



Answering a claim: a guide for Responsible Bodies

This guidance is to help schools and local authorities respond to claims made to the First Tier Tribunals Special Educational Needs and Disability (SEND) by parents who believe that their child has been unlawfully discriminated against because of a disability.

What is SEND?

Special Educational Needs and Disability (SEND) is independent of local government. We are part of the Tribunals Service, an executive agency of the Ministry of Justice.

We hear and decide on parents claims of disability discrimination in schools in England. This covers discrimination claims about admissions to independent and non-maintained schools; permanent exclusions from independent and non-maintained schools and fixed-term (temporary) exclusions in all schools, and education and services linked to education in all schools.

We do not handle **most** claims about admissions to, or permanent exclusion from, maintained schools. If we have mistakenly sent you a claim of this sort, please let us know straightaway.

The Rules which determine how we carry out this function are The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 These are available from to download a www.sendist.gov.uk

Separately, we also hear and decide on parents appeals against local educational authorities decisions on statutory assessments and statements of special educational needs. This guidance does not cover this part of our work.

The Responsible Body

Are we the responsible body?

The responsible body depends on the type of school and the circumstances of each case.

In most cases, the responsible body will be as set out in the following table, but there can be exceptions.

Type of school	Responsible body
Maintained school	Governing body, in general
Pupil referral unit	Local authority
Maintained nursery	Local authority
All independent schools	The proprietor
Non-maintained special school	The proprietor

Where local authorities are responsible for certain services for schools, such as school meals or home/school transport, they are the responsible body when the claim is about how these services have been delivered.

If you do not think that you are the responsible body, and that we should be sending the parents claim to someone else, please let us know, explaining why, straightaway.

What is a responsible body?

The responsible body is the body that is responsible for the school, or for the activity during which there was allegedly discrimination. No individual at the school, whether a member of staff or a voluntary helper, has legal responsibility for disability discrimination.

What can parents claim about?

Since September 2002, it has been against the law for schools to discriminate in:

- admissions
- education and associated services
- exclusions.

Admissions

Whoever is responsible for admissions to a school must not discriminate against disabled children:

- in the way they decide who can get into the school. This includes any criteria when the school is over-subscribed, and the way the responsible body operates those criteria,
- in any terms they attach to offers of a place at the school, or
- by refusing or deliberately not accepting an application for admission to the school.

Education and associated services

The Act covers all education and associated services for pupils and prospective pupils in essence, all aspects of school life. A wide range of activities could be covered, including:

Preparation for entry to the school	Breaks, lunchtimes
The curriculum, teaching and learning	The serving of school meals
Classroom organization	Assessment and exam arrangements
Timetabling and the grouping of pupils	School discipline and sanctions
Homework	Exclusion procedures
Access to school facilities	School clubs and activities
School sports	School trips

This list is not intended to be exhaustive.

Exclusions

Responsible bodies must not discriminate against a disabled pupil by excluding him or her from the school for a reason connected with their disability. This applies to exclusions whether they are permanent or fixed-term (temporary), including lunch-time exclusions.

More information on duties

The Disability Rights Commission (DRC) Code of Practice (Schools) explains in more detail received copies of the Code. The DRC has also produced short guides for schools and for governors.

What is the process for making a discrimination claim?

Parents have six months to make a claim after the alleged discrimination. If they use the DRC's conciliation service, that time limit is extended by two months.

You have six weeks from when we send you a copy of parents claim to send us a case statement and any written evidence on which you wish to rely. The same applies to the parents. We will also arrange a hearing, which will normally take place about three months after we send you the claim.

At the end of the case statement period, we will ensure that you and the parents see each other's case statement. At the hearing a tribunal panel will consider all this written evidence, as well as anything you, the parents and your respective witnesses have to say.

How should you deal with the claim?

If you do not think you are the responsible body, you should write and tell us straight away, explaining why. If you think that you are the responsible body, there are four key things to consider at once:

- 1) Do you intend to dispute the claim?
- 2) Will you seek to resolve it without the need for a hearing?
- 3) How will you present your case at a hearing?
- 4) What case will you make in written evidence?

Should we dispute the claim?

The parents claim form includes an optional box in which they can say how they would like to see things put right. These may be things you are prepared to do without need for a tribunal.

If you agree that there has been discrimination but plan to put things right, the parents may be prepared to withdraw their claim. If you do not within the six week limit notify us that you intend to dispute the claim, the tribunal will decide the claim without hearing your views.

Can we try to resolve the matter without a hearing?

It will generally be best if disputes can be resolved by agreement between you and the parents. It is quite proper to discuss the matter while a tribunal claim is pending. Communication difficulties may well have been a factor in the dispute. Parents can use the Disability Rights Commission's independent conciliation service. If you take part in conciliation meetings, what you say in these meetings can only be used in a tribunal hearing with your consent.

If we dispute the claim, will we need a lawyer?

Legal representation is not essential at tribunal hearings. But you may choose to instruct a lawyer, to attend in addition to your representative. If you consult a lawyer, or some other representative, you should do so as early as possible.

What is a Response?

Your response sets out the relevant facts as you know them: about what happened, the child's disability, and background information (e.g. school policies, earlier difficulties).

Any written evidence you want to submit must be in the response or be sent with it. Your

response can also set out the arguments you want to put forward. You should go into as much detail as you think is necessary to make your case.

There is a strict time limit for submitting your response. If you fail to send us your response in time we may decide the claim on the papers submitted by the parent only, or hold a hearing without you.

What the tribunal regulations require

The regulations set out some legal requirements.

Your response must say whether or not you intend to oppose the claim. The Chairman of Governors or a person authorised to act on their behalf must always sign the response.

If you oppose the claim, you must tell us in the response why you oppose the claim, the name and profession of the person you have authorised to deal with the claim and the address to which we should send documents. We will not correspond with more than one nominated contact.

Why you oppose the claim

There may be a number of reasons why you oppose the claim. Please state these as clearly as you can. The following paragraphs may help you.

The facts

You may want to comment on factual issues. Do you accept that what the parents say happened actually did so? If there is some history to the parents claim, which it would be helpful for us to know about, you may wish to summarise this.

Is there some basic factual background which tribunal members should know?

Justification

If you accept the parents account of what happened, but consider that the discrimination related to the child's disability was justified, you will need to say why. You might wish to cover some or all of the issues set out in the following paragraphs

We refer several times to the DRC Code of Practice, which explains a number of the concepts more fully and with detailed examples. You should read it carefully, and may wish to refer to sections of it in your case statement.

You can get a copy of the DRC Code of Practice and find out more about the DRC's Conciliation Service from the Disability Rights Commission on their Helpline 08457 622633, or by emailing enquiry@drc-gb.org.

The child's disability and your knowledge of it

You should say whether you accept that the child is disabled under the definition in the Disability Discrimination Act. The definition is explained in the Code of Practice and further guidance the DRC has issued. However, the definition is broad and might include children with a learning disability, sensory impairment, severe dyslexia, diabetes or epilepsy, pupils who are incontinent, or who have AIDS, severe disfigurements or progressive conditions like Muscular Dystrophy.

If you do not accept that the child is disabled, you should say why.

If you accept that the child is disabled, but no-one at the school knew about this when the alleged discrimination took place, you should explain this. Remember that if any member of school staff is informed of a pupil's disability, the school as a whole will be regarded as knowing about it. If no-one knew about it, it will be helpful to set out the steps you have taken to enable parents to notify you of their children's disabilities. If a parent has asked you to keep the nature or the existence of a child's disability confidential, you should tell us.

Less favourable treatment

In considering the parents claim, we will need to establish whether the child has experienced discrimination for a reason connected with his or her disability. We will need to consider whether he or she has been treated less favourably than a child without the disability concerned would have been treated, and whether that treatment was justified.

Something might constitute less favourable treatment of disabled children in terms of:

- the time and effort that they might need to expend doing something,
- the inconvenience, indignity or discomfort they might suffer or
- the loss of opportunity or lack of progress that they may make compared to other non-disabled children.

If you do not consider that the disabled child has been treated less favourably than a child without the disability concerned, you should tell us. However, it will not be sufficient to say that you treat all pupils equally. For example, you will not be able to argue simply that you treat all disruptive pupils the same, if some children's disabilities cause them to be disruptive. You will need to show that you have sought to deal with the consequences of the child's disability see reasonable adjustments below.

For more guidance on the comparison required between a disabled pupil and one without the disability concerned, you may wish to consult Chapter 5 of the Disability Rights Commission Code of Practice, which includes some examples.

Justification for less favourable treatment

In order to show that you were justified in treating a disabled pupil less favourably, you will need to show that this less favourable treatment was:

- the result of a permitted form of selection or
- justified by another substantial reason, relevant to the particular case.

Different forms of selection are permitted in different schools. Grammar schools may select their intake. Specialist schools can give priority in their admissions criteria to a proportion of pupils who show a particular aptitude for the subject in which the school specialises. Independent schools can set their own selection criteria, which can include ability or aptitude.

Reasonable adjustments

As stated above, you will not be able to argue that less favourable treatment was justified if you have not taken reasonable steps to adjust your practices to ensure that disabled pupils are not disadvantaged.

Depending on the circumstances of the claim, you may need to describe the steps you have taken to prevent any disadvantage. As a responsible body you have to take reasonable steps to prevent substantial disadvantage to disabled pupils, and you have to do this before the disadvantage occurs.

So a school may need to show in response to a claim of less favourable treatment how it has anticipated the needs of the particular pupil and disabled pupils generally. In explaining how generally you ensure that you comply with the DDA you may wish to address some or all of the following questions:

- are all staff and voluntary helpers aware of the school's duties, including managers,
- teaching staff, learning support assistants, catering staff, caretakers and others involved
- in providing or supporting learning?
- has the school held training on the DDA and/or broader issues of disability equality?
- have you reviewed policies covering admissions, education and associated services, and exclusions to ensure that these do not put disabled children at a substantial disadvantage?
- do you have procedures in place to ensure that discrimination by staff will be picked up on and dealt with properly?
- has the school made reasonable adjustments in order to comply with the new law?

A local authority responding to a discrimination claim might address similar questions about how far they have anticipated and planned to meet the needs of disabled pupils.

Exceptions

There are exceptions to the requirement to make adjustments. You are not required to provide aids and services that will be provided under the SEN framework for example, an extra classroom assistant, or personal assistance. Nor are you required, in making reasonable adjustments, to remove or alter physical features of the school, which are covered by the longer-term planning duties for local authorities and schools. If you think that either of these exceptions are relevant to the claim, please say why.

What is reasonable?

If you have decided in the circumstances of the particular case that there is no reasonable adjustment that could be made, you will need to show how you have considered what steps might be taken. If you considered various possible steps and concluded that they would not be reasonable, you will need to say why.

In looking at whether steps might be reasonable, we will consider a number of factors, which might include:

- the need to maintain academic, musical, sporting and other standards the financial resources available to you
- the cost of taking a particular step
- the extent to which taking the particular step is practicable
- the extent to which aids and services will be provided under the SEN framework
- health and safety requirements
- the interests of other pupils and children who might be admitted to the school as pupils.

If you wish to argue that some or all of these factors meant that various possible adjustments would not have been reasonable, you will need to state clearly why and provide the background information you think is relevant. For example, if you considered that a step was too expensive, you will need to provide us with information on costings and your budget. If moving a particular facility is impracticable, you may wish to show us a floor plan, which helps to demonstrate this.

Remedies

Whether or not you oppose the claim as a whole, you may wish to give a view on any remedies proposed by the parents. We have included an optional section in the claim form

for parents to say what they think should be done to put things right. If they have completed this, please tell us how far you think the measures suggested would be reasonable. If you have suggestions of your own, these may also help us decide what should be done.

Progress in resolving the issue

Claims only reach us if you and parents have a disagreement, but it is quite in order for discussions between the parties after the claim has been launched. If there are matters that you have been able to resolve since the parents sent in their claim, please explain these

Practical points

- Where possible, papers should be single-sided A4 copies and not stapled.
- Papers should be in black and white. We cannot make colour copies so we suggest that if you want to send us booklets or other coloured documents, you send us photocopies.
- Please do not add your own page numbers.
- If you send a number of separate documents, a contents list or summary of what you are presenting will also be extremely helpful.

The hearing

Choosing who to bring as witnesses at the hearing is important. The regulations allow you up to five witnesses, but this many will normally be unnecessary.

The witnesses you choose should be able to discuss the main issues of the appeal as they relate to the individual child concerned. They must expect to answer questions about their evidence both from parents, their representatives or witnesses, and from members of the tribunal. They will need a thorough knowledge of the facts and reasoning behind the information they give.

You should tell any expert witnesses that they are there to assist the tribunal with their professional views, not simply to support your case. Expert evidence that appears biased can lose credibility.

You can help us

We are committed to providing a high quality service. One of the ways we can continue to improve is by listening and responding to you. We welcome your comments on this guidance, or indeed on any aspect of our service.

You should address your comments to the Tribunal Manager at:

Special Educational Needs and Disability Tribunal

1st Floor, Darlington Magistrates Court

Parkgate

Darlington

DL1 1RU

You do not need to give your name, but if you do we will acknowledge your comments and, if we can, respond to the points you raise.