
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 332

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006

Meaning of “discrimination” and “harassment”

6.—(1) Article 29 (meaning of “discrimination”) is amended as follows.

(2) In paragraph (1) for “Article 28” substitute “this Chapter”.

(3) For paragraph (2) substitute—

“(2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by Article 30 or 30A(5) in relation to the disabled person.”.

(4) Omit paragraph (4).

(5) For paragraphs (5) to (9) substitute—

“(5) Treatment, other than the application of a competence standard, is (subject to paragraphs (7) to (9)), justified for the purposes of paragraph (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(6) The application by a responsible body of a competence standard to a disabled person is (subject to paragraphs (8) and (9)) justified for the purposes of paragraph (1)(b) if, but only if, the body can show that—

(a) the standard is, or would be, applied equally to persons who do not have his particular disability, and

(b) its application is a proportionate means of achieving a legitimate aim.

(7) If in a case falling within paragraph (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under Article 30 or 30A(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under paragraph (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to paragraph (9), regulations may make provision, for the purposes of this Article, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.

(9) Treatment of a disabled person by a responsible body cannot be justified under paragraph (5), (6) or (8) if it amounts to direct discrimination falling within paragraph (10).

(10) A responsible body directly discriminates against a disabled person if, on the ground of the disabled person’s disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(11) In this Article and Article 30, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability.”.