would be an auxiliary service.

A school decides to go to a particular venue on a school trip because it has good facilities for hearing impaired children, and this is to accommodate a particular child. This would be a reasonable adjustment.

A selective school includes exams as part of its entrance procedures, in the case of a disabled child who may be disadvantaged, they consider what adjustments can reasonably be made to the exam procedure to avoid any disadvantage the child may experience.

A school has a policy that children are seated alphabetically in a classroom, the policy is modified so that a child with a visual impairment can sit at the front of the class. This avoids the disadvantage they would experience if they had to sit further away.

**If I want my disabled child to have all the support they need in school, do I just rely on the special educational needs framework?**

No. There is some interface between the special educational needs framework ([CFA2014 Part 3](#)) and [EqA2010 \(Part 6\)](#), which both have a shared aim of removing barriers to learning but they are two separate legal frameworks and schools, families and carers need to navigate both if a child is disabled. This distinction was confirmed very recently in [RB v Calderdale MBC \(SEN\) \[2022\] UKUT 136 \(AAC\)](#).

If a disabled pupil without special educational needs experiences a substantial disadvantage in relation to how the school is organised for a reason related to their disability the school has a duty to make reasonable adjustments.

For a disabled child who also has special educational needs (SEND), the substantial disadvantage experienced by a disabled pupil may be mitigated or avoided entirely by the support they receive under the SEN framework.

In other cases, a disabled pupil may need reasonable adjustments to be made as well as the SEP they receive. The extent to which a pupil is provided with SEN support under [CFA 2014 \(Part 3\)](#) is one of the factors to be taken into account [by the school] when considering what adjustments it is reasonable for a school to make.

**Glossary:** [EqA2010](#)

### **Example**

For example, not all disabled pupils will also be classified as having special educational needs and may not be receiving support via school-based SEN provision or have an Education Health Care Plan (EHCP). The schools' duties under the EqA2010 are designed to sit alongside and not replace the duties of schools and local authorities under the CFA2014 to ensure that disabled pupils receive the support they require to fully participate in education irrespective of whether or not they are classified as having special educational needs.

**More:** [Does a child need a “medical” diagnosis of a condition or disorder to satisfy the definition of disability in the Equality Act 2010?](#)

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## **03 Children/young people with SEN and Disability but no EHCP**

**Can I use the Equality Act 2010 as a substitute for failing to secure a needs assessment for my child?**

No. If a child has SEN but no EHCP, parents should challenge any refusal to carry out a needs assessment etc if they genuinely think that their child may need more SEP. What they should not do is look to the [EqA2010](#) to provide SEP, as the [EqA2010](#) does not address SEP and looks at something different as described below.

The SEN framework addresses difficulties a child has with learning and provision is provided to help them in this regard.

The disability framework addresses how a school is organised and how a disabled pupil would be disadvantaged because of their impairments.

### Example

To illustrate, in [Does the Equality Act 2010 afford a disabled child or young person any protection in education?](#) we gave an example of a visually impaired pupil who was given auxiliary aids to avoid the disadvantage he was subject to because of the way lessons were delivered in the school, i.e. lessons were organised by including oral teaching for which the pupil had to take notes. The auxiliary aid is linked to his visual impairment and does not relate to the SEN framework. The child in question could have an IQ of 190 so he doesn't have a problem learning, but if reasonable adjustments were not made, he would not be able to engage because of the way lessons are organised and delivered in the school.

## 04 General Duty of Schools and Post-16 education providers

**Does a school or post-16 provision have to make “reasonable adjustments” under the Equality Act 2010 for a child/young person if they have not been told they are disabled?**

Yes. Because the duty to make reasonable adjustments is a duty to disabled pupils or students at large, it applies regardless of whether it currently has any disabled pupils/students or whether they knew that a particular pupil/student is disabled.

Usually, schools/post 16 provisions will be aware of a child who has both SEN and a disability due to a number of reasons such as the arrangements for the assessment of, and the provision of, special educational needs through the SEN framework or because parents often volunteer information about their child's/young person's disability.

In some situations, however, it may not be immediately obvious that a child/young person is disabled but certain factors may point to an underlying disability which has not yet been identified, such as unexplained behaviour or not performing to the expected standard. The duty to make reasonable adjustments is not qualified simply because a school/post 16 provision has not been told a pupil/student is disabled.

Once a school/post 16 provision has become aware of the requirements of a particular disabled pupil/student, it might then be reasonable for it to take a particular step (or steps) to meet these

requirements. This is especially so where a disabled pupil/student, or their parent, has pointed out the difficulty that they face or has suggested a reasonable solution to that difficulty: [s20 EqA2010](#).

**Does making “reasonable adjustments” under the Equality Act 2010 extend to modifying internal school policies that place a disabled child at a disadvantage?**

Yes. The duty in [s20 EqA2010](#) applies to the making of reasonable adjustment to a provision, criterion or practice (PCP) by schools.

**Glossary:** [EqA2010](#), [EqA2010 Guidance](#), [PCP](#).

#### **Example**

Take for example a school that has a uniform policy that states that pupils must wear grey polyester trousers from a particular manufacturer. The trousers exacerbate a disabled pupil’s severe eczema, so the school amends the policy to allow the pupil to wear cotton trousers of a similar style and colour. This would be a reasonable adjustment to a provision, criterion or practice (PCP).

**Are schools (including post-16 provision) expected to know what reasonable adjustments are needed for a potential students who are disabled?**

No. Schools are not expected to anticipate the needs of every prospective pupil, but what they are required to do is think about and take reasonable steps to overcome the barriers that may impede pupils with particular kinds of disabilities.

Disabled people are a diverse group with different requirements.

All schools (including fee-paying schools) in England, Wales and Scotland, irrespective of how they are funded or managed, have obligations under the [EqA2010](#).

LA schools and academies are subject to the PSED (Public Sector Equality Duty) in [s149 EqA2010](#). This does not apply to private fee-paying Schools.

**Glossary:** [EqA2010](#).

#### **Example**

For example, pupils with visual or mobility impairments or specific learning difficulties may face different types of barriers – for example, hearing impaired pupils who use British Sign Language (BSL) will be unable to access education where BSL is not used, whereas hearing impaired pupils

who lip read will be able to access such education. The duty to make reasonable adjustments will still be owed to members of both groups.

**Does a school have to do anything to create a level playing field for my child when compared to other children who are not disabled?**

Yes. **Sch. 2 of the EqA2010** places obligations on schools and post 16 provisions in relation to disabled pupils and students. This includes taking positive action by making “reasonable adjustments”. This means modifying procedures or process or providing axillary aids to a disabled pupil or student to avoid them being disadvantaged as result of their impairments when compared to those who are not disabled and attempt to place them on a level playing field. The document **Reasonable adjustments for disabled pupils** published by the Equality and Human Rights Commission provides helpful guidance in relation to when reasonable adjustments should be made.

**Glossary: EqA2010, Reasonable adjustments for disabled pupils.**

**Is a school allowed to ask me or my child to contribute to the cost of making reasonable adjustments for my child?**

No. **S20(7) EqA2010** makes it very clear that the person responsible for complying with the duty to make reasonable adjustments must not charge the disabled person for making the adjustments. Further **s86(6) EqA2010** makes it very clear that it is the school and its responsible body who are under a duty to make reasonable adjustments. **S91(9) EqA2010** applies this same duty to both further and higher education institutions.

Parents of children of all ages are therefore not required to fund reasonable adjustments hence they should not be asked to do so, nor should young persons in education.

**Do the protections contained in Equality Act 2010 extend to disable children who attend private school?**

Yes. **Chapter 1 EqA2010** identifies the obligations a school has in relation to current and prospective disabled pupils and confirms that this section applies to private schools.

**Glossary: EqA2010.**

## **05 EHCP assessment and issuing (disability)**

Q&A to follow in a later edition

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## **06 EHCP general**

For detailed advice on SEN law refer to Support SEND Kids: [Noddy No-nonsense Guide to SEN law](#)

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## **07 EHCP section C (health care)**

Q&A to follow in a later edition

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## **08 EHCP section D (social care)**

Q&A to follow in a later edition

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## **09 EHCP section G (health care provision)**

Q&A to follow in a later edition

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## 10 EHPC section H (social care provision)

Q&A to follow in a later edition

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## 11 Transport and Reasonable Adjustment (Disability)

**Does a school's duty under the Equality Act 2010 to make reasonable adjustments extend to when the children go on a school trip?**

Yes. The duty in [s20 EqA2010](#) would apply to school trips and in some instances a duty to make an adjustment can arise despite some inconvenience to others.

In deciding what adjustments are reasonable it is important that the school weigh the level of inconvenience to others against the substantial disadvantage faced by the disabled pupil.

**Glossary:** [EqA2010](#).

### **Example**

Consider a school that plans a school trip to a local history museum in their town. One of the pupils in the class is deaf and as the museum does not have a hearing loop installed, she will be unable to participate in the trip. The school decides to change the trip and attend a museum in a neighbouring town which has a hearing loop. Although this will cause some inconvenience to the other pupils as the travel time to and from school is longer, the school decides that this is a reasonable adjustment to make given the substantial disadvantage faced by the disabled pupil if she can't attend the trip.

**For more general advice on Transport & SEN law – refer to Section 11: [Noddy No-nonsense Guide to SEN law](#)**

## 12 Tribunal Procedure (Disability Discrimination)

**Can I do anything if my child has been the subject of disability discrimination in school?**

Yes. In England and Wales the parent of a child whom, in good faith, they believe has been discriminated against, can make a claim to the **First-tier Tribunal (Special Educational Needs and Disability) (Sch. 17 EqA2010)**.

Proceedings on a claim may not be brought after the end of the period of 6 months starting with the date when the conduct complained of occurred, although the tribunal may also consider a claim which is out of time.

When bringing a claim of disability discrimination, the Claimant(s) must be able to:

- establish the existence of a statutory disability;
- be clear about the impairments associated with the statutory disability and their effects; and
- be clear about the discrimination the child or young person has been subject to.

Where a tribunal finds that the school has committed an unlawful act, it can make any order it considers appropriate in the circumstances of the case, other than an order for financial compensation.

The tribunal will consider how best to alleviate the effects of the discrimination that has occurred and reduce any future disadvantage.

The types of order the tribunal may make include an order to carry out staff training, change policies and procedures, provide extra tuition and /or apologise to a disabled pupil. **Sch. 17(5) EqA2010**.

UT Judge West provided a useful commentary on remedies in **Proprietor of Ashdown House School v. (1) JKL (2) MNP [2019] UKUT 259 (AAC)**.

**Glossary: EqA2010.**

**For further advice:** refer to Section 12 Tribunal procedure [Noddy No-nonsense Guide to SEN law](#).  
**Coming soon:** Support SEND Kids' 'No-nonsense Guide to Exclusions' will be available soon.

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## 13 Exclusions and Disability

**Can I do anything if my child has been excluded from school for challenging behaviour which is related to their disability?**

Yes, but it must be remembered that a breach of a behaviour policy which is related to a pupils' disability and which results in permanent exclusion can be justified if the school can show this was a proportionate means of achieving a legitimate aim: [s15 EqA2010](#).

Justification is an objective test, and the school would have to demonstrate that it considered all options, including additional support for the pupil, prior to exclusion.

**Glossary:** [EqA2010](#).

**Example:**

Consider the example of an autistic child who was permanently excluded from school after pushing another pupil who was teasing him whilst queuing for lunch. The child has significant social communication and regulation and modulation difficulties. The school, whilst generally sympathetic, continually resists giving him additional support or making adjustment as they want to avoid giving the impression of favouritism claiming they want him to "learn to stand on his own two feet". The Head said that the school has a policy which makes it clear that they operate a zero-tolerance approach to physical violence and there is nothing he can do other than to exclude the child. He also said, if he did "let him off", he would be sending a signal to all other pupils that physical aggression was now acceptable in his school. The approach taken by Head means that it is unlikely that the unfavourable treatment (the exclusion) can be justified hence it would be deemed unlawful.



## Support SEND Kids No-nonsense Guides

Support SEND Kids charity brings lawyers and SEND families together, sharing knowledge to improve outcomes for SEND children.

Available now:

- [Noddy No-nonsense Guide to SEN Law on SEND Kids site](#)
- [Noddy No-nonsense Guide to SEN Law download](#)

Coming soon:

- Exclusions
- Court of Protection
- Post-16 provision



# Disability Law in Education No-nonsense Guide 2022

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For an interactive version visit charity **Support SEND Kids**

