

The Disability Discrimination Act Part 4 A Governors' Guide

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Introduction

The Disability Discrimination Act 1995 (DDA) is extended to education from September 2002. This leaflet explains in brief the implications for governing bodies and Governors of higher education institutions.

The legislation does not aim to lower academic standards. Instead, it aims to ensure that disabled people have equal opportunity to benefit from, and contribute to, the learning available in higher education institutions.

Institutions already have responsibilities towards members of staff and members of the public under the Act. This leaflet does not cover these responsibilities. For more information on these responsibilities, please contact the Disability Rights Commission (see Helpline details at the end of this leaflet).

A brief outline of the Governing Body's responsibilities

The Governing Body has legal liability for ensuring that higher education institutions comply with the new requirements of the Disability Discrimination Act (DDA). The DDA refers to the Governing Body as the "responsible body". The responsible body is legally liable for the actions of the institution as a whole, but also for:

- the actions of individual employees of the institution in the course of their employment, whether they are full-time, part-time or temporary
- the actions of agents, including contractors, visiting speakers etc.

It may be possible to use a defence that all reasonably practicable steps were taken to prevent staff or agents discriminating.

The Act makes it unlawful to discriminate against disabled applicants, potential applicants or students. The Act uses a wide definition of a disabled person. It can include people with physical or mobility impairments, visual impairments, hearing impairments, dyslexia, medical conditions and mental health difficulties. The meaning of student is also very wide. It includes full and part-time students, postgraduates and undergraduates, home and overseas students, those on short courses, day schools, evening classes, taster courses or even those undertaking only part of a course or visiting from another institution. Applicants and potential applicants include those attending open days or interviews, receiving a prospectus, or those targeted by recruitment drives and outreach work.

Discrimination against disabled applicants or students can take place in either of two ways. By:

- treating them “less favourably” than other people
- failing to make a “reasonable adjustment” when they are placed at a “substantial disadvantage” compared to other people for a reason relating to their disability.

The act applies to all the activities institutions undertake wholly or mainly for students, including

- all aspects of teaching and learning, including lectures, lab work, practicals, field trips, work placements etc
- e-learning, distance learning
- examinations and assessments
- learning resources, including libraries, computer facilities etc
- aspects of the physical environment such as buildings, landscaping and equipment
- welfare, counselling and other support services
- catering, residential and leisure facilities
- careers services.

A reasonable adjustment might be any action that helps to alleviate a substantial disadvantage. It might involve:

- changing standard institutional procedures or adapting the curriculum, electronic or other materials, or the delivery of teaching
- providing additional services, such as a sign language interpreter or materials in Braille
- training staff to work with disabled people and to provide appropriate adjustments
- altering the physical environment.

Under the Act, there is a responsibility to make anticipatory adjustments. This means that institutions should consider what adjustments future disabled students or applicants may need, and make them in advance.

Institutions are only expected to do what is “reasonable”. This will depend on all the individual circumstances of the case, including the importance of the service, the financial or other resources of the institution and the practicality of the adjustment. Other issues, such as the relevant interests of other people including other students, health and safety and the need to maintain academic standards are also important.

Most of the Act is implemented from September 2002. There are two exceptions. Adjustments requiring the provision of “auxiliary aids and services” (such as interpreters, lip-readers, note takers etc) are not required until September 2003. Adjustments requiring alterations to physical features are not required until September 2005.

The Disability Rights Commission is offering a conciliation service for students and institutions to sort out any differences informally. If both parties do not agree to conciliation, or if conciliation fails, a student or applicant can take a case to a county court (in England or Wales) or a sheriff court (in Scotland).

Checklist

1. Are Governors familiar with the Act and with their responsibilities?
2. Is responsibility for complying with the Act taken seriously by senior managers?
3. Has the institution carried out an audit and risk assessment of its current situation against its potential responsibilities under the DDA?
4. Are all staff and agents aware of and trained in their responsibilities under the Act? Have they received sufficient training to know how to avoid discriminating against disabled people?
5. Do contracts with agents make clear what is expected of them regarding their treatment of disabled students?
6. Are appropriate procedures in place to ensure that any discriminatory treatment by staff or agents would be picked up on and dealt with appropriately?
7. Are Governors aware of how accessible the institution, its policies and procedures, its curriculum and its buildings are?
8. Is an action plan in place to ensure that accessibility is improved?
9. Do planning processes take into account the need to make anticipatory adjustments?
10. Are appropriate funds set aside to make reasonable adjustments?
11. Are complaints of discriminatory treatment dealt with quickly and fairly by internal complaints procedures?

Other resources

The following organisations may be helpful to provide more information on your legal responsibilities towards disabled students and applicants under the Disability Discrimination Act

Further guidance and advice, and copies of the Code of Practice (Post-16) are available from the Disability Rights Commission Helpline – details below.

You can contact

Codes of practice covering institutions' responsibilities towards employees and members of the public are available from The Stationery Office and good bookshops.

Skill: National Bureau for Students with Disabilities

Information Service
Chapter House
18-20 Crucifix Lane
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