



Disability Discrimination Code of Practice for Schools



**Special Educational Needs and Disability
(Northern Ireland) Order 2005**

Equality Commission

FOR NORTHERN IRELAND

Disability Discrimination Code of Practice for Schools

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**Special Educational Needs and Disability
(Northern Ireland) Order 2005**

Laid before the Northern Ireland Assembly by the Department of Education in accordance with Section 54A(4)(a) of the Disability Discrimination Act 1995 (as amended by Article 41 of the Special Educational Needs and Disability (Northern Ireland) Order 2005).

Date 5th January 2006

NIA 275/03

Published by the Equality Commission for Northern Ireland in 2006.

This Code of Practice was developed in partnership with the Disability Rights Commission, Great Britain. The Equality Commission gratefully acknowledges the substantial contribution made by the Disability Rights Commission to this publication.

The Equality Commission gratefully acknowledges the contribution made by the Department of Education in developing this Code of Practice.

This Code of Practice is available in a range of accessible formats (for example in Braille, audio cassette, disk or other format) on request from the Equality Commission for Northern Ireland. If you would like a copy in an alternative format please contact:

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 9050 0600
Fax: 028 9031 5993
Text Phone: 028 9050 0589
E-mail: information@equalityni.org
Website: www.equalityni.org

ISBN 1-903941-82-2

Cover Photograph: The Equality Commission for Northern Ireland would like to thank, from left to right: Gail McAleenan (Oakwood Integrated School), Joshua McKinnell (Fleming Fulton School), Alec Pinedo (Oakwood Integrated School), Amy Cameron (Fleming Fulton School).

The Code of Practice shall come into effect on such a day as the Department of Education may by order appoint. Please contact the Equality Commission for further details.

The Code of Practice applies to Northern Ireland

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDI) applies to schools and further and higher education institutions, including the teacher training and agricultural colleges and general qualification bodies.

This Code of Practice explains the duties placed upon schools only.

This Code explains how SENDI makes it unlawful for bodies responsible for the provision of education and other associated services to discriminate against disabled pupils and prospective pupils. SENDI makes it unlawful to treat disabled people less favourably for a reason related to their disability: to make 'reasonable adjustments', to ensure, where reasonable, education is fully accessible to disabled people and to ensure victimisation does not occur. The 'reasonable adjustment' duty is both an anticipatory and reactive duty.

The Special Educational Needs and Disability (Northern Ireland) Order 2005 is a new law, which took effect on 1st September 2005.

Foreword

Education can unlock the talents of everyone and provide an opportunity to develop an individual's full potential. The Equality Commission therefore welcomes the introduction of the Special Educational Needs and Disability (Northern Ireland) Order 2005 hereafter referred to as SENDO which is effective from 1st September 2005. SENDO mirrors legislation brought into effect in Great Britain in September 2002 and fully implemented also on 1st September 2005. The aim of SENDO is to strengthen the rights of children with special educational needs to be educated in mainstream education and to introduce unlawful disability discrimination legislation to schools, further and higher education institutions (including teacher training and agricultural colleges) and to general qualifications bodies.

This Disability Discrimination Code deals with the disability discrimination provisions relating to schools and has been issued under Section 54A of the Disability Discrimination Act 1995 (as amended by Article 41 of Chapter IV of Part III of SENDO) and at the request of the Minister for Education. Separate publications will be available relating to the further and higher education and general qualification provisions.

Part 2 of SENDO has introduced new provisions and amended aspects of special educational needs. This Code provides a brief overview of the key changes. The Department of Education's publication entitled 'Code of Practice on the Identification and Assessment of Special Educational Needs (1998)' and the Supplement to it (operative from 1st September 2005) provide the detail surrounding the Special Educational Needs framework.

SENDO makes it unlawful for bodies responsible for the provision of education and associated services, admissions and expulsions in schools to discriminate against disabled pupils and prospective pupils. SENDO makes it unlawful to treat disabled pupils and prospective pupils less favourably for a reason related to their disability. It introduces new duties to make 'reasonable adjustments' and to ensure victimisation does not occur. The 'reasonable adjustment' duty is both an anticipatory and reactive duty.

This Code is a major tool in helping to achieve the aim of a society where all disabled people can participate fully as equal citizens. It aims to highlight when discrimination can occur, even if unintentional, and to give practical guidance and encourage good practice in delivering an inclusive education service. Its intention is ultimately to ensure that disabled pupils and prospective pupils have the same access to the high quality education service which is available to pupils and prospective pupils who are not disabled.

The Equality Commission undertook a wide ranging consultation on the Code involving key stakeholders including education providers, disabled people, trade unions, young people, parents and representatives from the community and voluntary sector. In response to the consultation exercise, a number of changes have been made to the Code. The Commission is grateful to all those who contributed to the consultation exercise.

SENDO is intended to bring about significant changes in educational provision and to achieve the recommendations made by the Disability Rights Task Force in its report in December 1999 'From Exclusion to Inclusion' which stated that

'Inclusion of disabled people throughout their school and college life is one of the most powerful levers in banishing stereotypes and negative attitudes towards disabled people amongst the next generation. When disabled and non disabled people are educated together, this sends powerful messages to the whole community about the potential for a truly integrated and diverse society'¹

¹ From Exclusion to Inclusion – A Report of the Disability Rights Task Force on Civil Rights for Disabled People. December 1999.

In order for SENDO to be effective and to achieve this vision it must be implemented in a managed and strategic way both in terms of adequate resources, training and evaluation. Central to any management strategy is the dignity of the disabled pupil and prospective pupil. SENDO should be incorporated into the culture of the schools sector rather than be seen simply as a legal compliance matter.

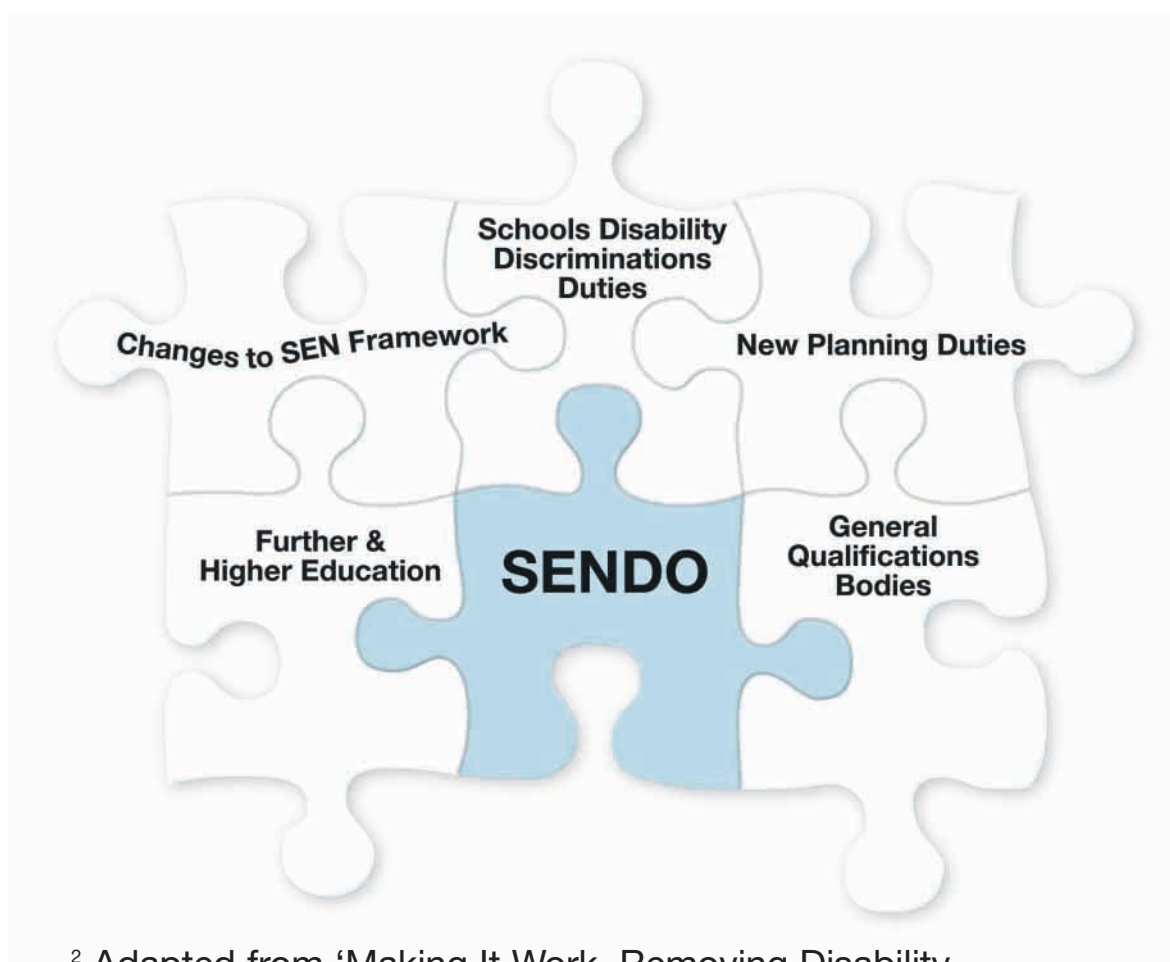
The Equality Commission recognises that changes have occurred and that Education and Library Boards, schools and teachers are involved in inclusive practices particularly in partnership with the special schools. Nonetheless, there is more to be done to build a fully accessible, diverse education system in Northern Ireland which realises the potential of all pupils. SENDO represents an opportunity to build upon the inclusive practices that are happening across the schools sector. It is also an opportunity to review policies, procedures, practices, physical access, communication and attitudes to ensure that unlawful disability discrimination does not happen.

This Code is necessarily comprehensive and detailed as it will assist in the interpretation of a new law for education providers in the schools sector in Northern Ireland. The Commission has also produced a range of other information to assist with the understanding of rights and responsibilities under SENDO. Contact the Commission for more details.

The Commission hopes this and all our publications will be widely used and helpful.

Visual Overview of the Structure of SENDO

This Code focuses on the schools sector disability discrimination duties including the new planning duties and also highlights changes to the SEN Framework. Other publications exist in relation to Further and Higher Education and General Qualifications Bodies duties, as well as the SEN framework, and planning duties.



² Adapted from 'Making It Work. Removing Disability Discrimination Are you ready?'

² Making It Work. Removing Disability Discrimination Are you ready? A training pack for schools and LEAs. A partnership project led by the Council for Disabled Children and Disability Equality in Education supported by a grant from the Department for Education and Skills Small Programmes Fund and the Disability Rights Commission.

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1 Introduction

This Chapter provides a brief outline of:

- the purpose of the Special Educational Needs and Disability (Northern Ireland) Order 2005; and
- the purpose of this Code of Practice.

General comments

- 1.1 The concept of disability discrimination in this Code of Practice (Code) reflects the Social Model principle that it is often environmental factors (such as the structure of a building), attitudes, communication or an education provider's practices, rather than limitations arising from a person's disability, which unnecessarily restrict a disabled pupil's ability to participate fully in educational life.

This principle underpins the duty to make reasonable adjustments described in Chapter 6 of this Code. Understanding this principle will assist schools and Education and Library Boards to build upon already existing inclusive practices.

It is as important to consider which aspects of educational life create difficulties for a disabled pupil as it is to understand the particular nature of an individual's disability.

- 1.2 Reference is made throughout this Code to 'disabled pupils' or 'disabled people'. The Equality Commission (the Commission) appreciates the sensitivity of language and similar to the Disability Rights Commission has chosen to adopt the term 'disabled person'. This term, meaning a person who is disabled by environmental factors, social attitudes and/or communication inadequacies, is used in our publications as opposed to 'a person with a disability'.

The Commission acknowledges that some people may prefer to use the alternative terminology ‘people with disabilities’.

- 1.3 Many of the terms used in this Code are drawn from legislation and have a particular meaning. Only the Special Educational Needs and Disability Tribunal can decide how these terms are interpreted and in which circumstances they apply.

Background to the Special Educational Needs and Disability (Northern Ireland) Order 2005

- 1.4 From 1st September 2005, the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO) applies to providers of education in Northern Ireland. Although SENDO only applies in Northern Ireland, similar laws already exist in England, Wales, and Scotland.
- 1.5 The Equality Commission for Northern Ireland has issued this Code of Practice for Schools under Section 54A of the Disability Discrimination Act 1995 (as amended) and at the request of the Minister for Education. To understand SENDO fully readers are advised to consult the Department of Education’s Code of Practice on the Identification and Assessment of Special Educational Needs and the supplement to it, as well as the accessibility planning guidance materials of the Department of Education, Education and Library Boards and schools respectively.
- 1.6 The Commission has issued a separate Code of Practice covering Disability Discrimination in Further and Higher Education. Further guidance relating to the duties on General Qualifications Bodies also will be available from the Commission.

The purpose of SENDO

- 1.7 SENDO strengthens the right of pupils with special educational needs to be educated in mainstream schools.
- 1.8 It makes it unlawful for schools to treat disabled pupils and prospective disabled pupils less favourably than other pupils in all aspects of school life.
- 1.9 It places a duty on schools to make improvements in accessibility to help enable disabled pupils have the same access to education as pupils who do not have a disability.
- 1.10 It places a duty on schools to work towards making school life more accessible to disabled pupils. For example in terms of premises, the curriculum and written information.
- 1.11 It makes it unlawful for general qualifications bodies to discriminate against disabled pupils in relation to the award of prescribed qualifications such as GCSE, GCE, AVCE, GNVQ and AEA to Entry Level, Basic and Key as well as vocational and vocationally-related qualifications.
- 1.12 Prior to 1st September 2005 there was no duty on schools in relation to disability discrimination against disabled pupils.

The purpose of the Code

- 1.13 The Code is intended to show that all pupils have a right to the same opportunities in the whole of educational life.

- 1.14 The Code strives to explain what SENDO requires from education providers in respect of education and associated services and shows how they might meet these requirements.
- 1.15 The Code can help disabled children, young people and their parents to understand the law. It may assist education providers to avoid complaints and litigation by adopting good practice.
- 1.16 In addition, the Code is intended to give practical guidance on how to strengthen inclusive practices.

Status of the Code

- 1.17 The Code does not impose legal obligations nor is it an authoritative statement of the law – that is a matter for the Special Educational Needs and Disability Tribunal for Northern Ireland (the Tribunal). However, the Code can be used in evidence in legal proceedings under SENDO. The Tribunal, in dealing with disability discrimination cases, must take into account any part of the Code that appears to be relevant to any question arising in those proceedings.
- 1.18 Throughout the Code, references are made to ‘responsible bodies’. These are the bodies responsible for providing education or other related provision, and which are legally responsible under SENDO.

1.19 This Code will be of use to:

- all Northern Ireland schools (as defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986) whether mainstream or special, grant-aided or independent;
- Education and Library Boards;
- school Boards of Governors;
- Trustees
- proprietors of independent schools; and
- all pupils and prospective pupils who are disabled, including pupils over 16 who are still at school;
- parents of all pupils and prospective pupils who are disabled, including pupils over 16 who are still at school.

1.20 Separate guidance covering further and higher education and general qualifications bodies (those which cover the range of qualifications listed at Para 1.11) is available free of charge from the Commission. Guidance relating to Special Educational Needs and Accessibility Planning is available from the Department of Education. See Chapter 14 for contact details.

1.21 There are many private, voluntary and statutory providers of services for children under compulsory school age that are not constituted as schools. They are not covered by SENDO. These services are covered by the provisions set out in Part 3 of the Disability Discrimination Act 1995 (DDA). The DDA Part 3 duties

(Access to goods, facilities and services) are explained in a separate Code of Practice on Rights of Access to Goods, Facilities, Services and Premises published by the Commission. Further information or guidance is available free of charge from the Commission.

- 1.22 All early years providers have a duty under Part 3 of the DDA not to discriminate against disabled children, in the education and day-care provided or in other services they provide. The table below sets out the main disability discrimination legislation that applies to each type of education provider.

DDA Part 3 (Access to goods, facilities and services)	SENDO Part 3 Chapter 1 Schools' duties	SENDO Part 3 Chapter 1 Education and Library Boards' residual duty
Day-care nurseries, family centres etc.	All grant-aided and independent schools in Northern Ireland (including nursery schools)	Pupils not registered with a school but educated otherwise than at school
Private or voluntary after / out of school clubs	After / out of school clubs provided by school	Children under statutory school age but in receipt of services other than at school
Private and voluntary playgroups and pre-schools	Pupils registered with a school but educated otherwise than at school	Other duties on Education and Library Boards cited in Chapter 13 of this Code of Practice
Registered childminders		
Non-education services provided by schools	After school clubs and activities provided by schools to their own pupils	

- 1.23 Each chapter of the Code is part of an overall explanation of SENDO and the duties it places on education providers. In order to understand the law properly it is necessary to read the Code as a whole. It should not be read too narrowly or literally. It is intended to illustrate how the law might operate in certain situations and to provide general guidance on the new law.
- 1.24 There are some questions which the Code cannot resolve and which must await the authoritative interpretation of the Tribunal. The Code is not intended to be a substitute for taking appropriate legal advice about particular situations.
- 1.25 The Code contains quotations taken directly from SENDO. Although SENDO uses language specific to the male gender, the legal convention under the Interpretation Act (NI) 1954 is that both males and females are included. Thus where direct quotations from SENDO appear in the Code, for example:

“a responsible body discriminates against a disabled person if - for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply”

Both male and female are covered by the words ‘him’ and ‘his’.

- 1.26 Examples based on everyday situations are given in boxes. They are intended to illustrate the principles and concepts used in the legislation and assist understanding of the law. They are often examples of common or best practice in schools in Northern Ireland and examples of how obligations under the new law may or may not be met in different situations. They should not be treated as complete or authoritative statements of the law.

- 1.27 The examples cover different situations in school life, different types of school and pupils with different disabilities. Although they are examples of particular situations, they can often be used to show how the law might work in similar situations.

Keeping up-to-date with the Law

- 1.28 This Code refers to Parts III to IV of SENDO that cover disability discrimination in schools. Over time, there may be changes to SENDO or to other legislation, for example, to the range of people who are considered to have a disability under the law. These changes may have an effect on the duties explained in this Code. Everyone who has responsibilities under SENDO will need to keep up-to-date with any changes that may affect what the law requires them to do.

Statutory authority and national security

- 1.29 SENDO does not make unlawful any act done in pursuance of legal obligations under any other legislation or enactment of a Minister of the Crown or Northern Ireland department. SENDO does not make unlawful any act done for the purpose of safeguarding national security.

Further information

Copies of SENDO and Regulations made under it can be obtained from:

The Stationery Office (TSO)
 16 Arthur Street
 Belfast BT1 4GD
 Telephone: 028 9023 8451
 Fax: 028 9023 5401
 E-mail: enquiries@tsoireland.com
 Website: www.tso.co.uk

Office of Public Sector Information (OPSI)
 Website and e-mail: www.opsi.gov.uk

2

Definition of a disabled person – Who has rights under SENDO

2

This Chapter provides a brief outline of:

- the definition of disability; and
- who is protected by the Special Educational Needs and Disability (Northern Ireland) Order 2005.

- 2.1 Part III of SENDO protects disabled pupils from disability discrimination in education. It defines a disabled pupil as “a pupil who is a disabled person”.
- 2.2 This means that a pupil who is, by the definition given in the DDA a ‘disabled person’, is protected from discrimination on grounds of their disability by SENDO.

Definition of ‘disabled person’

- 2.3 The DDA defines a disabled person as someone who has a physical or mental impairment which has a substantial and long term adverse effect on his or her ability to carry out normal day-to-day activities. The DDA states that the definition does not include any impairment resulting from or consisting of a mental illness, unless that illness is a clinically well-recognised illness. A clinically well-recognised illness is one that is recognised by a respected body of medical opinion. This aspect of the definition along with other areas may be reviewed and amended. The reader is advised to keep up-to-date on the definition of disability. To do this, contact the Commission.

This definition raises a number of concepts that need to be explored in order to help us understand who meets the definition of a disabled person.

Physical or mental impairment

2.4 The term 'physical impairment' may include for example cerebral palsy, muscular dystrophy, spina bifida, arthritis, hearing or sight impairment, diabetes, asthma, epilepsy, chronic fatigue syndrome (ME), HIV, cancer, multiple sclerosis as well as facial disfigurement.

The term 'mental impairment' may include depression, post traumatic stress disorder, and schizophrenia. It may also include what are often known as learning difficulties. For example, emotional behavioural disorder, ADHD, ADD, emotional and behavioural difficulties, autistic spectrum disorders, and developmental disorders such as dyspraxia.

Substantial adverse effect

2.5 This is an effect that is more than minor or trivial - a limitation that is more than the normal differences in ability that might exist among people. It makes it more difficult and time consuming for the person to carry out an activity compared to someone without the impairment.

Long-term effect

2.6 A long-term effect of impairment is one which:

- has lasted at least 12 months; or
- is likely to last at least 12 months; or
- is likely to last for the rest of the person's life.

- 2.7 Effects such as the loss of mobility due to a broken limb or the effects of temporary infections are not considered to be long-term because a person would be likely to recover from these within 12 months.

Effects that change over time

- 2.8 If an effect is likely to come and go over a period of time (i.e. it is likely to recur) it is considered to be long-term.

Example 1 – A long-term effect

A pupil with arthritis has a period of remission, but it is expected that there will be a recurrence 12 months or more after the initial occurrence. This amounts to a long-term effect.

Past disabilities

- 2.9 Pupils who have had a disability in the past, within the definition, are protected from disability discrimination (in relation to that disability) even if they are no longer disabled. This may include pupils who have previously had mental health problems.

**DDA
Schedule 2**

Normal day-to-day activities

- 2.10 These are activities that are carried out by most people on a fairly regular and frequent basis. For example:
- mobility;
 - manual dexterity;
 - physical co-ordination;
 - continence;
 - ability to lift, carry or move everyday objects;

- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger.

Effects of treatment

2.11 A pupil with an impairment may be receiving medical or other treatment which alleviates or removes the effects although not the impairment. In such cases, the impairment is regarded as having the effect it would have had if the person did not have the treatment. For example a hearing aid may remove the effect of the disability for a person who is hard of hearing but it does not remove the disability. The hearing loss is regarded as having the effect it would have had if the pupil did not use the hearing aid.

This does not apply if substantial adverse effects are not likely to recur even if the treatment stops, because the individual no longer has a disability.

Pupils who wear spectacles

2.12 Wearing spectacles is the only exception to the rule about ignoring the effects of treatment. Usually a pupil who wears spectacles would not be considered disabled. However, a pupil who is visually impaired and wears spectacles would be considered disabled.

Pupils who have severe disfigurements

2.13 Pupils with severe disfigurements are protected by SENDO. There is no need to demonstrate the effect that a pupil's severe disfigurement has on their ability to carry out normal day-to-day activities.

- 2.14 However, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are not protected by SENDO.

Progressive conditions

- 2.15 Conditions that are likely to change and develop over time are known as progressive conditions. Examples are cancer, multiple sclerosis, muscular dystrophy and HIV infection. Pupils with progressive conditions are protected from the time of diagnosis.

Genetic conditions

- 2.16 If a genetic medical condition has no effect on ability to carry out normal day-to-day activities, the person is not protected. Diagnosis does not in itself bring someone within the definition. If the medical condition is progressive, then the rule about progressive conditions applies.

Excluded conditions

- 2.17 The DDA sets out a list of excluded conditions. For more information contact the Equality Commission.

Pupils with a Statement of special educational needs

- 2.18 Some children with or without a Statement may be receiving special educational provision at school but may not be a disabled person. The fact that a pupil has special educational provision made for him or her does not automatically mean that he or she is disabled in accordance with the definition in the DDA. A pupil may have a Statement, but unless there is an underlying physical or mental impairment affecting the pupil's ability to carry out normal daily activities, the pupil would not be considered a disabled person according to the DDA definition.

- 2.19 Those who have a Statement of special educational needs but are not considered a disabled person under the DDA definition are not protected by the disability discrimination duties in Part III of SENDO (see Chapters 4 – 12 of the Code).
- 2.20 However, there are many children who will require special educational provision to access education and will also satisfy the definition of disability under the DDA. These children should not be discriminated against on the grounds of their disability, and should always benefit from the same educational opportunities as children without a disability.

Further information on disability discrimination

- 2.21 The definition of a disabled person used by the DDA can be periodically reviewed. To ensure that the definition cited within this Code of Practice is up-to-date at time of reading please contact the Equality Commission for further information. See Chapter 14 for the Commission's contact details.
- 2.25 A publication, available from The Stationery Office, entitled 'Guidance on matters to be taken into account in determining questions relating to the definition of disability', provides additional help in understanding the concept of disability and in identifying disabled persons. See Chapter 14 for The Stationery Office contact details.
- 2.26 Additional Sources of information are given in Chapter 14 of the Code.

3 Special educational needs

3

Guidance on the Special Educational Needs (SEN) aspects of SENDO is the responsibility of the Department of Education. The Department of Education has a Code of Practice on the Identification and Assessment of Special Educational Needs and a Supplement (2005) to it.

Schools, Boards and others exercising relevant statutory functions (including the tribunal), need to be able to demonstrate in their arrangements for children with SEN, that they are fulfilling their statutory duty to have regard to the Code of Practice on the Identification and Assessment of Special Educational Needs and its Supplement. Issues relating to the application of the procedures of SEN should be addressed to the Department of Education or Education and Library Boards. The Commission cannot advise on matters relating to policy and procedures of the SEN framework.

This Chapter provides a brief outline of:

- what the law says about educating pupils with special educational needs;
- the changes to the law on SEN as a result of SENDO;
- where to go for more information; and
- the relationship between SEN and disability.

The law on special educational needs prior to SENDO

3.1 Current education law says that:

“a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him”.

It says that:

“a child has a "learning difficulty" if –

- (a) he has a significantly greater difficulty in learning than the majority of children of his age;
- (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in ordinary schools; or
- (c) he has not attained the lower limit of compulsory school age and is, or would be if special educational provision were not made for him, likely to fall within sub-paragraph (a) or (b) when he is of compulsory school age.”

3.2 Most pupil’s needs can be met by a mainstream school but in some circumstances educational provision is provided within a non-mainstream setting known as a ‘special’ school.

3.3 The Code of Practice on the Identification and Assessment of Special Educational Needs sets out a 5 stage approach to identification and assessment of children or young people with special educational needs. The first 3 stages are school based, calling on external specialists at stage 3 as necessary. At stages 4 and 5 the Education and Library Boards share responsibility with schools.

The 5 stages are as follows:

Stage 1: teachers identify and register a pupil's special educational needs and, consulting the school's special educational needs co-ordinator (SENCO) take initial action;

Stage 2: the SENCO takes lead responsibility for collecting and recording information and for co-ordinating the pupil's special educational provision, working with the pupil's teacher;

Stage 3: teachers and the SENCO are supported by specialists from outside the school;

Stage 4: the Education and Library Board considers the need for a statutory assessment and, if appropriate, makes a multi-disciplinary assessment;

Stage 5: the Education and Library Board considers the need for a Statement of special educational needs. If appropriate, it makes a Statement and arranges, monitors and reviews the special educational provision.

- 3.4 The procedures associated with the statutory assessment and Statementing process, and the rights of pupils with special educational needs come from the Education (Northern Ireland) Order 1996, as amended by SENDO. The Code of Practice on the Identification and Assessment of Special Educational Needs and the Supplement to that Code, operative from 1 September 2005 provides further detail and can be obtained from:

Special Education Branch
Department of Education
Rathgael House
43 Balloo Road
Bangor BT19 7PR
Telephone: 028 9127 9279
Fax: 028 9127 9100
Website: www.deni.gov.uk

A list of useful contacts is given in Chapter 14 of this document.

Aspects of the SEN not affected by SENDO

3.6 Special educational provision may be provided by:

- schools;
- schools in partnership with other external agencies;
or
- by schools and Education and Library Boards and Health and Social Services Trusts (if statutory assessment results in a Statement of special educational needs by schools).

Further information about this is available from the Department of Education.

3.7 SENDO does not affect:

- the way that an assessment of a pupil's special educational needs is carried out; or
- how a Statement of special educational needs is made, reviewed or amended.

3.8 If a parent has any concerns that their son or daughter may have special educational needs, they should share these concerns with his or her teacher who may be able to offer further advice.

Changes in relation to special educational needs

3.9 In relation to special educational needs SENDO makes changes in 5 key areas:

- increased rights for pupils with special educational needs to attend mainstream schools;
- new Education and Library Boards advice and information service;
- new Education and Library Boards Dispute Avoidance and Resolution Service (DARS);
- a requirement to inform parents that special educational provision is being made; and
- request for a statutory assessment of special educational needs from a responsible body.

Each of these will now be explored in more detail.

Education in mainstream schools for pupils with special educational needs

3.10 SENDO gives a right to pupils who have a Statement of special educational needs to be educated in a mainstream school unless:

“that is incompatible with:-

- (a) the wishes of his parent; or
- (b) the provision of efficient education for other children”.

Where a parent expresses a preference for a grant-aided school the Education and Library Board will specify the name of that school in the Statement unless:

- “(a) the school is unsuitable to the child’s age, ability or aptitude or to his special educational needs; or
- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources”.

- 3.11 SENDO states that further guidance may be issued to Education and Library Boards and Boards of Governors by the Department of Education, particularly on the issue of what reasonable steps might be taken to ensure compatibility. This guidance is included in the ‘Supplement to the Code of Practice on Identification and Assessment of Special Educational Needs (2005).
- 3.12 A child or young person without a Statement may be admitted to a special school for the purposes of a statutory assessment of his or her special educational needs. In some cases, a child or young person without a Statement of special educational needs may also be admitted to a special school due to a change in his or her circumstances.

Education and Library Board Advice and Information Service

- 3.13 As of 1st September 2005, Education and Library Boards must provide a special educational needs advice and information service not only in respect of individual pupils but also in general terms. Additionally, in relation to Stages 4 and 5 of the SEN process outlined at paragraph 3.3, a named officer of the Education and Library Board will provide information, advice and support to parents and schools.

The SEN Dispute Avoidance and Resolution Service (DARS)

- 3.14 As of 1st September 2005, Education and Library Boards must also have an independent service in place for avoiding and resolving disputes relating to SEN issues between parents and schools, and parents and the Education and Library Board/s.
- 3.15 This service is known as the Dispute Avoidance and Resolution Service (DARS) and is separate from the Conciliation service provided by the Commission which only deals with disability discrimination (see Chapter 12).
- 3.16 The DARS provides an informal forum for exploring differences, identifying points of agreement and disagreement and finding a way forward that all parties accept. It is independent of the Education and Library Boards' SEN branches and the SEN decision-making areas.
- 3.17 Neither the DARS nor the Commission's Conciliation Service affect a parent's right of appeal to the Tribunal.

Informing parents that special educational provision is being made

- 3.18 The law calls for schools to inform parents when they consider that their child may have special educational needs and that special educational needs provision is being made.

Assessment of special educational needs

- 3.19 Parents have a right to request an assessment or review of their son or daughter's special educational needs. SENDO now allows responsible bodies to request an assessment or review (Chapter 4 discusses who is a responsible body).

- 3.20 Before deciding if an assessment or review will be carried out, the Education and Library Board in which the pupil lives, must inform his or her parents:
- that it is considering whether or not to assess their son or daughter's special educational needs;
 - how the assessment will be carried out;
 - of the name of a person in the Education and Library Board who can give further information about this; and
 - of their right to be consulted and to make their views known.

- 3.21 The Education and Library Board must inform the parents that it has decided to:
- carry out a statutory assessment of a pupil's special educational needs;
 - carry out a review of an existing Statement of special educational needs;
 - seek updated advice from professional advice-givers; or
 - undertake a reassessment of the pupil's special educational needs.

- 3.22 If the Education and Library Board decide not to make an assessment it must inform the parents about their right to appeal against this decision and of the parents' right to access the DARS service.

- 3.23 Education and Library Boards must give parents a copy of their child's Statement of special educational needs, any amended Statement or additional report appended to the Statement. They must inform parents about how they can appeal against their decisions. Under Article 12 of the United Nations Convention on the Rights of the Child children may have a right to be involved in any appeal process concerning their education.
- 3.24 The Department of Education has issued a 'Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs' in order to provide a clear understanding and consistency of approach with schools, Education and Library Boards and others on the steps to be taken in carrying out statutory functions as they relate to special educational needs aspects of SENDO.

Copies of the 'Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs' can be obtained from:

**Special Education Branch
Department of Education
Rathgael House
43 Balloo Road
Bangor BT19 7PR
Telephone: 028 9127 9279**

Parents right of appeal to the Tribunal

- 3.25 Parents' rights of making a SEN appeal to the Tribunal are unchanged by SENDO. The Tribunal will continue to consider SEN appeals but SENDO extends the powers of the Tribunal. As of 1st September 2005, the Tribunal will be known as the Special Educational Needs and Disability Tribunal (SENDIST) and will also consider claims of disability discrimination under SENDO (see Chapter 12).

**SENDO
Part II
Article 7**

3.26 A parent can appeal against the content of a Statement of special educational needs about:

- the description of the pupil's special educational needs (Part 2 of the Statement) ;
- the special educational provision specified (Parts 3 and 4 of the Statement) (including the name of any school specified); or
- the fact that no school is specified (Part 4 of the Statement).

3.27 An appeal about the content of the Statement can be made to the Tribunal:

- when the Statement is made;
- the Statement is amended; or
- if following an assessment, the Education and Library Board decides not to amend the Statement.

3.28 The time limit for making an application to the Tribunal in relation to unresolved disputes is two months.

3.29 In certain circumstances, children and young people have the right to participate in appeal proceedings. This is in accordance with Article 12 of the United Nations Convention on the Rights of the Child.

3.30 Education and Library Boards must comply with the decisions of the Tribunal within set times. If an Education and Library Board does not comply with an order of the Tribunal, a parent has the right to ask the Department of Education to enforce the Tribunal decision by making a direction for compliance to the Board.

The relationship between special educational needs and disability

- 3.31 Not all pupils who are disabled will have a SEN. For example, a pupil who has severe asthma that affects his/her ability to carry out normal daily activities may be a disabled person according to the DDA definition (see Chapter 2 for definition of disability), but he or she may not have a Statement of special educational needs. However, many pupils who are disabled will have a Statement as a result of their disability, for example, a blind pupil who is disabled according to the DDA definition and who has a Statement because he or she requires special educational provision.
- 3.32 A disabled pupil has special educational needs only if he needs special educational provision to enable him to access education. A disabled pupil who needs special educational provision in order to access education, has that provision made through the special educational needs framework. SENDO does not change this and does not provide a new or alternative route to access such aids and services.
- 3.33 The purpose of the special educational needs framework is to identify and meet any special educational needs which the learning difficulty calls for. The disability discrimination duties in SENDO are there to ensure that disabled pupils are not discriminated against and to promote equality of opportunity between disabled pupils and other pupils who do not have a disability.

- 3.34 The special educational needs duties, the disability discrimination duties and the strategic planning duties (see Chapter 11 Accessibility Strategies and Accessibility Plans) in SENDO fit together like the pieces of a jigsaw, so that the whole education experience will, as far as possible, be the same for disabled pupils as it is for other pupils.
- 3.35 Together these duties will provide a stronger legal framework to underpin the inclusive practice that schools are already working towards.

4 Overview of Duties and Responsibilities under SENDO

This Chapter provides a brief outline of:

- what disability discrimination is;
- what activities are covered by SENDO; and
- who has responsibilities

Disability discrimination outlined

4.1 The following three terms are used to describe unlawful disability discrimination:

- less favourable treatment;
- failure to make reasonable adjustments; and
- victimisation

A brief outline of each of these follows. More detailed consideration is given to each in Chapters 5 – 7.

Those responsible for ensuring that disabled pupils do not experience disability discrimination are discussed in sections 4.26 – 4.29 of this chapter.

Less favourable treatment

4.2 SENDO describes this type of disability discrimination in the following way:

“a responsible body discriminates against a disabled person if –

- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
- (b) it cannot show that the treatment in question is justified”.

This means that education providers have a duty not to treat disabled pupils less favourably than other pupils for a reason relating to their disability, when it cannot be justified. This form of disability discrimination is explained in more detail in Chapter 5.

Failure to make reasonable adjustments

4.3 SENDO says that a responsible body also discriminates against a disabled pupil if it fails to:

“take such steps as it is reasonable for it to have to take to ensure that:

- (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
- (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled”.

This means that unless they have a justification for not doing so, education providers have a duty to make reasonable adjustments so that disabled pupils are not at a substantial disadvantage compared to other non-disabled pupils. This anticipatory duty under SENDO places the onus on schools to anticipate the needs of pupils and to create an environment where pupils feel secure in disclosing any disability that they may have. Paragraph 4.20 gives examples of the range of activities that may be covered by the term ‘associated services’. Disability discrimination by way of failing to make reasonable adjustments is explained in more detail in Chapter 6.

Limits to the duty to make reasonable adjustments

Auxiliary aids and services

- 4.4 Although SENDO says that schools must take reasonable steps to avoid putting disabled pupils at a substantial disadvantage, this does not include providing “auxiliary aids or services”. These may be provided through the SEN process which determines the individual needs of a pupil with SEN.

SENDO
Part III
Chapter I
Article 16(2)(b)

Physical features of buildings

- 4.5 SENDO states that a responsible body is not immediately required to:

“remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources)”.

SENDO
Part III
Chapter I
Article 16(2)(a)

However, SENDO places a duty to plan for accessibility which means that the responsible body must be proactive in making improvements through planned changes over time. However, schools can go beyond what SENDO requires if they are able to. The accessibility duties placed on schools are discussed in Chapter 11.

Triggers to making reasonable adjustments

4.6 SENDO makes it clear that in failing to take a particular step a responsible body does not discriminate against a disabled pupil if it shows that:

- (a) “at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
- (b) that its failure to take the step was attributable to that lack of knowledge”.

This means that if a responsible body did not know, and could not reasonably be expected to know, that a pupil was disabled, it cannot be considered responsible for a failure to make a reasonable adjustment. However, if the school can reasonably be expected to have known of the disability, it is under a duty to provide reasonable adjustments, even where the disability has not been formally disclosed. Many changes need to be made regardless of knowing about an individual pupil. The responsible body must have taken reasonable steps to have found out about a disability. This is explained in more detail in Chapter 8.

4.7 The anticipatory nature of the duty to make reasonable adjustments means that even if there are no disabled pupils in a school at present, in the expectation that there will be disabled pupils in their school, the responsible body needs to consider what changes may be needed, develop or amend their policies accordingly and produce plans of action. In taking such action, a responsible body will be more prepared when a new pupil with a disability is admitted to the school.

4.8 Schools need to know that a pupil is disabled and they need to have some knowledge of the nature of a pupil's disability, if they are to ensure that they do not treat the pupil less favourably. The same applies if the school is to make reasonable adjustments for the disabled pupil. Despite the fact that the reasonable adjustments duty

relates to disabled pupils in general, the school will need to know when and how to apply any specific individual arrangements. It is important therefore that disabled pupils or their parents provide schools in advance with as much information as possible. Examples of how failing to provide information may affect a school's ability to meet a pupil's individual needs are given in Chapter 8 (Examples 42 and 43).

- 4.9 Parents and pupils have a right under SENDO to make a request for confidentiality in relation to any disability disclosed (Chapter 9). Parents and pupils need to be aware that a request for confidentiality may limit what a responsible body may be able to do for the pupil by way of making reasonable adjustments (see paragraph 9.9). For further information about other conventions relating to the rights of children and young people see Chapter 10 paragraphs 10.5 – 10.8.
- 4.10 There are some circumstances where a pupil and/or parents are not aware of the disability; have not received a clear diagnosis; do not accept the disability; or the child may not require special educational provision or reasonable adjustments but is afforded protection from disability discrimination. Although a lack of knowledge of a disability may be a defence to an allegation of having failed to make reasonable adjustments, a responsible body cannot rely on this if it could have been reasonably expected to know that the pupil had a disability. The lack of knowledge defence is discussed further in Chapter 8.

Victimisation

- 4.11 Victimisation is a special form of disability discrimination covered by SENDO. It is explained in more detail in Chapter 7. It applies whether or not the person is a disabled person.

4.12 SENDO states that a person discriminates against another person (who may or may not be disabled) if they treat him or her less favourably than they treat (or would treat) other people in the same circumstances because he has:

- brought proceedings under the disability discrimination provisions of SENDO or the DDA (whether or not they are later withdrawn);
- given evidence or information in connection with such proceedings;
- done anything else under the disability discrimination provisions of SENDO or the DDA; or
- alleged that someone has contravened the disability discrimination provisions of SENDO or the DDA.

4.13 A person also discriminates against another person if they treat him or her less favourably than they treat (or would treat) other people in the same circumstances because they believe or suspect that they had done or intends to do any of the above things.

4.14 However, it is not victimisation to treat a person less favourably because that person has made an allegation which was false and not made in good faith.

Aspects of education covered by SENDO

4.15 Every aspect of school life is covered. This includes:

- admissions;
- education and associated services; and
- suspensions and expulsions.

Admissions

4.16 SENDO States:

“It is unlawful for the body responsible for a school to discriminate against a disabled person:-

- (a) in the arrangements it makes for determining admission to the school as a pupil;
- (b) in the terms on which it offers to admit him to the school as a pupil; or
- (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.

This means:

4.17 Education providers must not discriminate against disabled pupils or prospective disabled pupils:

- in the decisions they make about who will be admitted to a school;
- in the terms that they offer pupils admission to the school; or
- by refusing or deliberately not accepting an application for admission to the school from someone who is disabled.

4.18 Sometimes a school is allowed to refuse a disabled pupil admission. This is discussed in Chapter 5.

Education and associated services

4.19 SENDO says:

“It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body”.

4.20 'Education and associated services' is a broad term that covers all aspects of school life for pupils and potential pupils. The following lists examples of the range of activities that may be covered by this term:

- preparation for entry to the school;
- admission criteria;
- the curriculum;
- teaching and learning;
- classroom organisation;
- timetabling;
- grouping of pupils;
- homework;
- activities that supplement the curriculum;
- after school clubs and activities provided by schools to their own pupils;
- school sports;
- school policies;
- breaks and lunchtimes;
- the serving of school meals;
- interaction with peers;
- assessment and exam arrangements;
- school discipline and sanctions;
- suspension / expulsion procedures;
- school clubs and activities;
- school trips;

- work experience;
- counselling services;
- medical support;
- preparation for the next phase of education; and
- preparation for the Transfer Test.

This is not an exhaustive or all inclusive list and it is not intended to be.

- 4.21 Other services that are provided to the public are not included. For example, if the governing body holds a parents meeting this activity is covered by Part 3 of the DDA. A Code of Practice explaining the duties in Part 3 of the Act: Rights of Access to Goods, Facilities, Services and Premises is available from the Commission.
- 4.22 In some areas of school life there may be an overlap of responsibility with other bodies that have duties under Part 3 of the DDA, (for example, providers of health services). Education providers must make sure that they fulfil their responsibilities, regardless of duties on other bodies.

Suspending or expelling a disabled pupil

- 4.23 SENDO says:

“It is unlawful for the body responsible for a school to discriminate against a disabled pupil by suspending or expelling him from the school”.

This means that:

- 4.24 It is unlawful for a responsible body to suspend or expel a pupil for a reason related to his or her disability.

Who has responsibilities under SENDO?

SENDO places responsibility for the implementation of its duties with the “responsible body”.

Responsible bodies

4.25 SENDO says:

“the Body responsible for a school is –

- (a) in the case of a grant-aided school, the board for the area in which the school is situated or the Board of Governors, according to which has the function in question;
- (b) in relation to an independent school, the proprietor”.

This means that:

the responsibility not to discriminate against disabled pupils or prospective disabled pupils varies depending on:

- the type of school; or
- the role in question

Responsible body according to type of school

Type of School	Responsible Body
<ul style="list-style-type: none">Grant-aided Schools	Board of Governors of the school
<p>Most schools in Northern Ireland are grant-aided and include special schools and mainstream schools in the following categories:</p> <ul style="list-style-type: none">Controlled SchoolsControlled Integrated schoolsVoluntary (Maintained) SchoolsVoluntary Grammar SchoolsGrant-Maintained Integrated SchoolsIrish Medium Schools	
<ul style="list-style-type: none">Independent Schools	The Owner of the school
<p>Independent schools are funded totally by fees paid by parents and sometimes charitable trust funds. There are very few independent schools in Northern Ireland.</p>	

Responsible body according to role

- 4.26 The following are a few examples of the roles that those specified by SENDO have responsibility for. The duties not to discriminate against disabled pupils placed on these bodies are outlined in Chapters 5, 6 and 7.

School Boards of Governors

4.27 In the majority of Northern Ireland schools it is the role of the Board of Governors to make sure that the school provides a good quality education. It is the Board of Governors that decides the school aims and policies on such issues as:

- admissions to the school;
- the curriculum on offer at the school;
- discipline within the school;
- how the budget will be spent;
- providing information to parents; and
- maintenance of school buildings.

SEND0 makes the Board of Governors responsible for ensuring that disabled pupils or prospective disabled pupils are not discriminated against in relation to any of their functions.

4.28 The Board of Governors delegates responsibility for the day-to-day running of the school to the Principal and Senior Management Team. The Board of Governors is legally responsible for the actions of the Principal and members of the Senior Management Team (see also points 4:34 – 4:41).

Education and Library Boards

4.29 The Education and Library Boards in Northern Ireland are responsible for a range of duties and services including:

- providing curriculum advisory and support services;
- special education assessment and Statements;

- providing information and advice to schools and parents on special educational needs matters;
- SEN Dispute Avoidance and Resolution Service;
- provision of home tuition and education otherwise than at school (EOTAS) to pupils who are temporarily or permanently unable to access school;
- home to school transport;
- school meals; and
- providing library services.

This is not an exhaustive list nor is it intended to be. Chapter 13 of this Code outlines the residual duties that SENDO places on Education and Library Boards. The Education and Library Boards are responsible for ensuring that disabled pupils or prospective disabled pupils are not discriminated against in relation to any of their functions.

Other bodies

4.30 There are a number of other bodies and organisations in Northern Ireland which are not specified by SENDO as responsible bodies but which have an input into the provision of education. It is recommended that these bodies / organisations take cognisance of the disability discrimination duties placed on responsible bodies for schools in the roles that they perform. These bodies / organisations may include:

- the Department of Education;
- Education and Training Inspectorate;
- the Council for Catholic Maintained Schools;
- the Northern Ireland Council for Integrated Education;

- Comhairle na Gaelscolaíochta;
- Governing Bodies Association;
- General Teaching Council;
- Council for Curriculum, Examinations and Assessments
- Staff Commission for Education and Library Boards;
- Trade Unions; and
- Health and Social Service Boards and Trusts.

Their support will be vital to the successful implementation of SENDO in Northern Ireland schools. Particularly in relation to the provision of:

- finance;
- resources;
- training;
- advice and guidance;
- medical support;
- information;
- technical services; and
- legal services

The duties imposed by SENDO are closely linked to the duties that bodies like the Department of Education and the Health and Social Service Boards and Trusts have under Section 75 of, and Schedule 9 to the Northern Ireland Act 1998 to promote equality of opportunity for disabled pupils. Further information about the Section 75 duties can be obtained free of charge from the Commission.

The education provider's legal responsibility for the actions of people working in schools

4.31 SENDO says:

- “(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Part as also done by his employer, whether or not it was done with the employer’s knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Part as also done by that other person.
- (3) Paragraph (2) applies whether the authority was –
- (a) express or implied; or
 - (b) given before or after the act in question was done.”

This means:

4.32 In general, people working in schools on a daily basis are not regarded as responsible bodies and a claim of disability discrimination cannot be made against such a person.

- 4.33 SENDO makes responsible bodies responsible for the actions of their employees and anyone working with the authority of the school. This is known as ‘vicarious liability’ and in the school sector includes teachers and substitute teachers, classroom assistants, volunteer helpers (including parents), teachers from support services, those providing school meals, after-school clubs, or anyone with a contract to provide any other service that is included in the broad scope of ‘education and associated services’. Under SENDO, the responsibility for disabled pupils involves everyone working with the authority of the school taking responsibility for the disability duties contained in SENDO.
- 4.34 As an employer, a responsible body cannot use the defence that disability discrimination took place without its knowledge or approval if the employee was working with its authority and it took no steps to prevent the situation arising.

Example 2 – A substitute teacher discriminates against disabled pupils but school’s lack of knowledge of the act is no defence

A school’s music teacher is on sickness leave so a substitute teacher is employed to cover the music lessons. The school has an inclusion policy covering pupils with a disability but fails to make the substitute teacher aware of this policy. Unknown to the school, the teacher makes no effort to teach two physically disabled pupils because she thinks that they will never be able to play the recorder. It is likely that this is less favourable treatment and is unlawful. Although the Principal and Board of Governors at the school are not aware that this is happening, the school has taken no steps to avoid potential disability discrimination and are likely to be responsible for the actions of the substitute teacher.

- 4.35 Responsible bodies need to make sure that employees and those working with the school's authority:
- are aware of, understand and apply the school's policies and practices as they relate to disability;
 - can help the responsible body to meet their duties to disabled pupils; and
 - do not act in a way that causes the responsible body to be legally responsible for a claim of disability discrimination.
- 4.36 A responsible body has a defence against a claim of disability discrimination based on the actions of an employee if it can prove that it took such steps as were reasonably practicable to prevent such acts. These may include:
- all staff were given access to training on special educational needs and disability awareness;
 - all staff were made aware that it is unlawful to discriminate against disabled people;
 - it has clear policies in place on disability matters which are clearly communicated to employees and anyone working with the authority of the school;
 - these policies are backed up by appropriate information, advice or training and are regularly monitored and reviewed;
 - disabled pupils and their parents have been consulted in the development and review of any such policies;
 - appropriate procedures are in place to back up such policies; or
 - any written policies are available in accessible formats to pupils and parents upon request.

- 4.37 A school's internal complaints procedure should be in writing and made available in an accessible format to disabled pupils or their parents upon request. A responsible body may have difficulty in defending a claim of unlawful disability discrimination by an individual member of staff if a complaint was made to the school but no action was taken to stop the discrimination.
- 4.38 Action by the school could include fully investigating a complaint of disability discrimination and taking appropriate remedial action to ensure that the circumstances that gave rise to the disability discrimination end and do not recur.

Example 3 – A school likely to have a defence against a claim of unlawful disability discrimination because it took action to stop the discrimination

A pupil with a physical disability needs access to private toilet facilities for personal care. The facilities must have hot water and sufficient room for a power wheelchair and the pupil's personal assistant. The pupils' toilets are not accessible but the school has identified some funding to redesign and adapt the toilets. In the meantime, the school agrees that the disabled pupil can use the staff toilet which is accessible. However, one member of staff who feels that the toilet should only be used by staff, regularly walks off with the key to the staff toilet or claims she cannot find it. Her actions place the pupil at a substantial disadvantage. When the parents of the pupil complain the Principal immediately makes the staff toilet accessible to the pupil and institutes the school's formal complaints procedure ensuring that the complaint and actions taken are well documented.

The responsible body is likely to have a defence against a claim of unlawful disability discrimination because action was taken to stop the discrimination.

- 4.39 Schools are responsible for anything done by their employees or agents with their authority. That authority may be explicit or implied and may have been given before or after the act in question.

Example 4 – A school is responsible for disability discrimination by a parent acting with its authority

A Principal has asked a parent to run a martial arts club for pupils after school. The parent running the club refused to admit a pupil with a visual impairment, saying that he cannot possibly do martial arts. Because the parent is running the club with the authority of the school, the parent is the agent of the school and the school may have difficulty in defending a claim of unlawful disability discrimination if it has done nothing to stop any discrimination on the part of the parent.

Unlawful agreements

- 4.40 SENDO says:

“(1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to –

- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
- (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
- (c) prevent any person from making a claim under this Chapter”.

This means:

- 4.41 Any term in a contract or agreement with schools which require someone to do something which would be unlawful under SENDO; exclude or limits the operation of SENDO; or prevent someone making a claim under SENDO is void.

Example 5 – An unenforceable agreement

A school agrees to a disabled pupil going on a field trip provided that the parents sign an agreement:

- releasing the school from responsibility for making any adjustments (which may be necessary to ensure that the pupil benefits from the planned activities on the trip); and
- stating that they will not take any action if the pupil is excluded from any activities.

It is likely that this agreement is not legally binding.

An agreement to settle or compromise a claim brought under SENDO is not affected by this rule.

5 Less Favourable Treatment

This chapter provides a brief outline of:

- The meaning of ‘less favourable treatment’

Definition of less favourable treatment

5.1 SENDO says:

“A responsible body discriminates against a disabled person if –

- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
- (b) it cannot show that the treatment in question is justified”.

This means:

5.2 A responsible body has a duty not to treat disabled pupils less favourably than other pupils for a reason relating to his or her disability when it cannot be justified.

Deciding if less favourable treatment has occurred

5.3 The following questions are relevant in deciding if a responsible body has discriminated against a disabled pupil or prospective disabled pupil:

- **Is the way the pupil has been or is being treated for a reason that is connected to his or her disability?**

There has to be a link between the reason for the less favourable treatment and the pupil's disability.

- **Is the treatment less favourable than someone gets if that reason does not apply to him/her?**

A comparison has to be made between the treatment the disabled pupil gets and the treatment other pupils (who are not disabled) get or would get. The comparison can be real or supposed.

- **Is the treatment justified under the law?**

There are some circumstances when treating a disabled pupil less favourably can be justified. The law says that less favourable treatment that is justified is not unlawful disability discrimination.

Justification

5.4 SENDO says that treating a disabled pupil or prospective disabled pupil less favourably is justified if it is the result of:

A permitted form of selection

- a grant-aided school applying the normal admission criteria that was drawn up by the school's Board of Governors under Article 16(1) of the Education (Northern Ireland) Order 1997 or Article 32(1) of the Education (Northern Ireland) Order 1998;
- any arrangements that allow an independent school to select pupils who have a general or special ability or aptitude.

Example 6 – School’s application of normal admission criteria justifies their refusal to admit girl with Chronic Fatigue Syndrome (ME)

A girl who has Chronic Fatigue Syndrome (ME) is at Stage 2 of the special educational needs assessment at primary school and her individual educational needs, such as extra time to complete tasks (such as coursework) are generally met through the special educational needs framework. However, in addition to this, SENDO also applies to how the extra help is provided. For example, if a teacher was to refuse without justification to allow her the extra time which, because of her disability, she requires to complete a particular piece of work, it is likely that this would be an unlawful act under the disability discrimination duties.

The girl wished to go to a grammar school that selects its intake on the basis of the Transfer Test results. As a result of the effects of her disability, the girl did not perform as well in the Transfer Test as was expected. When applying for a place at the grammar school her parents submitted a request, together with supporting evidence, for her special circumstances to be taken into account by the school when it was applying its admissions criteria. The school governors are under a statutory duty to consider this request and evidence. However, although her special circumstances were properly taken into consideration by the school, the girl did not obtain the academic standard required by the school’s admission criteria and she was refused admission.

The school’s refusal to admit the girl was based on her performance in the Transfer Test, which in turn was related to her disability. However, the school applied the normal admission criteria permitted under Article 16(1) of the Education (Northern Ireland) Order 1997 (academic standard) and is likely to have a justification for refusing to admit the girl.

A reason that is both material and substantial

Other than this, less favourable treatment can only be justified if there is a reason which:

- is material to the circumstances of the particular case (i.e. there is a clear connection between the reason for the treatment and the circumstances of the particular case); and
- is substantial (is more than minor or trivial).

In other words the reason for the less favourable treatment must be related to the specific case and have weight and some substance.

Example 7 – General admission policy discriminates against a boy who has Down syndrome

A mother wants her son who has Down syndrome to attend a mainstream nursery school. The school refuses to admit him until he is toilet trained. That is their policy for all pupils.

This boy has difficulty with bowel control as a result of having Down syndrome, so the reason for delaying his admission is related to his disability. The treatment he receives has to be compared with a pupil who has bowel control. A pupil who has bowel control is not asked to delay admission to the school so it is less favourable treatment. The decision was not based on any assessment of the boy's particular circumstances but on a general admission policy of the school, this is neither material nor substantial so it is unlikely that the reason for the less favourable treatment will have any weight or substance to justify it. It is likely that the general policy amounts to unlawful disability discrimination.

No reasonable adjustment could have been made

It may not be possible to justify less favourable treatment if there are reasonable steps that could have been taken to avoid putting disabled pupils at a substantial disadvantage but were not. Reasonable Adjustments are discussed in Chapter 6.

Example 8 – Social Exclusion of boy with Asperger’s syndrome

Through a Statement of special educational needs, a primary school boy with Asperger’s syndrome has a classroom assistant. The teacher regularly gives him repetitive, low-level tasks to complete with the support of the classroom assistant who closely follows him and restricts his interaction with his peers. The boy is rarely given the opportunity to participate or communicate with his peers when the teacher subdivides the pupils into groups to complete a task. The class teacher has limited direct contact with the pupil.

The treatment this pupil gets has to be compared with the treatment other pupils who do not have Asperger’s syndrome get (or would get). These pupils are not socially excluded, nor would they be. So, for a reason connected to his disability, this boy is being treated less favourably than other pupils to whom that reason does not apply. There were reasonable adjustments that the school could have made but did not. For example, disability awareness training could have been made available to staff, advice could have been sought from special schools on how best to include the pupil in group tasks, the role of the classroom assistant could have been reviewed. The school is unlikely to be able to justify the less favourable treatment of the boy and it is likely that this is unlawful disability discrimination.

- 5.5 The following examples of less favourable treatment drawn from everyday situations might help to illustrate this concept.

Example 9 – School refuses to admit boy who has learning and behavioural difficulties even though he passes entrance test

The parents of a twelve-year-old boy apply for him to go to an independent school. He passes the entrance test, but when the school hears that he has learning and behavioural difficulties they refuse him admission.

This boy is turned down for admission because the school hears that he has learning difficulties and behavioural difficulties that are directly related to his disability. The reason he is refused admission is related to his disability.

The treatment is less favourable than it is for someone who does not have learning and behavioural difficulties. As the boy had already passed the entrance test, this is unlikely to be justified.

Example 10 – School wants a girl to have her lessons in a separate classroom

An eleven-year-old girl starts secondary school. The school wants her to have all her lessons in a separate classroom, in case she frightens the other pupils with her muscle spasms and the uncontrollable noises she makes.

The muscle spasms and the uncontrollable noises are a natural part of her disability, so the treatment she was to receive would be for a reason connected to the girl's disability. The treatment she was to receive has to be compared with the treatment of pupils who did not have muscle spasms or make uncontrollable noises. This girl would be isolated from the curriculum and from her classmates in a way that others would not. So this girl is being treated less favourably than other pupils to whom that reason does not apply. The reason is based on general assumptions and is unlikely to justify the treatment. This is likely to be unlawful disability discrimination.

Example 11 – School excludes pupil with learning difficulties from trip to the theatre

Pupils at a special school for pupils with physical disabilities are going on a trip to the theatre. The trip is not offered to a pupil who also has a learning disability on the basis that the school think that he would not understand the play.

The reason for not offering the boy the opportunity to go on the trip is his limited understanding. The reason for the treatment is directly related to this boy's disability. The treatment he was to receive has to be compared with the treatment that other pupils who did not have limited understanding received. It is less favourable treatment because they were offered the trip. The assumption that the boy would not understand the play was a general assumption and the school is unlikely to be able to justify the less favourable treatment. This is likely to be unlawful disability discrimination.

Example 12 – Boy with dyspraxia given extra homework for not doing his homework the night before

At the end of lessons, a supply teacher in a primary school writes the class homework on the board. A boy who has dyspraxia is unable to copy it down in the time given. Next day he is given extra homework to do.

The reason for the extra homework is the failure to do the homework the night before. This is connected to his inability to write it down in the time available, which is a part of his disability. The treatment he received has to be compared with the treatment received by other pupils who had done their homework. They were not given extra homework so it is less favourable treatment. The teacher assumed that all pupils would be able to write down the homework in the time at the end of the lesson. It is unlikely that the treatment can be justified. In addition, reasonable adjustments may have been possible (see Chapter 6), for example, more time could have been given to write the homework down. The extra homework given to him is likely to amount to unlawful disability discrimination.

Example 13 – Pupil with ADHD excluded from school trip because he is difficult to manage

A pupil at an Irish medium school has ADHD. The school have arranged to take his class away for the weekend to Donegal Gaeltach. The school decides that the pupil cannot attend because he would be difficult to manage. They have concerns regarding his behaviour on the minibuss and their insurance cover for him for the trip.

This is less favourable treatment for a reason related to the pupil's ADHD. The treatment that the pupil received has to be compared with the treatment that the other pupils who do not have ADHD received.

The school's reason for the less favourable treatment is based on management, health and safety and insurance issues. There may be enough weight and substance to this reason to justify the treatment. However, the responsible body has not carried out a risk assessment, explored alternative methods of including the boy with the parents, or genuinely investigated their insurance concerns. This is likely to be less favourable treatment which they are unlikely to be able to justify.

Example 14 – Health and Safety not a justification for less favourable treatment

A pupil with hydrocephalus attends a mainstream primary school. The school are concerned that the pupil will fall and hurt herself whilst in the playground at break or lunchtimes. The pupil has no history of falling. As a precautionary measure and without carrying out a risk assessment the school provides the girl with a protective helmet that she must wear when she goes out to the playground. Some other pupils at the school tease the girl about wearing the helmet and call her names. The girl feels increasingly excluded by her peers because she has to wear the protective helmet.

Although the school's action is motivated by a desire to protect the pupil, pupils who do not have hydrocephalus do not have to wear helmets in the playground at break or lunchtime although they are equally likely to fall and hurt themselves.

The school carries out a risk assessment in order to assess whether or not there is a need for the pupil to wear the protective helmet, and to ensure that by asking her to do so, they are not treating her less favourably due to her disability. The school also carries out disability awareness-raising within the school, which includes information on how someone wearing a protective helmet should be treated. The school also reviews its anti-bullying policy to ensure that it protects disabled pupils. These are likely to be reasonable steps that the school could take.

Example 15 – Teacher finds a suitable alternative for a boy excluded from football for health and safety reasons

A pupil who attends a special school has hydrocephalus. Whilst playing football with pupils visiting the school from a local mainstream school the boy gets excited and attempts to head the football.

The teacher is worried that if the pupil continues to play he will attempt to head the ball again and this could have serious consequences for him. For health and safety reasons the teacher decides that the pupil should not continue to play. As an alternative the teacher asks the boy to assist him referee the game. This way the teacher can shield the pupil should the football be kicked near his head.

The treatment that the pupil received has to be compared with the treatment that the others who did not have a shunt received. They were allowed to continue playing football whereas this pupil was not so it is less favourable treatment. However, the reason for the less favourable treatment is likely to be justified as the risk of injury has been assessed to be a health and safety issue. In addition, an alternative is found that allows the boy to continue enjoying the game with his peers. The responsible body is likely to be able to justify the less favourable treatment and in a manner that is inclusive.

Example 16 – Pupil with past disability refused access to work experience placement

A secondary school is arranging work experience placements for its pupils. Two years ago, a boy experienced a period of depression lasting 18 months, during which he attempted suicide. The school decided that the placement would be too stressful for him and did not arrange a placement for him. They failed to consult the boy, seek advice about the placement from his General Practitioner, or consider options for providing additional support during the placement. This is likely to be less favourable treatment related to the boy's past disability and is likely to be unlawful discrimination.

Example 17 – Pupil with autism suspended from school for hitting teacher

A pupil with autism goes to the front of the queue at school dinners. A teacher standing nearby tells him not to ‘barge in’. The pupil becomes anxious but does not move. The teacher insists that the pupil must not ‘jump the queue’. The pupil becomes more anxious and agitated, hits the teacher and as a result is suspended from the school.

Particular features of the boy’s autism are that he has difficulty in managing social situations and difficulty in managing increasing levels of anxiety. He is unable to understand the purpose of a queue and symbolic language such as ‘barge in’ and ‘jump the queue’. If the reason for suspension (hitting the teacher) is related to these features of his autism, then it is less favourable treatment for a reason related to his disability. It is less favourable treatment than someone would get if they had not hit the teacher.

Any assault is likely to represent a material and substantial reason justifying exclusion in terms of preserving order and discipline in the school. However, there may be reasonable steps that might have been taken to prevent the incident happening in the first place. For example staff might have been trained:

- about autism and how the disability manifests itself;
- on strategies to avoid difficulties, e.g. avoiding negative instructions and symbolic language such as ‘barging in’ and ‘jumping the queue’, and
- on strategies to overcome difficulties if they do arise.

For the pupil there might have been:

- particular training for social situations, such as queuing; and
- the development of strategies for communicating that he is upset or confused.

If reasonable steps of this type could have been taken but were not, it may not be possible for the school to justify the exclusion. If steps of this type were taken but the incident still happened, the school is likely to be able to justify the exclusion.

Who decides if treatment is less favourable

- 5.6 If a disabled pupil, a potential disabled pupil or their parent feels that there has been less favourable treatment a range of options are available as noted in Chapter 12 of the Code. Ultimately, a Special Educational Needs and Disability Tribunal for Northern Ireland (SENDIST) will decide if less favourable treatment has occurred and whether or not that treatment was justified.

Anti-social behaviour

- 5.7 The duty not to treat disabled pupils less favourably does not mean that disabled pupils have an excuse for disruptive or antisocial behaviour, or that they cannot be punished for such behaviour. There has to be a direct relationship between the reason for the less favourable treatment and the pupil's disability for it to be considered discrimination.

Example 18 – Banning pupil with a hearing impairment from school trip because of his rowdy and troublesome behaviour justified because his behaviour was not directly connected to his hearing impairment

On a visit to the museum, the disruptive and anti-social behaviour of some pupils in the class puts further visits to the museum by other pupils at risk. The school decides that the pupils in question should be banned from taking part in the next school trip because of their behaviour. One of the pupils has a hearing impairment.

The disruptive and anti-social behaviour is not directly connected to the pupil's hearing impairment.

The ban from the trip may be less favourable treatment than that given to pupils who did not behave in this way, but it is not for a reason related to the pupil's disability. This is likely to be lawful.

6 Reasonable Adjustments

This chapter provides a brief outline of:

- who must make reasonable adjustments;
- what are reasonable adjustments;
- when reasonable adjustments should be made;
- what are the exceptions to the reasonable adjustment duty; and
- who decides what is reasonable.

The duty to make reasonable adjustments

6.1 SENDO says:

“The responsible body for a school shall take such steps as it is reasonable for it to have to take to ensure that –

- (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
- (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled”.

This is often referred to as the reasonable adjustments duty.

This means:

- 6.2 It is the responsible body for a school that has a duty to make reasonable adjustments. The responsible body under SENDO is the Board of Governors of a grant-aided school or the Proprietor of an independent school, or the Education and Library Board depending on which has the function in question (see Chapter 4).
- 6.3 Reasonable adjustments are the reasonable steps that a responsible body should take in order to avoid putting disabled pupils and prospective disabled pupils at a substantial disadvantage compared to other pupils.
- 6.4 The responsible body for a school discriminates against a disabled pupil if, to the detriment of the pupil, it fails to make a reasonable adjustment without justification.
- 6.5 Reasonable adjustments should be made for disabled pupils in general, but disability discrimination only occurs if a failure to make adjustments puts an individual pupil at a substantial disadvantage. This means that the duty to make reasonable adjustments is both an anticipatory and continuous duty and the steps that will need to be taken to meet this duty will continue to evolve over time.

Substantial disadvantage

- 6.6 The legal term “substantial disadvantage” means a disadvantage that is more than minor or trivial. Therefore, the threshold is in practice lower than might normally be understood by the term “substantial”.

6.7 When deciding whether or not a pupil has experienced or is experiencing a “substantial disadvantage”, schools need to take account of a number of factors. These might include:

- the time and effort a disabled pupil must invest in a task;
- the inconvenience, indignity or discomfort a disabled pupil might have suffered or be suffering; and
- the loss of opportunity or the reduced progress that a disabled pupil may make in comparison to his or her non-disabled peers.

Example 19 – Individual arrangements when taking exams

A secondary or grammar school that fails to negotiate individual arrangements with the examinations body for disabled pupils taking GCSE or ‘A’ Level exams (e.g. extra time) is likely to place disabled pupils at a substantial disadvantage.

Example 20 – Providing information in accessible format

A secondary school has a unit specifically for pupils with a visual impairment. The educational needs of the pupils, such as classroom assistants, provision of large print or Braille versions of documents are met through the special educational needs framework. As a result, the school is already well equipped through the SEN framework to enlarge text and provide Braille versions of documents for pupils who use Braille. However, in addition to this, SENDO also applies to how the extra help is provided or used. For example, if a teacher was to refuse without justification to supply materials in Braille to a pupil who requires them for a particular lesson, it is likely that this would be an unlawful act under the disability discrimination duties.

When the pupils are working in the unit all information is provided at the beginning of the lesson in the full range of formats they need. However, when they are working with other pupils in the mainstream classes, the school regularly fails without justification to provide materials in the different formats in time for the lessons. This failure leaves the disabled pupils unable to refer to written information during the lessons, unlike their non-disabled peers. This is likely to put the disabled pupils at a substantial disadvantage in comparison with non-disabled pupils. The unjustified failure of the school to take reasonable steps to prevent this substantial disadvantage is likely to be unlawful.

When reasonable adjustments should be made

- 6.8 The duty to make reasonable adjustments is an anticipatory duty, it is a proactive as well as reactive duty. Schools cannot, in general, wait until a disabled pupil arrives at the school, or a pupil acquires a disability, or a pupil's disability worsens before making reasonable adjustments. This may be too late to make the necessary changes to prevent the pupil being at a substantial disadvantage.

- 6.9 It is the duty of responsible bodies to try to ensure in advance that disabled pupils in general would not be placed at a substantial disadvantage, in comparison to other pupils. The potential for a substantial disadvantage should trigger a consideration of what reasonable steps might need to be taken, to meet the needs of disabled pupils.
- 6.10 This means that responsible bodies will need to keep their policies practices and procedures under regular review, to try to make sure that they do not discriminate against disabled pupils in general. Disabled pupils and their parents could be consulted in the development and review of such policies. Written policies should be made available in accessible formats to pupils and parents upon request.
- 6.11 Policies, practices and procedures need to have flexibility, so that the school can respond to individual needs as they arise. It is important that schools' complaints procedures include the handling of complaints of disability discrimination, to try to ensure that any difficulties can be resolved without the need to resort to the SENDIST. It is also important that procedures are in place to ensure that any disability discrimination by staff will be identified, immediately halted and steps taken to prevent future disability discrimination.
- 6.12 The following are some examples of reasonable adjustments that might be made by schools.
- 6.13 Not every school will need to adopt the same approach as the schools in these examples. Each school should identify the steps that need to be taken in their particular circumstances. The important point about the steps is that they try to ensure that disabled pupils are not at a substantial disadvantage, and provide solutions that meet the needs of disabled pupils. There will be many ways of doing this.

Example 21 – Include disability in policy on bullying

A primary school reviews its policy on bullying to make sure that it deals with bullying linked to disability. This is likely to be a reasonable step that the school could take.

Example 22 – Consideration of special circumstances relevant to performance in Transfer Test

A boy with dyslexia, who does not have a Statement, sat the Transfer Test. Due to the effects of his disability he did not obtain a grade which would ordinarily have secured him a place in the local grammar school.

The boy's parents submit a request, together with supporting evidence, of his special circumstances to be taken into account by the school when applying its admissions criteria. The school governors are under a statutory duty to consider this request and supporting evidence.

In order to comply with its statutory duties, including the duty not to discriminate against disabled pupils, the school has arranged for the Principal and the Board of Governors to receive training on analysing special circumstance evidence and on their duties under SENDO. This is likely to be a reasonable anticipatory adjustment for schools to make. The school also decided that in cases where evidence is inconclusive they will consider seeking further expert advice.

Example 23 – School checks that outdoor pursuits centre is accessible before booking

A secondary school takes pupils to an outdoor pursuits centre each year. The school can get a reduced rate if they make a three year booking with the same centre. The school checks before making the booking that the centre's facilities are accessible to disabled pupils if they were part of a group. This is likely to be a reasonable step that the school could take.

- 6.14 Although the changes that were made in these examples were of a general nature, changes may be prompted by thinking about groups of pupils or individual pupils who might come to the school.

Example 24 – School discusses individual requirements with parents prior to disabled pupils' admission

An independent school sets up meetings with the parents of disabled pupils who have applied for admission to the school. The meetings are used to discuss any reasonable adjustments that can be put in place for the entrance exams. The particular arrangements for an individual pupil can then be put in place before the pupil takes the entrance exam. This is likely to be a reasonable step that the school could take.

Example 25 – School works with parents to identify ways of meeting the individual requirements of their son who has insulin dependent diabetes

From a pre-admittance questionnaire a primary school becomes aware of a new pupil who has insulin dependent diabetes. In anticipation of the pupil's arrival the school consults with the pupil's parents about the steps needed to be taken in order to manage the boy's diabetes on a daily basis. These steps may include:

- training all staff on diabetes awareness;
- providing a quiet room for the boy to rest or where the parents can administer insulin injections if necessary during school hours; and
- drawing up and issuing guidance to all members of staff on action that they may take if an emergency situation should arise.

These are likely to be reasonable steps that the school could take.

Example 26 – Use of buddy system promotes inclusion of pupils with speech and language impairments in mainstream lessons

A large secondary school is opening a unit specifically for pupils with speech and language impairments. They plan to include the pupils from the unit in mainstream lessons. One of the challenges is how to enable the pupils from the unit to follow the timetable. They might otherwise be at a substantial disadvantage. The school has an established 'buddy system' as part of its anti-bullying policy. After discussions with pupils, parents and the speech and language specialist teacher, the school extends its buddy system. It provides training for additional volunteer buddies to accompany disabled pupils from class to class. This is likely to be a reasonable step that the school could take.

Example 27 – PE lessons devised for pupil who is a wheelchair user

A boy with a spinal injury who uses a wheelchair wants to attend his local primary school. The teachers are concerned, as they do not know what he should do in PE lessons. The boy might be at a substantial disadvantage if he did not do PE. The school discusses with the boy and his physiotherapist how they might adjust the PE curriculum appropriately. Amongst other things the school includes exercise routines to carry out on the mat, which other pupils will also do and benefit from, and ball work sitting on chairs in a circle. These are likely to be reasonable steps that the school could take.

Example 28 – Initial provision of accessible text helps girl with dyslexia recognise unfamiliar vocabulary

A girl enrolled at a Grammar school has dyslexia which makes recognising unfamiliar vocabulary difficult for her. Consequently she finds difficulty with the 'A' level texts supplied by the school.

After discussion with the pupil and her parents the school agrees to provide information in a more individually suitable format until she develops an understanding of the topic. In addition, the teacher also meets regularly with the pupil to discuss her progress and any further adjustments needed. This is likely to be a reasonable step for the school to take.

Example 29 - Pupil with past disability protected from less favourable treatment in relation to exam timetable

A post-primary pupil had Chronic Fatigue Syndrome (ME) which lasted for 18 months. Two years later the pupil still needs to be very careful not to over-exert herself in order to avoid a recurrence of her symptoms. She is due to sit her GCSE examinations. When she is given a copy of the exam timetable she discovers that on one particular day she is due to sit two papers each lasting 1 hour 30 minutes in the morning with a 15 minute break between. She is due to have a break of 1 hour for lunch before sitting a third paper lasting 1 hour 20 minutes in the afternoon.

Realising that the examination timetable could result in the pupil being treated less favourably the school contact CCEA on the pupil's behalf and ask for reasonable adjustments to be made. CCEA agree that the school can arrange for this pupil to take these examinations over two days. This is likely to be a reasonable adjustment that the school and CCEA could make.

Example 30 – Reasonable adjustments made for pupil who has post-traumatic stress disorder

A primary school pupil who lost his parents as a result of an accident whilst he was at school is fostered for the past year by an aunt. Since the accident the boy has displayed separation anxiety every time he has to be separated from his aunt.

The school has a policy that those leaving pupils to school or collecting pupils from school must leave the pupils in and collect them from the playground. The boy is so upset when he gets to class every day that he cannot concentrate or do his school work. It is likely that the general application of the policy on leaving and collecting pupils would mean that he would be treated less favourably for a reason related to his post-traumatic stress disorder. As a reasonable adjustment the school agree to permit the boy's aunt to accompany him into class every day through a back entrance and remain with him until the teacher gets him settled.

Planning reasonable adjustments

- 6.15 As well as fulfilling the anticipatory duty, in order to be properly prepared, responsible bodies will need to plan ahead. Good information is needed about pupils who may be coming to the school and for whom they may need to make reasonable adjustments.
- 6.16 Discussions with the local Education and Library Boards or the Department of Education may help schools to find out about the numbers of prospective disabled pupils and the types of disability they may have. These bodies in turn might wish to discuss with local health and social services bodies, the possible numbers of disabled pupils who may be going to attend their schools.

- 6.17 Before a pupil is admitted, schools should consider discussing with parents and pupils themselves the type of adjustments that may be needed. Consulting with the Education and Library Board support services, voluntary groups, parent groups and special schools in addition to the Department of Education may also provide good information about appropriate adjustments.

Example 31 – Timetable adjustments lead to successful inclusion of girl with Osteogenesis Imperfecta (brittle bones)

A young girl who has Osteogenesis Imperfecta and walks using a rollator wants to attend a mainstream primary school. The school's buildings have narrow walkways. For her own safety, her parents asked if she could leave class five minutes before the end of lessons in order to miss the rush in the corridors. The school carefully timetabled classes, breaks and meal times to ensure that the girl was able to avoid crowded corridors. They also created safe environments for her to mix with her peers during lunch and other breaks. This is likely to be a reasonable step for the school to take.

- 6.18 Parents and pupils have a right under SENDO to make a request for confidentiality in relation to any disability disclosed to the school. This is discussed further in Chapter 9 (see also Chapter 10 paragraphs 10.5 – 10.8 for information on other conventions relating to the rights of children and young people). However, sharing information with teachers and others may help the school to make reasonable adjustments to make sure that individual pupils can access the school and the curriculum. Information sharing and confidentiality are discussed in more detail in Chapter 9.

Example 32 – Consulting parents and other professionals helps school devise staff training on pupil’s rare condition

A small rural primary school has no experience of disabled pupils. The school is going to admit a five-year-old girl with a rare syndrome involving moderate learning difficulties, poor muscle tone, and speech and language difficulties. The Principal consults the girl's mother, the Education and Library Board Support Services, Speech and Language Therapist, Occupational Therapist, Physiotherapist and a local voluntary organisation. Together they devise a series of training events that enhance staff knowledge and confidence and the girl has a positive start to school. This is likely to be a reasonable step to take to prevent the pupil from being placed at a substantial disadvantage.

A continuing anticipatory responsibility

- 6.19 The anticipatory nature of this duty means that responsible bodies need to ensure that staff are appropriately trained in disability awareness and that procedures are in place to identify and cater for a pupil’s individual needs.
- 6.20 Schools need to keep their policies, practices and procedures under review to make sure that:
- generally, education provided is accessible to disabled pupils; and
 - individually, the needs of disabled pupils are being met and so they are not being substantially disadvantaged.

- 6.21 To achieve these goals there must be good communication between the school, pupil and parents both at the time of admission and throughout the pupil's education. This may involve proactive requests for one to one discussions with pupils and/or their parents to assess how effective any adjustments made are.

Example 33 – School reviews and amends policy

A girl with one arm was happily included in her nursery class, which had a separate playground from the main school. When she moves up to Primary 1 she starts to be bullied by older pupils in the main playground. Her teacher realises this because the girl becomes withdrawn in the classroom.

The school's anti-bullying policy includes bullying related to disability. The school decides that it needs to take a number of steps, including:

- fully investigating the teacher's concerns in accordance with their anti-bullying policy;
- informing the parents of all the children concerned;
- setting up support mechanisms for the individual child to mitigate the likelihood of any further bullying and to assist her in reporting any further incidents of bullying to a member of staff;
- addressing the whole issue of name-calling and bullying, including bullying related to disability, in two school assemblies; and
- undertaking work on disability issues in a number of classes.

These are likely to be reasonable steps that the school could take.

Exceptions to the reasonable adjustment duties

6.22 SENDO says that the requirement to make reasonable adjustments:

“does not require the responsible body to –

- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
- (b) provide auxiliary aids or services”

This means:

Physical barriers

6.23 Schools are not immediately required to change the way buildings are constructed, although they could if they wanted to. Structural changes to buildings are required by SENDO by a long-term accessibility planning approach.

6.24 This does not mean that schools should do nothing where there is a physical barrier to a pupil. Schools are still required to take reasonable steps to ensure that a disabled pupil is not at a substantial disadvantage. It may be possible to make reasonable adjustments that will be enough in the short term to make sure that school buildings and the curriculum are accessible to disabled pupils.

6.25 The improvement of school buildings over time, in order to make the curriculum more accessible to disabled pupils, is covered by the duties on schools and Education and Library Boards to prepare ‘accessibility plans and strategies’ (Chapter 11).

- 6.26 Accessibility planning guidance for schools and Education and Library Boards may be obtained from the Department of Education (DENI).

Auxiliary aids and services

- 6.27 Within the Special Educational Needs Framework schools and Education and Library Boards determine the special educational provision required to meet a pupil's needs. Depending on the individual circumstances of the pupil, auxiliary aids and services may be provided through this Framework.

The disability discrimination duties in SENDO do not provide an extra way of getting special educational provision.

Example 34 – How SEN provisions are used is covered by the disability discrimination law

A deaf girl attends her local primary school with the regular support of a classroom assistant, and regular visits from a peripatetic teacher of deaf pupils. Although she is deaf, her spoken language and use of English is well established. Her educational needs, such as a classroom assistant and radio aid are met through her special educational needs Statement. SENDO covers how the extra help is used. For example, if a teacher was to refuse to use the radio microphone, it is likely that this would be an unlawful act under the disability discrimination duties.

- 6.28 Where pupils attend an independent school at their parents' expense, the school normally arranges the extra educational help, and parents are usually charged for this.

Example 35 – An independent school can ask the parent of a disabled pupil to pay for additional educational help

A pupil with moderate learning difficulties attends an independent school. He has four lessons a week with a specialist teacher. In addition to the normal school fees the parents are asked to pay the exact cost of the lessons. This is likely to be lawful. Less favourable treatment might occur if charges were made at a level intended to deter disabled pupils from coming to the school.

Reasonableness

Who decides what is reasonable

6.29 It is the responsible body that must decide for itself what is reasonable in the circumstances of a particular school. An explanation is given in Chapter 4 of the Code of who or what a responsible body is (4.25 – 4.29). Decisions made by responsible bodies are nevertheless open to legal challenge, (Chapter 12) where the Tribunal will ultimately decide whether or not an adjustment was reasonable.

When it is reasonable to take a particular step

6.30 Responsible bodies need to take reasonable steps to make sure that disabled pupils are not at a substantial disadvantage compared to other pupils. There may be a range of ways in which adjustments might be made. In considering whether it is reasonable to have to take a particular step, responsible bodies should take into account the guidance contained in this Code.

6.31 SENDO requires that reasonable steps be taken to ensure that disabled pupils will be included in every aspect of school life. A careful consideration of how this is best achieved will help the responsible body to determine what a reasonable step might be. Any relevant factors need to be explored and balanced. They need to be weighed against the potential for a disabled pupil to be placed at a substantial disadvantage.

6.32 The following list highlights some of the factors that might need to be taken into account in deciding whether a step is reasonable or not:

- the extent to which the step would achieve a successful outcome;
- the financial resources available to the responsible body;
- the cost of taking a particular step;
- the extent to which it is realistic to take a particular step;
- the extent to which additional educational provision will be given to disabled pupils at the school through the Special Educational Needs Framework, provision for the pupil from the school's own budget or sought by a school from the Education and Library Board;
- health and safety requirements;
- the interests of other pupils and potential pupils; or
- the need to keep up academic, musical, sporting and other standards.

Where a factor is relevant it needs to be considered. It should be used to help determine what steps might be taken in order to ensure that a disabled pupil is not at a substantial disadvantage.

Justifying a failure to make reasonable adjustments

6.33 In some circumstances there may be justification for a failure to make reasonable adjustments. SENDO says that failing to make reasonable adjustments can only be justified if:

“the reason for it is both material to the circumstances of the particular case and substantial”.

6.34 If a responsible body is to justify making a decision not to make reasonable adjustments for a disabled pupil, it has to give a sound reason. There has to be a clear connection between the reason that the school gives and the circumstances of the particular case. The reason also has to be a substantial reason; that is, one that is more than minor or trivial.

6.35 The responsible body may choose to make certain adjustments rather than others. For example, on the grounds of cost or how likely it is to be successful. On other occasions careful consideration may result in a decision that there is no adjustment that it would be reasonable to make, for example, where a disabled pupil would not meet an objective standard needed to take part in a particular activity even with the adjustment.

6.36 The need to maintain standards should not be used as a means to exclude a disabled pupil from an activity. Creative ways of including disabled pupils should be sought.

- 6.37 Some examples of schools considering what might be reasonable are given below. Each example is considered in the light of relevant factors to determine how the responsible body might meet the reasonable adjustments duty. Each example shows different factors and it is possible to interpret each in a number of different ways. There is no perfect answer to each example; rather, there is a range of possibilities. The examples show the process to be gone through, rather than the particular conclusion that is reached.

Example 36 – The need to maintain standards

A school, which includes a number of disabled pupils, plans a musical Christmas production. One of the disabled pupils has a powerful singing voice and is considered for a lead role. However, the stage is inaccessible.

The disabled pupil's participation will help to maintain high standards set in past musical productions. The school decides that if they were to run the production over two nights instead of one, seating for the audience could be arranged around the outside of the ground floor space allowing the centre area to be used for the production. There would be no additional cost to this option but the audience might not get such a good view. The school decides that, in order not to put the disabled pupil at a substantial disadvantage, and having considered the need to maintain standards, it will rearrange the audience seating and run the production on two evenings. The school has considered the factors and has identified a reasonable adjustment. In making this adjustment it is likely to be acting lawfully.

Example 37 – The interest of other pupils

An exchange trip is offered to pupils studying French in a grammar school. Accessible transport arrangements were made but at the last minute a suitable host who had been identified to accommodate a pupil who is a wheelchair user drops out. The Principal of the school liaises with the French organisers about an alternative host but they are unsuccessful in identifying one. It was not realistic for the school to allow the disabled pupil to go without a host.

The school thought about cancelling the trip, but if the other pupils did not go they would lose the opportunity of improving their French. In the interests of other pupils the school decides to go ahead with the trip but arranges additional tuition in school for the disabled pupil. The school has considered the factors and, whilst it has not been able to identify a reasonable adjustment that would enable the disabled pupil to go on the trip, it is likely to be acting lawfully.

Example 38 – Health & Safety

Two physically disabled pupils are going to be admitted to a primary school next term. The school is concerned that the pupils' standing frames will present a health and safety risk to other pupils:

- in the playground; and
- during an emergency evacuation.

The pupils' educational and physiotherapy programme requires regular movement and the use of the standing frames. Without this movement, the pupils would begin to develop contractures. They would also not be able to access parts of the curriculum where standing is necessary.

The school has to decide what steps it might be reasonable to take. The school seeks suitable, qualified opinions on the risks of standing frames being used in the school environment and on the pupils not being able to access them to stand in. The local health and safety officer believes that there is a potential risk in the frames being used in the classroom and in the playground but advises on how to minimise the risk. The local fire officer is also contacted to train staff on safe evacuation of children with mobility difficulties.

The school considers the options and identifies a suitable place to store the frames when not in use, that takes account of health and safety requirements. In making this adjustment it is likely to be acting lawfully.

7 Victimization

This chapter provides a brief outline of:

- who is regarded as a victim; and
- the circumstances in which victimisation occurs

7.1 Victimization 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 victimisation

7.2 A person victimises someone if they treat that person less favourably than they treat (or would treat) other people in the same circumstances (whether or not the person is disabled) because they have:

- brought proceedings under the Disability Discrimination provisions of SENDO or the DDA 1995 (whether or not they are later withdrawn);
- given evidence or information in connection with such proceedings;
- done anything else under the disability discrimination provisions of SENDO or the DDA 1995; or
- alleged that someone has contravened the disability discrimination provisions of SENDO.

Chapter 12 explains who may take legal action.

Example 39 – Non-disabled pupil acts as a witness in a complaint by a disabled pupil against a teacher

A non-disabled pupil acts as a witness in a complaint by a disabled pupil against a teacher and after investigation of the matter the Principal upholds the disabled pupil's complaint. Afterwards, the non-disabled pupil finds that her homework grades in the subject taught by this teacher are consistently lower than is usual for her. Her parents are told at a parents' evening that her behaviour is 'not acceptable', although she has never been in trouble in this or any other class. She and her parents believe that these events are connected to her support for her disabled friend. Although the pupil concerned is not disabled, this is likely to be victimisation under SENDO, and therefore unlawful.

- 7.3 SENDO also says that a person victimises someone if they treat that person less favourably than they treat (or would treat) other people in the same circumstances (regardless of whether or not the person is disabled) because they believe or suspect that they had done or intend to do any of the above things.

False allegations of disability discrimination

- 7.4 However, it is not victimisation to treat a person less favourably because that person has made an allegation that was false and not made in good faith.

Example 40 – A pupil with epilepsy makes false allegations that she is constantly excluded from after-school activities

A pupil with epilepsy makes a series of allegations that she and other disabled pupils are constantly excluded from after-school activities (such as sport and music) because of their disabilities. She is sometimes difficult and disruptive in the after-school sessions and has upset other pupils. Her complaints have been directed against the member of staff co-ordinating after-school clubs at the school. The allegations are investigated and found to be without any foundation, and are considered to have arisen from a personal vendetta against the staff member. Other disabled pupils in the school feel that they have been positively included in the after-school sessions and have no complaint.

After discussion, the co-ordinator decides that he will allow the pupil to continue in the after-school activities, provided that she modifies her behaviour and does not disrupt the other pupils. Because of the particular circumstances, this is not likely to be regarded as victimisation and hence not likely to be unlawful. The pupil is being asked to modify her behaviour for reasons unrelated to her disability but directly relevant to the well-being of other pupils.

8 Lack of Knowledge Defence

This chapter provides a brief outline of:

- how the lack of knowledge about a pupil's disability is / is not a defence against a claim of disability discrimination;
- what schools might reasonably do to find out about the existence of or the nature of a pupil's disability, and
- whether they are to be able to rely on the lack of knowledge defence subsequently.

A defence against a claim of disability discrimination

8.1 SENDO says:

“In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows –

- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
- (b) that its failure to take the step was attributable to that lack of knowledge”.

“The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled”.

SENDO
Part III
Chapter I
Article 15(3)

SENDO
Part III
Chapter I
Article 15(4)

This means:

- 8.2 A responsible body cannot be held legally responsible for a claim of unlawful disability discrimination if it did not know, and could not reasonably have been expected to know that a pupil was disabled. This is known as the 'lack of knowledge defence.' The defence applies to disability discrimination by:
- less favourable treatment; and
 - failure to make reasonable adjustments.

When lack of knowledge is not a defence against a claim of disability discrimination

- 8.3 Parents and pupils have a right under SENDO to make a request for confidentiality in relation to any disability disclosed (Chapter 9) and this is in keeping with the right to respect for privacy afforded to children under Article 8 of the European Convention on Human Rights.
- 8.4 However, schools need to know that a pupil is disabled and they need to have some knowledge of the nature of the disability, if they are to ensure that they do not treat the pupil less favourably. This also applies if the school is to make reasonable adjustments for the pupil.
- 8.5 Although the reasonable adjustments duty relates to disabled pupils in general, the school will need to know about individual pupils' disabilities, to ensure that they know when and how to apply any specific arrangements needed.

- 8.6 The lack of knowledge defence is irrelevant to the anticipatory duty. Even if there are no disabled pupils in a school at present, the responsible body needs to consider what changes may be needed, draw up or amend their policies and produce plans of action in the expectation that there will be disabled pupils in their school in the future. Written policies and plans of action should be made available, upon request, in an accessible format, to any prospective pupils and their parents as well as pupils at the school and their parents.
- 8.7 The anticipatory nature of the duties under SENDO means that many changes will need to be made independently of any knowledge of individual pupils' and particular disabilities. In making such changes in this way, a responsible body may be able to ensure, in advance, that future disabled pupils are not placed at a substantial disadvantage.
- 8.8 In the majority of cases, schools will be aware of a pupil's disability because of arrangements for the assessment of, and the provision for additional educational support, through the SEN framework. In many cases parents will volunteer information about their son or daughter's disability.
- 8.9 However, it may not always be immediately obvious that a pupil is disabled. For example, a learning difficulty, underachievement and difficult behaviour may, in some cases, indicate an underlying disability which has not yet been identified. In the absence of disclosure or diagnosis, a responsible body that has taken no reasonable steps to find out about the possible existence of a disability may have difficulty claiming not to have known about the existence of a disability.

8.10 It is in the interests of responsible bodies to ensure that schools are proactive in seeking out information. If they are not, the responsible body may not be able to claim lack of knowledge about a pupil's disability. In seeking out information responsible bodies may, for example:

- want to establish an open and welcoming atmosphere and culture at the school, so that pupils and parents feel comfortable about disclosing information about a disability;
- ask parents, when they visit or during the admissions process, about the existence of and nature of any disability that their son or daughter may have;
- provide continuing opportunities to share information.

Example 41 – Proactively seeking information

A primary school decides in light of SENDO that it will try to find out at the induction process / admission stage if any of the new pupils have a disability. In recognition that pupils may acquire a disability after admission, the school decides that it will repeat this process at each new school year. Statistics gathered will be recorded for the annual school census and used to identify what adjustments the school needs to make to be fully accessible in a managed, planned way. The school decides that in order to encourage parents to disclose a child's disability they will outline the reasons why they are seeking this information and the benefits of disclosure for pupils. They also give assurances that personal information will not be passed on to third parties without permission, and that any request for confidentiality will not be affected by disclosure of this information.

- 8.11 If the school did not know and could not reasonably have been expected to know about the existence of a pupil's disability, the responsible body is likely to be able to rely on the lack of knowledge defence, if a claim of disability discrimination is made against it.

Example 42 – Nursery School has lack of knowledge defence against claim of disability discrimination

A nursery school admits a four-year-old boy with coeliac disease. All new parents are asked to complete a form and are encouraged to discuss with the school their child's general development and any specific needs. However, the boy's parents do not inform the school of his condition. On another child's birthday, all the pupils were given a piece of birthday cake. The cake makes the boy with coeliac disease ill. The parents complain that the school has discriminated against their son because of his disability by giving him food that affects his health. They feel that none of the pupils should have been offered cake. The school had no information about the boy's special dietary needs and staff would have offered appropriate alternatives to cake, if they had been aware of the problem. There are other children in the nursery school with special dietary needs which are always met by the nursery school. It is likely that the school has acted lawfully.

- 8.12 However, if any member of staff at the school has been informed that a pupil has a disability, then the responsible body may not be able to rely on the lack of knowledge defence. Schools should communicate relevant information about a pupil's disability to any member of staff who may need to know. This will include all staff who may be in contact with the pupil at any point during the day. Sometimes it may be necessary to share this information with people outside the school (see Example 44). A request for confidentiality from the pupil or pupil's parent may affect this. See Chapter 9 for further information on confidentiality.

Example 43 – School's failure to share information results in teacher treating a pupil less favourably

After a period of illness, a primary school pupil returns to school at the end of the summer term. The mother discloses to her daughter's teacher that as a result of her illness her daughter has developed a heart condition that will impact upon her energy levels. Due to a busy end of term the teacher forgets to record this information or pass it on to the girl's teacher for the new term. Not long into the new school year the increased demands of her new class cause the girl to feel tired and her concentration in class is affected. Assuming that the girl is simply not paying attention, the teacher gives her extra homework as an incentive to work harder in class. It is unlikely that the school could argue that it did not know about the girl's condition. It is unlikely that the responsible body could rely on a lack of knowledge defence if the pupil or her parents were to make a complaint of disability discrimination.

9 Confidentiality

This chapter provides a brief outline of:

- who can make a request for confidentiality; and
- how the duty to provide reasonable adjustments and other duties under SENDO may be affected by a request for confidentiality.

Definition of confidentiality

9.1 Disabled pupils and their parents have a right to expect that information about the pupil's disability will not be disclosed to anyone without their consent.

Confidentiality is central to the trust between teachers and their pupils and parents. Without assurances about confidentiality, pupils and their parents may be reluctant to give schools the information they need in order to provide good educational experiences.

9.2 A confidentiality request is defined in SENDO as:

“a request which asks for the nature, or asks for the existence, of a disabled person's disability to be treated as confidential and which satisfies either of the following conditions –

- (a) it is made by that person's parent; or
- (b) it is made by the person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect”.

Who can request confidentiality

- 9.3 A parent can ask the school to keep the existence or the nature of their son or daughter's disability confidential.
- 9.4 A request for confidentiality may also come from a pupil him or herself. SENDO says that the school should take the request into account if it reasonably believes that the pupil understands what he or she is asking to be done, and what the effect of the request will be.

What a responsible body should do

- 9.5 When a responsible body is determining what action is necessary in order for it to comply with its duty not to treat a disabled pupil less favourably, the extent to which taking that action is consistent with complying with a request for confidentiality must be taken into account.
- 9.6 Schools should also take a request for confidentiality into account when deciding what reasonable adjustments it will make for a disabled pupil. The nature of the particular steps to be taken for that pupil may need to be modified to take account of the request for confidentiality. As a matter of good practice, schools could involve pupils and their parents in consultation about the reasonable steps to be taken to prevent disability discrimination and any implications or limitations that a confidentiality request may have on the steps to be taken by the school.
- 9.7 Schools could develop, implement, monitor and review a confidentiality policy as a matter of good practice (see Chapter 10 at 10.34 – 10.37). The written policy should be made available in accessible formats to pupils and their parents.

- 9.8 The confidentiality policy might state those circumstances (for example child protection) in which the responsible body believes that it would not be in the best interests of pupils to maintain confidentiality. Where possible, schools should tell the parents or pupil of the need to disclose a disability despite a request for confidentiality before doing so.

Example 44 – To ensure a pupil’s safety, the Principal shares confidential information about his epilepsy with swimming pool staff

The parents of a nine-year-old boy with epilepsy ask the Principal to keep the existence and the nature of their son’s disability confidential. Their son’s medication has been effective in reducing the number of seizures that he has and he is unlikely to have a seizure in school. However, on seeking professional advice, the Principal is told that it would be unsafe for the boy to go swimming without informing the staff at the pool. The parents do not want them to be told. The Principal decides that the safety of the boy dictates that he should not go swimming unless staff at the pool can be told. He decides in order to ensure that the boy is not treated less favourably he must tell the swimming pool staff about his disability. He informs the parents that he will have to do this. This is likely to be lawful.

The impact of a request for confidentiality

- 9.9 A request for confidentiality may limit what the responsible body can do by way of making reasonable adjustments (see Example 45). However, this is not a justification for failing to consider what adjustments could be made without compromising the request for confidentiality.

Example 45 – Parents request for confidentiality about their daughter’s leukaemia prevents school planning positively to maximise the girl’s progress and personal support in the school

The parents of a six-year-old girl ask the Principal to regard information about her leukaemia as confidential, and ask that other staff at the school are not informed. The parents are concerned that she should be treated 'positively and as if everything is normal'. As a result, the Principal does not disclose information about the pupil to any of the staff in the school.

The pupil has a number of days away from school and periods of sickness and tiredness because of her treatment. Unaware of the girl’s disability, the class teacher expresses concern about the girl’s absences from school and her poor schoolwork and asks to meet the parents. They still say nothing to the teacher about their daughter's condition. After a further round of treatment, the parents complain that the class teacher has 'picked on' their daughter for uncompleted class work.

In this case there were reasonable adjustments that the school might have taken, but could not because of the parents’ confidentiality request. For example, in respect of teaching and learning expectations, the school could have sought advice from the girl’s oncology nurse or paediatrician, to support the class teacher in managing periods of sickness and tiredness and determining when it might be appropriate to make demands. If the Principal had not been prevented by the request for confidentiality from sharing information about the girl’s disability, the Principal, class teacher and special educational needs coordinator would have been able to plan, review and amend adjustments that would have maximised the pupil’s educational progress and her personal support in the school.

- 9.10 When a request for confidentiality is made, consultation between pupils, parents and the school in agreeing, monitoring and reviewing the reasonable steps to be taken by the school is crucial in order to mitigate any future complaints.
- 9.11 If a school is concerned about the impact of a confidentiality request, it should explain this to the parents and to the disabled pupil him or herself (where possible). Where a parent, or a pupil who clearly understands the impact of the confidentiality request, remains opposed to sharing the relevant information about their disability, the school will need to discuss with them any alternative steps that might be taken to minimise any substantial disadvantage to the pupil.

Example 46 – Impact of request for confidentiality explained to pupil who has a bowel disorder

A pupil has a bowel disorder which causes her to have “accidents” and to need to wear incontinence pants. The parents and the pupil tell the Primary School Principal that they want this information kept confidential.

At the beginning of the following term the girl’s class are told that weekly swimming lessons will form part of their curriculum activities. The girl is excited about learning to swim and her parents give written permission for her to attend these classes.

The Principal asks to talk to the parents and explains that the swimming pool has a club-room changing facility which means that the girl will have to change in front of her peers. The Principal explains that unless the teacher in charge is made aware of the girl’s disability, no arrangements can be made to protect their daughter’s privacy. The parents reconsider their decision and allow the Principal to inform the teacher in charge.

9.12 It is recommended that the details of a pupil's medical condition, treatment needs or disability be considered to be confidential except where the sharing of that information is necessary to ensure the child's welfare or best interests. Chapter 10 (paragraphs 10.5 – 10.8) gives information on other conventions relating to the rights of children and young people.

10 Practical Guidance for Inclusive Education

This chapter sets out some guidance on ways to help ensure that disabled pupils and prospective pupils are not discriminated against. Additional guidance on inclusive schooling can be found in the Department of Education's Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs.

Introduction

- 10.1 The guidance notes in this chapter are building blocks to inclusive education and should be embraced with the aim of increasing the accessibility of school life for all.
- 10.2 Outlined below are some good practice measures which schools are recommended to consider putting in place in order to be more inclusive of all pupils regardless of disability and to prevent disability discrimination in education. The measures are neither all-inclusive nor exhaustive and should not be regarded as the only measures that might be taken.
- 10.3 These recommendations aim to:
- highlight practical ways in which a school can be fully inclusive;
 - help schools establish an atmosphere and culture in the school which is open, welcoming and treats pupils with dignity and respect, regardless of disability;

- assist schools to develop an environment in which everyone working with the authority of the school understands in clear terms what behaviour is and is not acceptable and that appropriate disciplinary action will be taken against those who act in a discriminatory manner;
- give guidance on how schools can build an environment in which pupils or their parents can raise complaints of disability discrimination without fear of repercussions or victimisation, and in which they can be confident that their complaints will be treated seriously and dealt with effectively.

10.4 The success of good practice measures requires the commitment of everyone in the school. Providers of education could by words and actions demonstrate their commitment to fully integrating disabled pupils into the entire educational experience.

Other conventions relating to the rights of children and young people

10.5 In seeking to build an inclusive school life it is recommended that those responsible for the provision of education and associated services, admissions, suspensions and expulsions consider other wider conventions relating to the rights of children.

10.6 These provisions may include:

- United Nations Convention on the Rights of the Child (UNCRC);
- European Convention of Human Rights (ECHR); and
- Human Rights Act 1998.

10.7 Disabled children and young people have the exactly the same rights as their peers. It may be useful for schools and Education and Library Boards to consider in particular:

- be involved in the decisions affecting them and have their opinions taken into account (Article 12, UNCRC);
- information (Article 17, UNCRC);
- meet together with their peers (Article 11, ECHR);
- an education which develops their personality and talents to the full (Article 23, UNCRC; Article 2, Protocol 1 ECHR);
- respect for privacy (Article 8, ECHR).

10.8 Further information about UNCRC and ECHR is available from:

- Human Rights Commission;
- Northern Ireland Commissioner for Children and Young People (NICCY);
- Children's Law Centre; or
- Law Centre (NI).

These and other organisations that may provide information about this are noted in Chapter 14 of this Code.

Respect for a pupil's rights may help education providers to avoid potentially discriminatory situations.

The diverse nature of disability

10.9 Around one in five people in Northern Ireland has a disability (approximately 340,000³). The nature, extent and effects of disabilities vary widely, as do individual requirements for overcoming any difficulties. If education providers are to avoid discriminating, they need to understand this, and to be aware of the effects their attitudes, decisions and actions – and those of people working with their authority – may have on disabled pupils and prospective pupils. Many of the steps that can be taken to avoid disability discrimination cost little or nothing and are practical steps to enhance inclusive education.

Practical Steps

Avoid making assumptions

10.10 Any given disability will affect different people in different ways, so individual requirements will differ also. It is therefore important not to make assumptions about disabled pupils and prospective pupils. The following suggestions may help to avoid disability discrimination:

- do not assume that because a pupil's disability cannot be seen, he or she is not disabled. Many disabilities are not visible. Do not assume that reasonable adjustments are not required;
- do not assume that because you do not know of any disabled pupils attending the school, that there are none;
- do not assume that all disabled pupils have a Statement of special educational needs;
- do not assume that most disabled pupils use wheelchairs;

³ This figure is obtained from the Census 2001. It should be noted that the term 'disability' was defined in this Census as 'any long-term illness, health problem or disability which limits daily activities or work'.

- see the person and the pupil, not the disability;
- do not assume that pupils with learning disabilities cannot be valuable students, or that they cannot participate in the full range of educational life;
- do not assume that a pupil with mental ill health cannot do demanding school work;
- do not assume that all blind people read Braille or have guide dogs; and
- do not assume that all deaf people use sign language.

Talk to disabled pupils and their parents

- 10.11 It is recommended that responsible bodies talk to disabled pupils or their parents in order to obtain in depth their views, attitudes and opinions and identify concerns or issues. The aim of discussions is to identify adjustments appropriate to the pupil's needs.
- 10.12 Listening carefully to disabled pupils and finding out what they want may help responsible bodies to meet their obligations by identifying the best way of meeting disabled pupils' requirements.
- 10.13 There is a better chance of reaching the best outcome if discussions are held with disabled pupils and prospective pupils at an early stage.
- 10.14 Often, discussing with disabled pupils and their parents what is necessary to meet their requirements will reassure a responsible body that suitable adjustments can be carried out at little expense and with very little inconvenience.

Example 47 – School Principal identifies adjustment appropriate to a pupil’s requirements that involves no financial outlay

A primary school is about to admit a girl who is hard of hearing. A statutory assessment of her educational needs has not yet been completed. Assuming that an induction loop system in the girl’s classroom will be necessary the Principal researches the installation cost so that he can request interim funding for this from the Education and Library Board. Before making the request the Principal arranges a meeting with the girl’s parents to discuss more fully their daughter’s requirements. During the meeting the parents inform the Principal that until their daughter’s educational provision is fully assessed the only adjustment that they would ask the school to make is that the teacher always faces the girl when speaking. This is likely to be a reasonable adjustment that the school could make.

Seek expert advice

- 10.15 Although SENDO does not specifically require anyone to obtain expert advice about ensuring school life is accessible for disabled pupils, in practice it may sometimes be necessary to do so. Expert advice might be especially useful if a pupil has recently become disabled or if the effects of a pupil’s disability become more marked.
- 10.16 It is recommended that information or views about solutions to meet the needs of disabled pupils be obtained from the disabled pupil him or herself or their parents – they are the people with the expert knowledge of that individual’s disability.
- 10.17 The personal knowledge and expertise of others within the school may also be sought.

10.18 In addition, expert advice about meeting the needs of disabled pupils may be available from groups such as:

- Home/School Liaison Officers;
- Special Educational Needs Departments of Education and Library Boards;
- Education and Library Board Specialist Support Services;
- outside agencies such as Occupational Therapy & Physiotherapy Services;
- Special Schools;
- Behaviour Support Team;
- local and national disability organisations;
- Council for Catholic Maintained Schools;
- Northern Ireland Council for Integrated Education;
- Comhairle na Gaelscolaíochta;
- Governing Bodies Association;
- Department of Education; or
- Non-Governmental Organisations / Disability Voluntary groups.

This list is not exhaustive. In addition, it is recommended that service / support providers be cognisant of the individual needs of disabled pupils for whom English is not a first language.

A list of useful contacts is included in Chapter 14.

Example 48 – Shared curriculum links between mainstream and special schools

A mainstream post-primary pupil was involved in a car accident and had an arm amputated. He is due to return to school after the summer holidays. Whilst confident that most of the curriculum will be accessible to him, the school are unsure about what PE activities they can offer. The Principal contacts a nearby school for pupils with physical disabilities and asks for advice. The Principals of both schools develop a shared PE programme that meets the needs of the boy's mainstream class and a same age class in the special school. Specialist training is made available to the mainstream teachers in their own school on an outreach support basis and also in the special school setting. This builds in the possibility of attending another school on a part time basis. This is likely to be a reasonable adjustment for the school to make.

Raise pupils' awareness of disability

10.19 Schools have a unique opportunity to raise awareness of disability amongst those who are the future of Northern Ireland. Community and voluntary groups as well as staff from special schools may be willing to assist schools in the preparation and delivery of disability awareness sessions.

Develop links

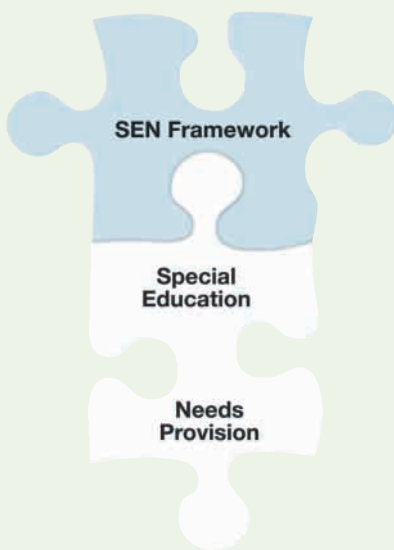
10.20 It may be possible for mainstream and special schools to develop links and arrange joint activities that could develop disability awareness through natural friendships amongst peers.

10.21 Mainstream schools that are over-subscribed for particular subjects on the curriculum might be able to arrange for some pupils to augment classes in a local special school thereby allowing that school to offer more subjects to their own pupils.

- 10.22 When all the jig-saw pieces of SENDO fit together inclusion is demonstrated at its best in our schools. Many schools in Northern Ireland are already working together towards a more inclusive education system.

Example 49 – How SENDO can work demonstrated in collaboration between mainstream and special schools

The parents of a girl who has Down Syndrome and severe learning difficulties have spoken to the Education and Library Board's Advice and Information Service and Board officers about their daughter's educational needs. The parents express a preference for their daughter to attend a mainstream primary school. The school has never previously admitted a pupil with severe learning difficulties and feel that they do not have the knowledge or expertise to meet the girl's needs.



Taking account of the parents' preference, and with their agreement, the Education and Library Board have made a Statement of the girl's special educational needs that makes provision for 3 days attendance at a special school and 2 days attendance at a mainstream school. The Statement also provides the support of a classroom assistant.

A named officer of the Education and Library Board provides information, advice and support to the parents and schools.

Both schools review their policies, procedures and practices to ensure they cover the unique situation of the pupil. They work together to identify reasonable adjustments that should be made in order to ensure that the girl is included in every aspect of school life and will not be treated less favourably than other pupils at both schools.

Example 49 continued



accompany the girl during her attendance at the special school.

The special school offers outreach support to the mainstream school. They provide training for teachers and classroom assistants who will be with the girl in mainstream school. Initially a classroom assistant from the special school will accompany the girl during her attendance at mainstream school and this will become a reciprocal arrangement whereby classroom assistants from the mainstream school will



The target outcome of the outreach support model being used is that staff in the mainstream school will be more confident in being able to meet the needs of the child more completely because they will gain knowledge, skills and expertise. This may assist the school to fulfil its anticipatory duty in the future.

The aim for this pupil is to identify and provide increased opportunities for her to have access to the full educational curriculum at mainstream school supported by the special school as required. The accessibility plans of both schools reflect the strategies identified as a means of increasing access to the curriculum for prospective pupils.

Monitor the number of disabled pupils and prospective disabled pupils

10.23 The Department of Education may monitor and analyse the number of pupils with a Statement of special educational needs and/or a disability attending or seeking admission to schools in Northern Ireland. This analysis may help schools by informing their future planning – see Chapter 11 for a more detailed consideration of the duty SENDO places on schools to produce Accessibility Plans.

Plan ahead

10.24 The duties which SENDO places on education providers are owed to disabled pupils in general so it is necessary to anticipate what might be required and plan ahead.

10.25 Considering the needs of a range of disabled pupils when planning for change (such as when planning ways of delivering the curriculum or associated services, redecoration or refurbishing a building) is likely to make it easier to implement adjustments for individual pupils when the need arises. Some sources of expert help are noted at paragraph 10.18 and Chapter 14.

10.26 SENDO places planning duties on education providers in relation to making the whole educational experience more accessible to disabled pupils and prospective disabled pupils. Guidance on Accessibility Plans for schools and Accessibility Strategies for Education and Library Boards is available from the Department of Education. See Chapter 11 of the Code for an explanation of Accessibility Strategies and Accessibility Plans and Chapter 14 for other sources of information.

Implement inclusion policies, procedures & practices

- 10.27 Schools are more likely to be inclusive, to comply with their duties under SENDO, and to minimise the risk of complaints being taken against them, if they implement anti-discriminatory policies and practices. It is recommended that Boards of Governors make this a strategic priority.
- 10.28 Schools could review existing policies, practices and procedures to ensure that they do not adversely impact upon disabled pupils or prospective pupils.
- 10.29 Schools, with the involvement of disabled pupils, could develop and implement a clear, comprehensive, effective and accessible inclusion policy, which covers disability.
- 10.30 It is recommended that the policy is accessible to pupils and their parents and endorses in clear terms the school's commitment to the promotion of inclusion for all pupils. The policy might also make it clear that disability discrimination is unlawful and will not be tolerated in the school.
- 10.31 It is recommended that the effectiveness of policies, practices and procedures is regularly monitored. It is also recommended that this involves consultation with disabled pupils and their parents. The policy could then be reviewed and revised in light of this monitoring information.

Review anti-bullying policy & procedures

- 10.32 It is recommended that schools ensure that their anti-bullying policy and procedures cover complaints of bullying for a reason related to a pupil's disability.
- 10.33 Further information on bullying policies can be obtained from the Department of Education. A list of useful contacts is included in Chapter 14.

Implement a confidentiality policy

- 10.34 Confidentiality is central to trust between teachers and their pupils and parents. Without assurances about confidentiality, pupils and their parents may be reluctant to give schools the information they need in order to provide good educational experiences.
- 10.35 With the involvement of disabled pupils, schools could implement a policy that:
- protects the right of disabled pupils and prospective pupils to privacy;
 - ensures that information about a pupil's disability is treated with strict confidentiality; and
 - ensures that, where possible, information about a pupil's disability is not be shared with anyone without the permission of the pupil or his or her parents.
- 10.36 It is recommended that the effectiveness of policies and procedures is regularly monitored. The policies and procedures could then be reviewed and revised in light of the monitoring information.
- 10.37 Confidentiality issues are discussed in more detail in Chapter 9 of the Code.

Consult on policies

10.38 When developing and implementing policies and procedures it is recommended that schools consult with pupils registered at the school and their parents. Additional advice may be available from organisations such as:

- Department of Education;
- Council for the Curriculum Examinations and Assessment;
- Education and Library Board;
- Council for Catholic Maintained Schools;
- Northern Ireland Council for Integrated Education;
- the Governing Bodies Association;
- Comhairle na Gaelscolaíochta;
- the Northern Ireland Commissioner for Children and Young People; or
- voluntary disability groups.

10.39 Talking with disabled pupils and their parents provides important feedback on the impact of the school's policies, practices and procedures and the effectiveness of any reasonable adjustments made.

10.40 Having policies and practices to combat disability discrimination, together with regular consultation with pupils and their parents, is likely to minimise disputes. However, when disputes do occur, it is in the interests of responsible bodies to attempt wherever possible to resolve them as they arise.

Communicate policies

10.41 It is vital that schools effectively communicate their inclusion policy, anti-bullying policy and procedure and all other policies or procedures they may have relating to equal opportunities to all staff, those working with the authority of the school, pupils and their parents.

10.42 This could be done, for example:

- for staff, through the school's ethos statement, staff briefings, contracts of employment, staff handbooks, notice boards, circulars, written notifications to individual employees, disability awareness training, induction training, management training, training manuals etc;
- for parents through, for example, parents' evenings, school brochures, circulars, or letters in addition to the school's ethos statement;
- for pupils, for example, through school assemblies, pastoral care, peer education, citizenship lessons in class, or incorporated into pupil day books and lesson planning; and
- for everyone, through for example the school website.

10.43 It is recommended that Boards of Governors, especially when recruiting new staff, ensure that their policies, practices and procedures are widely known so that everyone is aware of their equal opportunities and disability policies and practice.

10.44 It is recommended that Boards of Governors, and Principals make it clear to everyone acting with the authority of the school, what is required of them with regard to their duties and responsibilities under SENDO.

10.45 It is recommended that all school policies and procedures are accessible in respect of their format, content and implementation to all employees and those working with the authority of the school, particularly those who are themselves disabled.

Deal effectively with complaints

10.46 It is recommended that all complaints are dealt with in line with the Education and Library Board's existing Comments / Complaints Procedures or Employing Authority Procedures. It is recommended that Complaints Procedures are accessible in respect of format, content and implementation.

10.47 It is essential that any complaints of disability discrimination are dealt with promptly, seriously, sympathetically, confidentially and effectively. By dealing with complaints in this way, responsible bodies are reinforcing their message that they consider any complaint of disability discrimination a serious matter.

10.48 It is recommended that pupils and their parents are proactively informed whom to contact in the school if there is a complaint of alleged disability discrimination. Pupils and their parents should be able to speak of their concerns in confidence and be provided with support, advice and assistance to resolve their complaint.

10.49 Staff may require appropriate training in order to enable them to deal effectively with complaints of alleged disability discrimination.

10.50 It is also vital that reasonably practicable steps are taken to ensure that individuals who do raise complaints of disability discrimination are not victimised because of their complaints.

10.51 Monitoring complaints may assist accessibility planning by identifying issues for consideration (see Chapter 11).

10.52 In addition, any further action in relation to employees who unlawfully discriminate could be considered.

Provide training and guidance

10.53 It is recommended that Responsible Bodies ensure that all employees and those working with the authority of the Principal and Senior Management Team have access to appropriate training and/or guidance to ensure that they understand their responsibilities under SENDO. This would include people such as:

- Boards or Governors;
- Principals;
- all teachers, not just special educational needs coordinators (SENCOs);
- Classroom Assistants;
- Caretakers;
- Catering staff;
- Cleaning staff; and
- volunteer helpers (such as parents helping with after-school activities).

This list is neither exhaustive nor all inclusive. Schools need to identify those working with the authority of their particular school.

10.54 It is recommended that schools provide information for all staff on their disability policies and procedures.

10.55 It is also recommended that training is evaluated, monitored and reviewed on a regular basis so that further training needs can be identified.

11 Accessibility Strategies & Accessibility Plans

The Equality Commission has no remit for this aspect of SENDO and cannot advise Education and Library Boards about implementing an accessibility strategy, or schools about implementing an accessibility plan. The Department of Education can provide guidance on these duties.

This chapter provides a brief outline of:

- The long-term planning duties SENDO places upon Education and Library Boards and Schools.

Accessibility strategies

11.1 SENDO places a duty on Education and Library Boards to produce a written strategy of how, over time, they intend to improve:

- physical accessibility of school premises;
- accessibility of the curriculum; and
- provision of information in alternative formats where it is usually provided in writing.

Example 50 – Education and Library Boards plan provision of accessible information

The five Education and Library Boards are preparing their Accessibility Strategies covering the 2005 - 2008 period. In order to improve disabled pupils access to the curriculum, they work together to ensure that all 5 Strategies contain a commitment to carry out a combined information audit which will identify:

- what educational information is available in formats accessible to disabled pupils;
- what the gaps in the provision of such information are; and
- how the 5 Boards can work in collaboration to meet any needs identified.

The collaborative approach of the Education and Library Boards exhibits good practice.

11.2 The Board's accessibility strategy will set out its plans in respect of the controlled schools under its management in the area. The Board does not have to produce a stand-alone strategy. It can choose the most appropriate format to record its strategy, for example by dovetailing it with another of its plans.

11.3 Boards have a duty to take into account any guidance issued by the Department of Education, about the content of their strategy, the form in which it is to be produced, and those who should be consulted in the preparation of the strategy.

11.4 Boards also have a duty to review and revise their strategies taking into account any guidance on this by the Department of Education.

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Chapter I
Article 17(5)**

11.5 SENDO places a duty on Education and Library Boards to make a copy of its accessibility strategy available for inspection in an accessible format to any person who requests this.

**SENDO
Part III
Chapter I
Article 17(7)(b)**

Accessibility plans

11.6 SENDO places a duty on Boards of Governors of grant-aided schools or the proprietor of an independent school to prepare a written accessibility plan for a prescribed period in three main areas:

- physical accessibility of school premises;
- accessibility of the curriculum; and
- provision of information in alternative formats where it is usually provided in writing.

11.7 It is the duty of the Board of Governors or the proprietor to implement the accessibility plan.

**SENDO
Part III
Chapter I
Article 18(6)**

11.8 Schools will have to keep their plans under review, and revise them if necessary in light of that review.

11

Example 51 – School makes plans to improve access to buildings and the curriculum for pupils with a visual impairment

The Board of Governors of a secondary school is preparing their Accessibility Plan. They decide that it would be difficult for any pupils with visual impairments coming to the school to find their way around. They include in their Accessibility Plan that within the next two years, when re-painting the building as part of on-going maintenance, they will use suitable contrasting colours. This will make it easier for all pupils to find their way around the building.

In order to improve access to the curriculum for pupils with visual impairments, the school also decides to draw up and implement a policy that all written information produced by the school will be provided to pupils in a font size no smaller than 14. They make a commitment to meet the individual requirements of any pupil who has a visual impairment for whom this font size would be unsuitable.

11.9 Grant-aided schools are already under a duty to include certain information in their governors' annual report. SENDO places an additional duty on them to include information about their accessibility plans in that report.

11.10 Independent schools are required by SENDO to make a copy of their plans available for inspection by anyone who asks to see it at a reasonable time. Reports should be available in an accessible format. They are also required by SENDO to make a copy available to the Department of Education upon request.

11.11 SENDO states that the Boards of Governors or proprietors shall have regard to the need to allocate adequate resources for implementing the plan.

**SENDO
Part III
Chapter I
Article 18(3)**

11.12 SENDO states that the normal inspection of a school under Article 102 of the Education and Libraries (Northern Ireland) Order 1986:

“may extend to the performance by the Board of Governors or proprietor of functions in relation to the preparation, publication, review, revision and implementation of an accessibility plan for the school”.

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Chapter I
Article 18(7)**

11.13 The Department of Education will be producing guidance on accessibility planning. Further information can be obtained from the Department of Education at:

**Equality Unit
Department of Education
Rathgael House
Balloo Road
Bangor
BT19 7PR
Telephone: 028 9127 9279
Fax: 028 9127 9100
Internet: www.deni.gov.uk
E-mail: mail@deni.gov.uk**

12 Resolving Disability Discrimination Disputes

This chapter provides a brief overview of:

- routes to challenge disability discrimination;
- who may take legal action;
- time limits; and
- legal remedies available

Routes to challenge disability discrimination

12.1 There are various courses of action that can be taken to resolve an allegation of disability discrimination:

- internal complaints procedures of the responsible body;
- independent conciliation;
- legal action; or
- the Expulsion Appeals Tribunal (paragraph 12.17 – 12.18)

Internal complaints procedures of the responsible body

12.2 A parent, disabled pupil or prospective disabled pupil may contact the responsible body directly to discuss concerns and a claim of disability discrimination. This may be facilitated through the responsible body's internal complaints procedure. This may help resolve the dispute quickly without needing to take legal action.

- 12.3 It is important to remember however, that there are time limits for bringing a claim to the Tribunal. See paragraphs 12.10 to 12.12 and paragraph 12.19 for more specific details on time limits. If the time limits are not met an individual may lose the right to take legal action and using internal procedures may not be good justification for failing to meet the time limits.

Independent conciliation

- 12.4 Under SENDO, the Commission has the power to set up an independent conciliation service to promote the settlement of disputes in relation to disability discrimination. Pupils and/or parents are not required by law to enter into this conciliation process. They have a right to proceed directly to the Special Educational Needs and Disability Tribunal (SENDIST) to make a complaint of unlawful disability discrimination.
- 12.5 This conciliation service is different from the Dispute Avoidance and Resolution Service (DARS) set up by the Education and Library Boards (Chapter 3 paragraphs 3.14 and 3.17). The DARS will only deal with disagreements in relation to a responsible body's duties under Special Educational Needs law. The conciliation service set up by the Commission will only deal with disputes in relation to a responsible body's disability discrimination duties under SENDO.
- 12.6 Disputes may be referred to the conciliation service only if both the person claiming disability discrimination and the responsible body agree to this. However, the conciliation service does not have power to impose a settlement on either party.

- 12.7 Agreeing to the conciliation process does not prevent a claimant from deciding to take a complaint to the Tribunal. A claim of unlawful disability discrimination must be made to the SENDIST within 6 months of the date of the alleged disability discrimination. This time limit is extended by 2 months if the dispute is referred to conciliation before the expiry of the 6-month period.
- 12.8 No information disclosed to a conciliator during the conciliation process may be used in any subsequent Tribunal case without the permission of the party who provided the information.

Legal action

- 12.9 If a pupil or their parent feels that disability discrimination has occurred the parent can make a complaint on behalf of the pupil to the Special Educational Needs and Disability Tribunal (SENDIST).

Time limits for lodging a complaint of disability discrimination with SENDIST

- 12.10 A claim of unlawful disability discrimination must be made to the SENDIST within 6 months of the date of the alleged act of discrimination.
- 12.11 If the matter has been referred for conciliation (see 12.4 to 12.8) the time in which a claim to the SENDIST may be made may be extended by 2 months, making the total time limit 8 months from the date of the alleged act of disability discrimination.
- 12.12 Where disability discrimination takes place over a period of time, the 6 months may begin at the date of the last (or most recent) discriminatory act. The SENDIST also has discretion in certain circumstances to allow a case which would otherwise be out of time to proceed, where it would be just and reasonable to do so.

How to contact SENDIST

12.13 The Special Educational Needs and Disability Tribunal can be contacted at:

2nd Floor
Albany House
73-75 Great Victoria Street
Belfast
BT2 7AF
Telephone: 028 9032 2894
Fax: 028 9032 2924
E-mail: enquiries@sentribunal.co.uk

SENDIST remedies

12.14 SENDIST has wide powers to order any remedy it thinks appropriate with the exception of financial compensation.

12.15 Although SENDIST will not be able to award financial compensation it will be able to order schools, or Education and Library Boards, to take compensatory action to take account of past disability discrimination and shape the future prospects of the disabled pupil. Examples of the kind of orders that SENDIST might make are:

- that the Education and Library Board or school provide disability awareness training for some or all staff;
- that the Education and Library Board or school prepare guidance on combating disability discrimination for issue to all staff;
- that the Education and Library Board's Equal Opportunities Officer arrange and attend, at specified times, meetings between the school and the pupil's parents to review what reasonable adjustments (short of adjustments to the physical premises or provision of auxiliary aids and services) might be required;

- that the school / Education and Library Board change policies. For example, those that prevent pupils with visual impairments going into the science laboratory, those that prevent disabled pupils going on certain school trips, and anti-bullying policies so that they deal with bullying on the grounds of disability;
- that additional tuition is provided to enable a pupil to catch up on things he has missed due to disability discrimination (such as science lessons in the previous example);
- that a library is relocated to the ground floor (short of requiring an adjustment to the physical premises), or if that is not possible, that the school arranges for an accessible mobile library to visit the school regularly or provides a reading room for use by the whole class;
- that an independent school must admit a disabled pupil (where the school had previously refused) or must admit the pupil on the same terms as pupils who are not disabled (where, for example, the school had offered a place but at an unreasonably increased fee); or
- that a grant-aided school, which had suspended a disabled pupil for a reason related to his disability, must provide additional tuition to enable the pupil to catch up on education missed due to the disability discrimination.

12.16 SENDIST will be able to set deadlines when directing action by schools and Education and Library Boards. If a responsible body fails to comply within the deadlines, the parent can ask the Department of Education to give a direction requiring them to comply.

Expulsion Appeals Tribunal

- 12.17 Claims of disability discrimination in relation to expulsions from grant-aided schools cannot be made to the SENDIST. Such claims will be made through the Education and Library Board Expulsion Appeals Tribunal. SENDIST will, however, hear claims of disability discrimination in relation to expulsions from independent schools.
- 12.18 SENDIST will hear claims of disability discrimination in relation to suspensions from all schools because suspensions are not covered in the existing appeal arrangements.

Time limits for lodging an expulsion appeal

- 12.19 The time limit for an appeal against an expulsion is 10 days. If you want to make an appeal you must write to the Clerk to the Expulsion Appeals Tribunal at your local Education and Library Board within 10 days of notification of the pupil's expulsion.

Further information and advice

- 12.20 Parents, children or young people wanting to make a complaint against a responsible body under SENDO can get further information and advice about the process from the Commission. Those making a complaint to the SENDIST or Expulsions Appeals Tribunal may in some circumstances be eligible to receive assistance from the Commission. Please contact the Commission's Strategic Enforcement Division as early as possible.

12.21 The Commission can also provide advice to responsible bodies about their legal responsibilities under SENDO.

12.22 For further information about:

- rights under SENDO;
- responsibilities under SENDO;
- challenging claims of disability discrimination; or
- applying for assistance to legally challenge disability discrimination,

please contact the Commission – details at the back of the Code.

13 Other Duties on Education and Library Boards

This chapter explains other duties that responsible bodies and providers of education have under SENDO. It focuses on the residual duty of Education and Library Boards.

General education functions

- 13.1 SENDO makes it unlawful for an Education and Library Board in Northern Ireland to discriminate against a disabled pupil or a disabled prospective pupil in the discharge of its functions under various Orders relating to education, in particular:
- the Education and Libraries (Northern Ireland) Order 1986 (except Article 37 and Part VII);
 - the Education Reform (Northern Ireland) Order 1989;
 - the Education and Libraries (Northern Ireland) Order 1993;
 - the Education (Northern Ireland) Order 1996;
 - the Education (Northern Ireland) Order 1997;
 - the Education (Northern Ireland) Order 1998; and
 - the Education and Libraries (Northern Ireland) Order 2003.

The residual duty is intended to cover the general education related functions of Education and Library Boards that affect pupils or prospective pupils generally.

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13.2 Education and Library Boards come under the disability discrimination in schools' duties in respect of the schools for which they are responsible. The residual duty applies to treating disabled pupils and prospective pupils less favourably or failing to make reasonable adjustments in relation to the more general functions of the Boards.

13.3 Education and Library Boards should have regard to all their functions under the full range of education legislation to ensure that they are not treating disabled pupils less favourably and are planning how to meet their reasonable adjustments duty. Such functions may include:

- special educational needs provision under the Education (Northern Ireland) Order 1996;
- provision of transport;
- policies (such as the Board's policies on special educational needs, capital building programmes, sports, cultural activities, transport, early years provision);
- the Board's policy and arrangements on school admissions and exclusions; and
- the allocation of the Board's budget and any other resources which might directly affect disabled pupils.

Example 52 – Education and Library Board re-negotiates contract for home-school transport

Home-school transport for disabled pupils always leaves a school at 3.30pm. The Education and Library Board reviews its transport policy when it realises that disabled pupils who are dependent on taxis might be at a substantial disadvantage if they were not able to stay to after-school clubs. The Board re-negotiates its contract with the taxi firm so that it is possible to specify later departure times. This is likely to be a reasonable adjustment that the Board could make.

- 13.4 These duties apply to prospective as well as to current pupils and cover the full range of educational provision, including nursery education, arrangements for education otherwise than in school, and pupil referral units as well as the school stages of education.
- 13.5 When considering which SENDO duties apply to its schools' functions, an Education and Library Board should first look at whether the duties not to discriminate in admissions, associated services, suspensions / expulsions or victimisation of pupils apply. If they do not, then the duty not to discriminate under the residual duty of Boards will apply.
- 13.6 In consequence of these duties, Education and Library Boards may wish to review the full range of educational policies, practices and procedures for current and prospective pupils to ensure that they do not discriminate against disabled children and young people.

14 Useful Contacts

14.1 Free information can be obtained from:

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP
Telephone: 028 9050 0600
Textphone: 028 9050 0589
Fax: 028 9031 5993
E-mail: info@equalityni.org
Website: www.equalityni.org

The Code and Information about SENDO are also available in other languages and formats, including large print, Braille and audiotape. If you require further assistance, please contact the Commission.

14.2 Contact details of additional sources of information follows:

Advice NI
1 Rushfield Avenue
Belfast
BT7 3FP
Telephone: 028 9064 5919
Fax: 028 9049 2313
E-mail: info@adviceni.net

Belfast Education and Library Board
40 Academy Street
Belfast
BT1 2NQ
Telephone: 028 9056 4000
Textphone: 18001 028 9056 4000
Website: www.belb.co.uk

Blind Centre for Northern Ireland
70 North Road
Belfast
BT5 5NJ
Telephone: 02890 500 999
Fax: 028 9065 0001
E-mail: info@bcni.co.uk
Website: www.bcni.co.uk

Children's Law Centre
3rd Floor
Philip House
123-137 York Street
Belfast
BT15 1AB
Telephone: 028 9024 5704
Members Advice Line: 028 9043 4242
Fax: 028 9024 5679
E-mail: info@childrenslawcentre.org
Website: www.childrenslawcentre.org

CHALKY FREEPHONE
0808 808 5678 (open 9am-5pm week days)

Comhairle na Gaelscolaíochta
Westgate House
4 Queen Street
Belfast
BT1 6ED
Telephone: 028 9032 1475
Fax: 028 9032 4475
Website: www.comhairle.org

Compass Advocacy Group
Castle Croft
Main Street
Ballymoney
BT53 6TD
Telephone: 028 2766 9030
E-mail: info@compasspeople.org

Contact a Family Northern Ireland
Bridge Community Centre
50 Railway Street
Lisburn
BT28 1XP
Telephone: 028 9262 7552
E-mail: nireland@cafamily.org.uk
Website: www.cafamily.org.uk/nireland

Council for Catholic Maintained Schools
160 High Street
Holywood
BT18 9HT
Telephone: 028 9042 6972
Fax: 028 9042 4255
Website: www.onlineccms.vhost.tibus.com

Council for the Curriculum Examinations and
Assessment (CCEA)
29 Clarendon Road
Clarendon Dock
Belfast
BT1 3BG
Telephone: 028 9026 1200
Fax: 028 9026 1234
E-mail: info@ccea.org.uk

Deaf Association of Northern Ireland
Northern Ireland Office
Suite 3
Cranmore House
611b Lisburn Road
Belfast
BT9 7GT
Text: 028 9038 7706
Voice: 028 9038 7700
Fax: 028 9038 7707
Videophone: 028 9068 2677
E-mail: northernireland@bda.org.uk
Website: www.britishdeafassociation.org.uk

Department of Education
Rathgael House
43 Balloo Road
Bangor
BT19 7PR
Telephone: 028 9127 9279
Textphone: 028 9127 9472
Fax: 028 9127 9100
E-mail: mail@deni.gov.uk
Website: www.deni.gov.uk

Disability Action
Portside Business Park
189 Airport Road West
Belfast
BT3 9ED
Telephone: 028 9029 7880
Fax: 028 9029 7881
Textphone: 028 9029 7882
E-mail: hq@disabilityaction.org
Website: www.disabilityaction.org

Equality 2000
Willowbank Community Resource Centre
Carland Road
Dungannon
BT71 4AA
Telephone: 028 8775 3253
E-mail: Equality2000@tiscali.co.uk

General Teaching Council for Northern Ireland
4th Floor
Albany House
73-75 Great Victoria Street
Belfast
BT2 7AF
Telephone: 028 9033 3390
Fax: 028 9034 8787
E-mail: info@gtcni.org.uk
Website: www.gtcni.org.uk

Governing Bodies Association (NI)
c/o Belfast Royal Academy
3-17 Cliftonville Road
Belfast
BT14 6JL
Telephone: 028 9075 0610
Fax: 028 9075 0606
E-mail: bursar@bfsra.belfastni.sch.uk
Website: www.governingbodiesassociation.com

Irish National Teachers Organisation
23 College Gardens
Belfast
BT9 6BS
Telephone: 028 9038 1455

Law Centre (NI)
124 Donegall Street
Belfast
BT1 2 GY
Telephone: 028 9024 4401
Fax: 028 9023 6340
Textphone: 028 9023 9938
E-mail: admin.belfast@lawcentreni.org
Website: www.lawcentreni.org

Law Centre (NI) Western Area Office
9 Clarendon Street
Londonderry
BT48 7ET
Telephone: 028 71262 433
Fax: 028 7126 2343
E-mail: admin.derry@lawcentreniwest.org

Mencap
Annadale Avenue
Belfast
BT7 3JH
Telephone: 028 9069 1351
Website: www.mencap.org.uk

National Association of Headteachers
Carnmoney House
Edgewater Business Park
Edgewater Road
Belfast
BT13 9JD
Telephone: 028 9077 6633

National Association of Schoolmasters
& Union of Women Teachers
Ben Madigan House
Edgewater Office Park
Edgewater Road
Belfast
BT3 9JQ
Telephone: 028 9078 4480

North Eastern Education and Library Board
County Hall
Ballymena
BT42 1HN
Telephone: 028 9448 2252
Fax: 028 9448 2238
E-mail: info@neelb.org.uk
Website: www.neelb.org.uk

Northern Ireland Association of Citizens
Advice Bureau (NIACAB)
Regional Office
11 Upper Crescent
Belfast
BT7 1NT
Telephone: 028 9023 1120
Fax: 028 9023 6522
E-mail: info@citizensadvice.co.uk

Northern Ireland Commissioner for Children
and Young People (NICCY)
Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN
Telephone: 028 9031 1616
E-mail: info@niccy.org
Website: www.niccy.org

Northern Ireland Council for Integrated Education
Aldersgate House
13-19 University Road
Belfast
BT7 1NA
Telephone: 028 9023 6200
Fax: 028 9023 6237
Website: www.nicie.org

Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast
BT1 1NA
Telephone: 028 9024 3987
Textphone: 028 9024 9066
Fax: 028 9024 7844
E-mail: information@nihrc.org
Website: www.nihrc.org

Office of Public Sector Information (OPSI)
St. Clements House
2-16 Colegate
Norwich
NR3 1BQ
Telephone: 016 0372 3011
Website: www.opsi.gov.uk

PAPA (Parents and Professionals and Autism)
Resource Centre
Donard House
Knockbracken Healthcare Park
Saintfield Road
Belfast
BT8 8BH
Telephone: 028 9040 1729
Fax: 028 9040 3467
E-mail: info@autismni.org
Website: www.autismni.org

Parent's Advice Centre
Head Office
Floor 4
Franklin House
12 Brunswick Street
Belfast
BT2 7GE
Telephone: 0808 8010 722 – Helpline Freephone
Telephone: 028 9031 0891 – Office Line
Fax: 028 9031 2475
E-mail: belfast@pachelp.org
Website: www.pachelp.org

Positive Futures
2b Park Drive
Bangor
BT20 4JZ
Telephone: 028 9147 5720

Rethink Northern Ireland
'Wyndhurst'
Knockbracken Health Care Park
Saintfield Road
Belfast
BT8 8BH
Telephone: 028 9040 2323
Fax: 028 9040 1616
E-mail: info.nireland@rethink.org
Website: www.rethink.org

Royal National Institute of the Blind (RNIB)
40 Linenhall Street
Belfast
BT2 8BA
Telephone: 028 9032 9373
Fax: 028 9027 8119
E-mail: rnibni@rnib.org.uk
Website: www.rnib.org.uk

Royal National Institute of the Deaf (RNID)
Wilton House
College Square North
Belfast
BT1 6AR
Telephone: 028 9032 1733
Website: www.rnid.com

Special Education Needs Advice Centre (SENAC)
Graham House, Knockbracken Healthcare Park
Belfast
BT8 8BH
Telephone: 028 9070 4606
Website: www.down-syndrome.org.uk

South Eastern Education and Library Board
Grahamsbridge Road
Dundonald
BT16 2HS
Telephone: 028 9056 6200
Fax: 028 9056 6266/7
E-mail: info@seelb.org.uk
Website: www.seelb.org.uk

Southern Education and Library Board
3 Charlemont Place
The Mall
Armagh
BT61 9AY
Telephone: 028 3751 2200
E-mail: selb.hq@seelb.org
Website: www.selb.org

Special Educational Needs and Disability Tribunal
2nd Floor, Albany House
73-75 Great Victoria Street
Belfast
BT2 7AF
Telephone: 028 9032 2894
Fax: 028 9032 2924
E-mail: enquiries@sentrribunal.co.uk

The Stationery Office (TSO)
16 Arthur Street
Belfast
BT1 4GD
Telephone: 018 9023 8451
Fax: 028 9023 5401
E-mail: enquiries@tsoireland.com
Website: www.tso.co.uk

Triangle Housing Association
60 Eastermeade Gardens
Ballymoney
BT53 6BD
Telephone: 028 2766 6880
E-mail: info@trianglehousing.org.uk
Website: www.trianglehousing.org.uk

Ulster Teachers Union
94 Malone Road
Belfast
BT9 5HP
Telephone: 028 9066 2216
E-mail: office@utu.edu

Western Education and Library Board
1 Hospital Road
Omagh
BT79 0AW
Telephone: 028 8241 1411
Fax: 028 8241 1400
E-mail: info@welbni.org
Website: www.welbni.org

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Equality Commission

FOR NORTHERN IRELAND

How can we help?

The Equality Commission for Northern Ireland can give advice and information on the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO) through training, telephone and textphone advice, booklets and leaflets or we can meet with you.

For further information, please contact us at:

Promotion and Education Department
Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast BT2 7DP



Telephone: 028 9050 0600



Textphone: 028 9050 0589



Fax: 028 9024 8687



E-mail: information@equalityni.org



Website: www.equalityni.org