



# IPSEA

Independent Parental Special Education Advice

## What is disability discrimination?

All early years settings, schools, colleges and local authorities (“LA”) must make sure that they:

- do not treat children and young people worse than others, or badly, because of their **disability**, and
- change what they do (or were planning to do) to make sure a disabled child or young person is not disadvantaged. The type of changes they have to make are called reasonable adjustments. What is reasonable for them to do will depend on the facts.

If you feel your disabled child or young person’s setting or LA has broken one of these duties, you can make a claim about it.

Claims of disability discrimination can be brought against lots of bodies such as early years settings, schools, colleges and local authorities.

A claim of disability discrimination against a school of any type (whether state funded or independent), or against a maintained nursery, can be made to the First-tier Tribunal (Special Educational Needs and Disability) (the “**SEND Tribunal**”).

A claim against a private nursery, a further education college or an LA would need to be brought in the County Court.

IPSEA only advises on cases which go to the SEND Tribunal, so this section of the site focuses on claims against schools. If you wish to bring a claim in the County Court, you will need to seek advice from a solicitor. You may be able to get legal aid to cover the cost of this – see the page on [where to get help](#) for more information.

As a first step, you will need to work out what type of **disability discrimination** you believe has taken place.

## Who can bring a claim?

Not all children or young people with special educational needs will be disabled and not all disabled children or young people will have **special educational needs**. However, the vast majority are likely to fall under both legal definitions.

A child or young person is disabled if they 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 6 of the Equality Act 2010). "Substantial" means more than minor or trivial and "long term" means lasting more than one year or likely to last more than one year. This is a wide definition, and can cover physical or mental health problems, as well as conditions such as dyslexia or autism.

Some conditions are automatically counted as disabilities and people who have will fit the legal definition of disabled: When someone is certified blind or partially sighted, has a severe disfigurement, cancer, HIV infection or multiple sclerosis, they will be disabled under the law.

### **What might the SEND Tribunal order?**

If a disability discrimination claim against a school is successful, it might be ordered to:

- Arrange training for school staff
- Change school policies or guidance
- Provide extra tuition, to make up for lost learning
- Provide a written apology
- Provide trips or other opportunities to make up for activities the child or young person may have missed
- Make reasonable adjustments to accommodate the pupil's disability
- Change the location of lessons or activities within the school
- Where a child had been refused entry to an independent school in a manner that was discriminatory, the school could be ordered to admit the child or young person
- If a child was permanently excluded and this was found to be discriminatory, the school could be ordered to re-admit the child or young person

The following things cannot be ordered:

- Financial compensation
- Physical alterations to school buildings
- The dismissal of a particular staff member