An Overview of the Special Educational Needs and Disability Order (NI) 2005

Please note that this factsheet gives general guidance only and should not be treated as a completed and authoritative statement of the law.

Introduction

A new law relating to disability discrimination in education came into effect on the 1 September 2005. The new law is called the **Special Educational Needs and Disability (Northern Ireland) Order 2005 (also known as SENDO).** The new law applies to schools, education and library boards, universities and colleges including teacher training and agricultural colleges.

Aims of SENDO

SENDO aims to

- Introduce disability discrimination law to the education sector in Northern Ireland
- Strengthen the rights of children with Special Educational Needs to be educated in mainstream education

Responsible Bodies

The legal responsibility for ensuring that discrimination does not take place lies with the 'Responsible Body'.

- Responsible Bodies in the school sector include Boards of Governors/Trustees or the owner of the school and Education and Library Boards.
- Responsible Bodies in the Further and Higher Education sector include governing and managing bodies and in certain circumstances the Department of Employment and Learning/Department of Agriculture and Rural Development.

Disability Discrimination under SENDO

SENDO places new duties on bodies responsible for the provision of education and associated services, admissions and expulsions. The new duties can be summarised as follows:

- Not to treat disabled pupils/students and prospective pupils/students **less favourably** (for a reason relating to their disability) than it treats, or would treat, a person to whom that reason does not or would not apply (unless justified).

- To make **'reasonable adjustments'** to all policies, procedures and practices to ensure that a disabled pupil/student is not placed at a substantial disadvantage compared to pupils/students who are not disabled.

  This duty is both an anticipatory duty and a reactive duty. This means that educational institutions make changes, where reasonable, to how education is delivered both in response to the individual needs of students and proactively for disabled students generally.

  For colleges and universities the reasonable adjustment duty applies also to the provision of auxiliary aids and services and to the physical environment.

- For schools, there is a duty to work towards making the education experience more **accessible** to disabled pupils and prospective pupils in terms of premises, the curriculum and information. To assist with this particular duty the Department of Education and Education Library Boards shall produce accessibility guidance and strategies.

- For schools, the provision of auxiliary aids and services for disabled pupils and prospective pupils is facilitated through the Special Educational Needs framework. SENDO does not provide a new or additional means of obtaining the necessary aids and services required to make education accessible to disabled pupils/prospective pupils.

- Responsible Bodies must not **victimise** a pupil/student or prospective pupil/student. Victimisation is a special form of discrimination. A person can claim that they have been victimised whether or not he or she has a disability.

Definition of a disabled pupil/student or prospective pupil/student

To obtain rights under the disability aspects of SENDO a pupil/student or prospective pupil/student must meet the **definition of being disabled.**

A person is regarded as being disabled for the purposes of SENDO if he/she has **'a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day to day activities'.** This is the same definition as that used in the Disability Discrimination Act 1995.

The definition **may** include pupils/students with cerebral palsy, asthma, diabetes, epilepsy, muscular dystrophy, autism, depression, and M.E. This list is not definitive.

For more guidance on definitional issues please contact the Equality Commission.

Resolving disputes

If you feel you or your child has been discriminated against because of a disability a legal complaint can be lodged with one of three places, depending on the nature of your complaint and the organisation you are complaining about. You can contact:

- a tribunal called **SENDIST** (schools sector complaint)
- an **Expulsions Appeal Tribunal** (schools sector complaint)
- the **County Court** (colleges/universities sector complaint)

To lodge a legal complaint it is essential that you seek advice immediately as there are **strict time limits** within which you must act otherwise you or your child may loose the right to take a legal case.

Claims of disability discrimination can often be settled informally through the school/college/university's **internal complaints system** or through the **conciliation service** currently being developed by the Equality Commission. Ultimately, it is very important to seek advice about what to do if you or your child feels discriminated against as the legal time limits will apply even if the informal systems are used.

Role of the Equality Commission

The Equality Commission has responsibilities to promote good practice, produce codes of practice and guidance materials, give advice and consider assisting with complaints about **disability discrimination** in education. A media campaign was launched on the 1 September 2005 with the key theme being **'Education is for Everyone – Let's learn together'.**

The Equality Commission has produced **two codes of practice** – one concerned with the schools sector and one relating to colleges and universities. Codes of practice aim to give practical guidance on how to provide an inclusive and accessible education to disabled people of all ages. They describe the duties on bodies responsible for the provision of education and other related services, and outline the rights of disabled pupils/students and prospective pupils/students.

Special Educational Needs Framework

SENDO has changed aspects of the Special Educational Needs process. Information relating to this aspect of SENDO can be found in the Department of Education's **'Supplementary Guidance to the Code of Practice on the Identification and Assessment of Special Educational Needs'.** If you have any queries about this aspect of the new law please contact the Department of Education or your local Education and Library Board Special Needs Sections.

Further Help?

For more information regarding the **disability discrimination aspects of SENDO** and/or the work of the Equality Commission please contact:

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