

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Disability Discrimination in Further and Higher Education

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Statutory Guidance

Code of Practice Post-16, from: The Equality & Human Rights Commission, tel: 0203 117 0235, email: info@equalityhumanrights.com.

- The following anti-disability discrimination duties in Part 4 of the Disability Discrimination Act 1995 have now been introduced:
 - **Since 1 September 2002**, it has been unlawful for the responsible bodies of further and higher education institutions to discriminate against disabled students/prospective students, including those from overseas, by treating them less favourably than others. In addition, responsible bodies are now required to make certain types of reasonable adjustments to their provision where disabled students/other disabled people might otherwise be substantially disadvantaged.

- **Since 1 September 2003**, responsible bodies have been under a duty to make reasonable adjustments involving the provision of auxiliary aids and services.
- **From 1 September 2005**, responsible bodies have been under a duty to make reasonable adjustments to physical features of premises where these put disabled people/students at a substantial disadvantage.

Who is responsible for complying with these duties?

- Institutions in the higher education sector;
- Institutions in the further education sector;
- Local education authorities or education authorities securing further education, including adult and community education;
- Schools providing further education for adults; **and**

- Local education authorities providing the statutory youth service.
- Wholly privately-funded post 16 providers and providers of work-based training are covered by Part III of the Disability Discrimination Act 1995 relating to goods, facilities and services.

Which students count as disabled?

- Those who have '*a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities*'. (Section 1(1) Disability Discrimination Act 1995).
- **Physical impairments** include sensory impairments, medical conditions and severe disfigurements.
- **Mental impairments** include learning difficulties.
- **Substantial** means more than minor or trivial.
- **Long-term** means the impairment must have lasted or be expected to last at least 12 months or for the rest of

the life of the person affected. Recurring conditions are covered if the impairment remains and its substantial adverse effect recurs at least once 12 months or more after the initial occurrence.

What activities are covered by the post-16 duties?

- **Admissions and enrolments** – arrangements for determining admissions or enrolments to the institution, the terms on which admissions and enrolment offers are made, the refusal or deliberate omission of acceptance of a disabled prospective student's application.
- **Exclusions** – permanent or temporary on ground of a student's disability.
- **Student services** – any services provided wholly or mainly for students attending or undertaking courses, including teaching, examinations and assessments, library facilities, accommodation facilities etc. (The Post –16 Code of Practice has a lengthy but not exhaustive list of such services at section 3.14, page 23).

When does disability discrimination occur?

- It can occur in two possible ways:
 - When a responsible body treats a disabled person less favourably for a reason relating to the person's disability, than it treats or would treat a person to whom that reason does not, or would not, apply and that treatment cannot be justified.
 - When a responsible body fails to make a reasonable adjustment when a disabled student is placed, or is likely to be placed, at a substantial disadvantage in comparison with a person who is not disabled.

When can less favourable treatment be justified?

- If it is necessary to maintain academic standards;
- If it is the result of a permitted form of selection;

- If it is of a prescribed type or occurs in prescribed circumstances (to be defined in future regulations); **and**
- The reasons are both material to the circumstances of the particular case (i.e. to the individual circumstances) and substantial (i.e. not minor or trivial).

The responsible body can only use one of these justifications if the justification would still apply even after a reasonable adjustment has been made.

Duty to make reasonable adjustments

- It is an anticipatory duty owed to disabled people and students in general and responsible bodies should therefore continually be anticipating the needs of disabled people and the adjustments they can be making.
- Discrimination only occurs if the failure to make reasonable adjustments leads to the detriment of an individual student/prospective student.

- The factors to be taken into account when determining what is reasonable will include the need to maintain academic and other prescribed standards, the financial resources available to the responsible body, the cost of taking a particular step, the extent to which it would be practicable to take a particular step etc.

What if the education institution does not know that a student is disabled?

- A responsible body may have a defence to a claim of unlawful discrimination of either type, if at the time it discriminated against a disabled student or prospective student, it did not know, and could not reasonably have known that the student was disabled.
- In order to claim lack of knowledge about a person's disability, the responsible body must have taken reasonable steps to find out about the student's disability.
- If a member of staff has been told about a student's disability, then the responsible body may not be able to rely on the lack of knowledge defence.

- If a disabled student requests that the existence or nature of his/her disability be treated as confidential, this may limit what the responsible body can do by way of reasonable adjustments.

How to make a claim of unlawful disability discrimination

- A student could try to deal with the matter directly with the responsible body concerned. Many educational institutions will have internal complaints procedures which are set up to promote speedy resolutions to disputes.
- A student could try the independent conciliation service set up by the EHRC, provided both sides agree. The service is accessed through the Commission's helpline (see contact details below).
- A student could pursue the matter through the County Court. Claims must be brought within six months of the alleged discriminatory act. Where discrimination takes place over a period of time, the six months begins at the

date of the last discriminatory act. This time limit is extended by three months if the conciliation service has been used within the six month period.

If successful, a student could be awarded compensation, including compensation for any financial loss or injury to feelings. The responsible body could be ordered not to repeat any discriminatory act in the future or to carry out some form of positive action. The court could also make a declaration as to the rights and responsibilities of the parties.

Victimisation

- Counts as unlawful discrimination if it occurs in relation to the provision of Post-16 education under Part 4 of the DDA.
- Discrimination occurs if a person treats the victim (who does not have to be a disabled person) less favourably than they would treat other people in the same circumstances, regardless of disability, because the victim has (or they suspect has or intends to):

- brought proceedings under the DDA;
- given evidence or information in connection with such proceedings;
- done anything else under the Act; **or**
- alleged someone has contravened the Act.

Other organisations

The Education Law Association

Executive Officer

33 College Road

Reading RG6 1QE

Telephone: 01189 669 866

E-mail: secretary@educationlawassociation.org.uk

Provides details of experienced solicitors across the country who are willing to take on legal aid and privately funded cases.

The Equality and Human Rights Commission

London Office

3 More London

Riverside Tooley Street

London SE1 2RG

Telephone (Info only): 020 3117 0235

Telephone (helpline): 0845 604 6610

Textphone: 0845 604 6620

Email: info@equalityhumanrights.com

Website: www.equalityhumanrights.com

Skill (National Bureau for Students with Disabilities)

Head Office

Unit 3 Floor 3

Radisson Court

219 Long Lane

London SE1 4PR

Telephone: 0800 328 5050

Textphone: 18001 0800 328 5050

Fax: 020 7450 0650

E-mail: info@skill.org.uk

Web: www.skill.org.uk

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For further advice on these matters please contact:

Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

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