

# Education and disability rights

This factsheet describes:

- the laws that affect the education of all children, including children with additional support needs and children with disabilities
- what these laws mean for the support your child should receive.

## Meaning of words

**Additional support:** help given in school that is extra to or different from the help normally given to children and young people of the same age.

**A child or young person with additional support needs:** a child or young person who is unable to benefit from school education unless they get additional support. For example, a child may need additional support when he or she:

- has behavioural or learning difficulties
- is deaf or blind
- is particularly gifted
- is being bullied, or
- is a carer.

**A child with a disability:** under equality law, a disability is defined as “a physical or mental impairment that has a substantial, long-term, adverse affect on [a person’s ability] to carry out normal day-to-day activities”.

## Who enforces the laws?

The laws apply to local authorities or councils across Scotland, which often have different structures. Some councils have an education department, but others may include education within, say, a Department of Children’s Services, which can include services such as social work, community learning and sports. When planning how best to support children and young people, local authorities and schools must look at the laws and guidance on education, and other relevant laws.

# What are the basic educational rights of all children and young people?

Two education laws state the rights to education of all children and young people in Scotland. These are the **Education (Scotland) Act 1980** and the **Standards in Scotland's Schools etc Act 2000**. They include these important rights and responsibilities:

- Your child should be educated in line with your wishes as far as is reasonable. This includes the right to educate your child at home or request a place at a particular school.
- You have to make sure your child receives an education (at a school or at home).
- Local authorities have to provide an adequate and efficient education for children in their area.
- Children aged between 5 and 16 have a right to a school education.
- The education that local authorities provide has to meet the needs of the whole child rather than just their academic needs.
- Your child's views should be taken into consideration when decisions are made that affect them.
- Normally, school education should be provided in a mainstream school. However, in some cases a special school may be more suitable for a child.
- If your child cannot attend school because they are ill or they have caring responsibilities, then other arrangements for their education should be made.

Your child should receive an education that allows them to develop to their fullest potential. This means your child has a right to receive an education that lets them get the most out of a curriculum that is suited to their needs. Some children need a little or a lot of extra help to do this.

Parents have the right to make a placing request. This is a request for your child to attend a school that is not their local school. See **Enquire factsheet 3: Placing requests** for more information.

## Children and young people with additional support needs

### What rights do children with additional support needs have?

By law, children and young people with additional support needs are entitled to a range of support, and local authorities must identify and meet their needs.

The law that applies is the **Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)**. In this factsheet, we call this act the ASL Act.

Important parts of the ASL Act are:

- Local authorities must identify children and young people who have additional support needs.
- Local authorities must provide adequate and efficient support for children and young people with additional support needs and keep this under regular review.
- Local authorities must identify children and young people who need a co-ordinated support plan. See **Enquire factsheet 13: Co-ordinated support plans** for more information.

- You can ask for your child to be assessed to see if they have additional support needs. Young people also have the right to ask for an assessment.
- You have the right to use ways of resolving disagreements such as mediation and independent adjudication. Young people also have the right to ask for these. See **Enquire factsheet 8: Mediation** and **Enquire factsheet 12: Resolving disputes using independent adjudication** for more information.
- Other agencies, such as social work and health, have duties under the ASL Act, even though it is an education act. For example, a local authority can ask an agency to help identify and support a child's learning needs.

The ASL Act is very important for all children and young people because it gives them the right to have their views heard and taken into account. The way education is planned and delivered should be based on what children and young people say is best for them.

## How can I find out more about the ASL Act?

Enquire has written **The parents' guide to additional support for learning**, which covers all the features of the ASL Act. The Scottish Government have a support for learning section on their website where you can find information and publications. Education Scotland also has a supporting learners section on their website, which says more about the ASL Act. See the section 'Where to get more information' at the end of this factsheet.

## Children and young people's wellbeing

There is a law that focuses on improving the wellbeing of children and young people in Scotland, called the Children and Young People (Scotland) Act 2014. The law sets out an approach called **Getting it right for every child**. This approach stresses the importance of everyone involved with a child taking responsibility for his or her wellbeing, and ensuring they work together to enable the child to reach his or her full potential. The approach uses eight areas of wellbeing to assess when things are going well – the child will be: safe, healthy, achieving, nurtured, active, respected, responsible, and included.

The law does not change the duties that local authorities have as set out in the ASL Act. However, it may change the sort of plans that young people get for their education and who may be involved in identifying and helping to provide a young person's support needs. In practice, what this Act means for children, young people and their families is that:

- all the professionals involved in your child's life should be working together, and with you, to ensure your child's wellbeing
- your child may have a Child's Plan. A Child's Plan will be created if a child or young person needs some extra support to meet their wellbeing needs such as access to mental health services or respite care, or help from a range of different agencies. The Child's Plan will pull together all other plans, e.g. health and education plans, to create one single plan.

If a child has a co-ordinated support plan this will be included in a Child's Plan, but will also need to be treated as a stand-alone document. For more information see **Enquire factsheet 1: Planning children and young people's learning**

- all children and young people (up to the age of 18) will be offered access to a Named Person service to help support their wellbeing. The Named Person will take responsibility for coordinating support for the child's wellbeing, if needed, and keeping parents informed.

More information on the **Getting it right for every child** is available here:

[www.gov.scot/Topics/People/Young-People/gettingitright/publications](http://www.gov.scot/Topics/People/Young-People/gettingitright/publications)

## Children and young people with a disability

### What rights do disabled children and young people have?

Under the **Equality Act 2010** it is unlawful for local authorities and education providers to discriminate against a pupil for a reason related to his/her disability. This law includes duties not to treat a pupil less favourably and to make reasonable adjustments. It is unlawful to discriminate, without justification, against disabled pupils and prospective pupils, in all areas of school life.

### Auxiliary aids and services duty

The reasonable adjustment duty for schools, local authorities and education providers includes a duty to provide auxiliary aids and services for disabled pupils. This could be:

- assistance from a sign language interpreter, lip speaker or deaf-blind communicator
- extra staff assistance
- an electronic or manual note-taking service
- audio-visual fire alarms
- specialised computer software.

Many children and young people will have this type of support provided through the ASL Act.

Further information is given in the Equality and Human Rights Commission's **Equality Act 2010 - guidance for schools**.

Disabled children and young people are entitled to have an assessment and receive support that is designed to "minimise the effect of the child's disability" and "give those children the opportunity to lead lives which are as normal as possible". The law that applies is the **Children (Scotland) Act 1995**, which gives local councils a duty to carry out social work assessments. Their families may also need help and are entitled to request assessments also.

## So must a school make special arrangements for my child?

There is a legal duty to make reasonable changes to the way things are done and to the built environment. The ASL Act applies to these areas too, because there are general duties in the Act that mean your child's individual needs have to be met. The additional support your child needs should be set out in a co-ordinated support plan (CSP) or a learning plan such as an individualised educational programme (IEP). If your child's individual needs are not being met, you can take this up with your child's school or local authority or both. See **Enquire factsheet 4: Resolving disagreements**.

## General Equality Duty

Under the general equality duty set out in the **Equality Act 2010** local authorities must:

- take effective action on equality
- make the right decisions, first time around
- develop better policies and practices, based on evidence
- be more transparent, accessible and accountable
- deliver improved outcomes for all.

## What else has been done to improve life for disabled pupils?

### Duties to improve access

All local authorities have to make education accessible and remove barriers to learning for disabled pupils. This can mean, for example:

- enabling them to take part in all lessons
- making the school physically accessible (widening doorways, installing lifts, fitting hearing loops, etc)
- providing information in Braille, audio or other formats as required.

Under the **Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002**, all local authorities, independent and grant-aided schools have to produce a three-year accessibility strategy, covering all pupils and prospective pupils rather than individual pupils' needs.

For more about disability discrimination, contact the Equality Advisory Support Service. See 'Where to get more information'.

### What can I do if I think the school has unlawfully discriminated against my child?

Claims related to disability discrimination in schools can now be made to the Additional Support Needs Tribunals for Scotland. See 'Where to get more information'.

# Where to get more information

## Publications

The parents' guide to additional support for learning, Enquire (2016)

Enquire factsheet 4: Resolving disagreements (2016)

Enquire factsheet 8: Mediation (2016)

Enquire factsheet 12: Resolving disputes using independent adjudication (2016)

Need extra support at school?, an Enquire guide for young people (2015)

Equality Act 2010 – guidance for schools, Equalities and Human Rights Commission (2010).

[www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/](http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/)

Reasonable Adjustments for Disabled Pupils Scotland

[www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/key-concepts/reasonable-adjustments/](http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/key-concepts/reasonable-adjustments/)

## Websites

Education Scotland's website provides information and articles on supporting learners [www.educationscotland.gov.uk/inclusionandequalities](http://www.educationscotland.gov.uk/inclusionandequalities)

## Organisations

Equality Advisory Support Service (EASS)

Telephone: 0808 800 0082

Textphone: 0808 800 8084

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Additional Support Needs Tribunals for Scotland

Europa Building  
450 Argyle Street  
Glasgow G2 8LH

Telephone: 0141 302 5860

[www.asntscotland.gov.uk](http://www.asntscotland.gov.uk)

# ENQUIRE

Helping you understand additional support for learning

Enquire is the Scottish advice service for additional support for learning. We provide independent and impartial advice to parents and carers, to practitioners in education, social work and health services, and to children and young people themselves.

This factsheet has been awarded the Clear English Standard.



## Contact details

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