

Disabled pupils and the law

This factsheet explains:

- the legal definition of disability
- the key laws that apply to disabled pupils
- what to do if you think your disabled child is not getting the help they need.

Definition of disability

The legal definition of disability is a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

There is not a full list of conditions that either do or do not qualify as physical or mental impairments. Instead, it is about the effect of the impairment(s) on a person's life. This can include the overall **effect** of several different impairments, or the way one impairment affects different areas of someone's life.

There are three main laws that cover the rights of disabled pupils to get the extra help they need at school and nursery.

The Education (Additional Support for Learning) (Scotland) Act 2004 ('the ASL Act')

The ASL Act says that local authorities must identify which children and young people (whose education they are responsible for) need extra help to benefit from their education. These pupils are said to have 'additional support needs'.

Most, but not all, disabled children will have additional support needs. Some will be able to benefit fully from their education without extra help. But if a pupil, for any reason, needs additional support to help them get the most from school or nursery, the local authority must provide it. Find out more in our factsheet on [Additional support for learning: key facts](#).

Some disabled pupils may need their school or nursery to make adjustments so that they can have equal opportunities to participate fully. These kinds of adjustments are covered by the Equality Act.

The Equality Act 2010

Duty to make reasonable adjustments for disabled pupils

The Equality Act says that all local authorities, nurseries and schools (including independent and grant-aided schools) must take steps to avoid disabled pupils being significantly disadvantaged. These steps are called 'reasonable adjustments'. Schools and nurseries must think in advance about the adjustments disabled pupils may need.

Reasonable adjustments can include changes to the way a school or nursery operates on a day to day basis, including the decisions and actions that they take. For example:

- A school adjusting a 'blanket policy' such as their school uniform policy if it causes difficulty for a disabled pupil.

Making reasonable adjustments can also mean providing additional support or assistance to a disabled pupil. This can be things like assistance from a sign language interpreter, specialised computer software, extra staff help, or adapted PE equipment. For example:

- A school taking an additional staff member on a school trip to support a disabled pupil, if the pupil could not go on the trip without that support.

What is 'reasonable' for a school or nursery to do in a particular situation depends on the circumstances. They should consider things like:

- how effective it would be in overcoming disadvantage
- the financial costs
- how practical it is.

Duty not to discriminate

The Equality Act says that it is against the law for schools and nurseries to discriminate against disabled pupils in relation to:

- admission to the school or nursery
- the provision of education
- access to any of the benefits, facilities, or services of the school or nursery

- exclusions from school or nursery
- any other detriment (this can be anything that would put a pupil in a worse position, for example denying them an opportunity or choice).

It is also unlawful for schools or nurseries to harass or victimise disabled pupils.

Disabled pupils are protected from several different kinds of discrimination, including:

- treating a disabled pupil less favourably than a non-disabled pupil for a reason connected to their disability
- doing something that applies to all pupils in the same way, but that puts disabled pupils at a disadvantage
- failing to provide reasonable adjustments for a disabled pupil.

The Equality Act does not cover changes to the physical environment of a school or nursery. This is covered in the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002.

Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002

Local authorities and independent and grant-aided schools do not have a duty to adapt the physical accessibility of their schools or nurseries for individual pupils. Instead, they must plan to improve disabled access in general by having an Accessibility Strategy. Schools and nurseries run by a local authority should take account of their local authority's Accessibility Strategy and incorporate relevant parts into their own development plans.

Accessibility Strategies must set out how improvements will be made to:

- access to the curriculum
- access to the physical environment
- information for and communication with disabled pupils.

They should be based on the principle that disabled pupils should:

- have access to a full and broad curriculum
- be able to attend, wherever possible, the school of their choice and access all areas and activities of that school
- be provided with information in alternative formats
- have the same opportunities as non-disabled pupils to give their views and communicate with staff and other pupils.

Accessibility Strategies must be reviewed at least every three years, and copies must be available on request.

A local authority does not have to adapt all their schools and nurseries at the same time, but they should have a plan to look at all their schools and nurseries and decide an order of priority for adapting them.

What can I do if my disabled child is not getting the support they need?

If you feel your child is not getting the help they need to benefit from their education, there are several things you can do. The first step is to speak to the school or nursery about your concerns and discuss whether changes to your child's support can be made. Find out more about steps you can take in our factsheets on [Working together with your child's school](#) and [Avoiding and solving problems](#).

If you are concerned that:

- the school has not made reasonable adjustments to avoid putting your disabled child at a disadvantage, or
- your child has been discriminated against because they are disabled,

you can seek advice from the Equality Advisory and Support Service, who are experts in equality law (see contact details below).

If you cannot resolve a disagreement with the school or nursery and feel they are discriminating against your child, you (or your child if they understand how) can make a claim of disability discrimination. You can make this claim to the Additional Support Needs Tribunal. You can only do this if the discrimination occurred in the last six months. Find out more about this in our factsheet on [The Additional Support Needs Tribunal](#).

Where can I find out more?

Equality Advisory and Support Service www.equalityadvisoryservice.com

Tel: 0808 800 0082

The Equality Advisory and Support Service provides advice and information on issues related to equality and human rights. As well as their telephone helpline, there is a contact form and online chat available through their website.

Technical Guidance for Schools in Scotland on the Equality Act (2014)

www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland

This is the Equality and Human Rights Commission's guidance for schools about their responsibilities under the Equality Act.

Reasonable adjustments for disabled pupils: Scotland (2014)

www.equalityhumanrights.com/en/publication-download/reasonable-adjustments-disabled-pupils-scotland

This is the Equality and Human Rights Commission's detailed guidance about reasonable adjustments in schools.

Planning improvements for disabled pupils' access to education (2014)

www.gov.scot/publications/planning-improvements-disabled-pupils-access-education-guidance-education-authorities-independent

This is the Scottish Government's guidance for local authorities and schools about writing and reviewing their Accessibility Strategies.



How Enquire can help

Enquire can help you understand your child's rights to additional support for learning and how to work in partnership with their school or nursery to make sure your child gets the support they need.

Enquire can:

- explain your child's rights to additional support for learning
- listen to any questions and concerns
- advise you on the way forward
- help you find local education and support services.

You can contact our helpline on **0345 123 2303** or info@enquire.org.uk
Access to interpreters is available.

You can also find lots more information about additional support for learning, including our full range of publications, at www.enquire.org.uk

The information on our website is available in over 100 languages and with a range of accessibility tools, such as text-to-speech.

Reach is our website for children and young people. Reach helps pupils to understand their rights to feel supported, included, listened to and involved in decisions at school: www.reach.scot

Enquire is also a partner in the My Rights, My Say service. My Rights, My Say supports children aged 12-15 with additional support needs to exercise their rights to be involved in decisions about their support in school:
www.myrightsmysay.scot

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