

Key steps to avoid falling foul of disability discrimination laws

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For a school to become the subject of a disability discrimination claim is a challenging and resource-intensive matter, and can also be a source of potential reputational damage, even where such a claim is without merits.

As such, while this is a complex area of the law, there is a real value in front line staff in schools having some understanding of the legal requirements in this area, including strategies that can mitigate the risk of challenges in the First-tier Tribunal.

So, how can schools go about providing the right sort of guidance?

The importance of training

Firstly, it is important for schools and school staff to have a sound understanding of the legal requirements under the [Equality Act 2010](#) ("the Act"). In particular, they need to understand the definition of disability and what is and is not included.

A disability includes any physical or mental impairment that has a substantial and long-term adverse effect on the individual's ability to carry out normal day-to-day activities. Examples include, but are not limited to, dyslexia, autism, Down's syndrome, depression and schizophrenia.

They also need to have a sound understanding of the various duties on schools and school staff under the Act, and the types of decisions that these duties apply to, which include decisions around admissions, provision of education and exclusions.

The duties under the Act include the duty not to discriminate (directly or indirectly), harass or victimise, as well as the duty to make reasonable adjustments.

While, in some cases, the risks of disability discrimination may be clear, this is a complex area of the law and is at times much more nuanced.

For example, a teacher may decide to deny a pupil with a facial disfigurement a place on the school debating team, because they believe that other pupils taking part in the debates will make fun of the pupil and cause him distress. Although the teacher may have good intentions, denying the pupil the chance to be on the debating team is likely to be direct disability discrimination.

The complexity around reasonable adjustments

The "reasonable adjustments" duty is one in which schools often seek legal advice. This is covered by Section 20 of the Act and is the requirement to make reasonable adjustments to physical features, auxiliary aids, and provision, criteria or practice in school to prevent discrimination.

What is considered “reasonable” is very much fact specific, but there are factors that schools should consider when deciding what is likely to be considered reasonable, including school resources or cost, the effectiveness of the adjustment and the effect of the adjustment on other pupils.

These are factors that the Tribunal will consider in evaluating whether a school has acted reasonably.

There are strategies that schools and school staff can adopt to try to mitigate the risk of disability discrimination claims. Schools and school staff should have a sound understanding of parts of the Equality and Human Rights Commission’s [Technical Guidance for Schools in England](#).

This is comprehensive guidance that covers discrimination in schools. Although it is not statutory, it may be used in legal proceedings.

If a discrimination claim is brought, schools are likely to be in a stronger position to defend the claim if they can provide evidence that they have followed aspects of this guidance.

Record keeping

It is likewise important for front line staff to keep detailed records of conversations with families and external professionals.

Keeping an accurate record of decision-making processes, including any risk assessments, can be key to creating an evidence trail that can be usefully relied upon where legal challenge of a school arises.

Should the various mitigation strategies against a claim fail, school staff should have some knowledge of the process of preparing for tribunal, including the relevant timelines and gathering of evidence.

The school should gather any relevant evidence and witness statements from all staff involved, addressing the allegations made in the claim form. Witnesses should only comment on what is in their own knowledge (avoiding opinions, what others have said, etc).

Schools may wish to seek legal advice at this stage, or when it is likely that a claim will be brought, as it is important that their evidence is as strong as it can be.

Browne Jacobson’s national head of education Mark Blois will be presenting at the [Tes Send Show](#) on Friday 7 October 2022, where he will be covering the legal requirements for front line staff in schools in relation to pupils with disabilities and how to mitigate against the risk of disability discrimination claims in the First-tier Tribunal (Special Educational Needs and Disability).

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