

SPECIAL EDUCATIONAL NEEDS AND DISABILITY (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1117

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

Part Iii – Disability Discrimination in Education

Chapter 1 – Schools

Articles 13 to 26 with Schedule 2

Article 14: Discrimination against disabled pupils and prospective pupils

41. This Article prohibits all schools from discriminating against children who have disabilities in their admissions arrangements, in the education and associated services provided by the school or in relation to expulsions and suspensions from the school.

Article 15: Meaning of “discrimination”

42. This Article defines discrimination. It works in the same way as the definition in Section 5 of the DDA, except in the respects set out below.
43. The reasonable adjustments duty under Article 16 is owed to pupils at large. For the parents of a pupil to bring proceedings it is necessary for them to show that the general duty is breached and that this breach was to the pupil’s detriment. Responsible bodies will not be liable where they do not know (and could not reasonably be expected to know) of a pupil’s or prospective pupil’s disability, in relation to the less favourable treatment duty and the reasonable adjustment duty.
44. Responsible bodies must consider what reasonable adjustments it should make to meet the needs of pupils who have disabilities but it may need to know that a particular pupil had a disability in order to apply a policy to him. A responsible body would not be liable for failure to take a particular step where it did not know and could not reasonably have been expected to know of the disability.

Article 16: Pupils with a disability not to be substantially disadvantaged

45. This Article places an anticipatory duty on schools to take reasonable steps to ensure pupils who have a disability are not placed at substantial disadvantage in comparison to pupils who do not have a disability, in relation to education and associated services provided, and to ensure that prospective pupils who have disabilities are not placed at a substantial disadvantage in relation to admission arrangements. Schools will not be required to make physical alterations or to provide auxiliary aids under this Article.

Article 17: Accessibility strategies of Boards

46. This Article places a duty on Boards to plan to increase accessibility of the curriculum and school premises and to improve the delivery of information which is provided in writing for pupils who do not have a disability, to pupils who have a disability in ways which are determined after taking account of the effects of the disabilities and any preferences expressed by the pupil or their parents.
47. The Board's accessibility strategy will set out its plans in respect of the controlled schools under its management. The Board can choose the format it feels most appropriate to record its strategy but must have regard to any guidance issued by the Department of Education.

Article 18: Accessibility plans for Schools

48. Independent schools will be required to make a copy of their plans available on request within a reasonable time. Grant-aided schools will have to publish information about their plans in their annual governors' report.
49. All schools will have to keep their plans under review, and revise them if necessary in light of that review and must allocate adequate resources to implement their plans. Regulations may prescribe the period to be covered by the plan as well as when schools should produce new plans.

Article 19: Duty of Boards not to discriminate

50. This Article makes it unlawful for a Board to discriminate against a pupil or prospective pupil who has a disability in the discharge of its functions.

Article 20: Residual duty: Supplementary provisions

51. This Article imposes duties upon Boards to take reasonable steps to ensure that they do not place pupils (or prospective pupils) with disabilities at a substantial disadvantage compared to those without a disability in the discharge of any of their functions under Article 19.

Article 21: Special Educational Needs and Disability Tribunal

52. This Article changes the name of the SENT to the SENDIST and extends its jurisdiction to hear cases of disability discrimination in schools.

Article 22: Jurisdiction and powers of the Tribunal

53. This Article sets out the circumstances in which a parent can make a claim to SENDIST and the powers that SENDIST will have if it finds that there has been unlawful discrimination. The alleged discrimination may be treated as having been done by the responsible body if committed by its employees or agents.
54. Claims of discrimination in relation to expulsions from grant-aided schools will not be made to SENDIST these will be made through expulsion appeals panels. SENDIST will hear claims of discrimination in relation to expulsions from independent schools and claims of discrimination in relation to suspensions from all schools.
55. SENDIST can order any remedy it thinks appropriate with the exception of financial compensation. It will be able to order schools and Boards to take compensatory action to take account of past discrimination. SENDIST will be able to set deadlines when directing action by schools and Boards. If a responsible body fails to comply within the deadlines, the parent can ask the Department of Education to make a direction to require compliance.

Article 25: Role of the Department of Education

56. This Article gives the Department of Education the power to direct a Board or a school if satisfied that they have not complied with; or have acted unreasonably in carrying out, their duties to plan under Articles 17 and 18. It also gives the Department the power to direct Boards and schools if satisfied that they have not complied with, or have acted unreasonably in complying with an order made by SENDIST.

Article 26: Validity and revision of agreements of responsible bodies

57. This Article applies to contracts and agreements with schools, so that any discriminatory terms are made void.