

# **SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 – Disability Discrimination in Education**

##### *Chapter 1 – Schools*

##### *Section 18: Jurisdiction and powers of the Tribunal*

89. This section amends the DDA by inserting a new section 28I to set 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 have been committed by the responsible body of the institution in breach of section 28A of the DDA, or be treated under section 58 of the DDA as having been done by the responsible body if committed by its employees or agents.
90. *Section 28I(2)* prevents claims of discrimination being made to SENDIST in relation to admissions to, and permanent exclusions from, maintained schools and CAs. Arrangements for these schools will be through admissions appeals panels or exclusions appeals panels and are described under sections 20 and 21 respectively. SENDIST will hear claims of discrimination in relation to admissions to, and permanent exclusions from, all other schools. SENDIST will hear claims of discrimination in relation to temporary exclusions from all schools because temporary exclusions are not covered in the existing arrangements for exclusion appeals panels.
91. *Sections 28I(3) & (4)* gives SENDIST wide powers to order any remedy it thinks appropriate with the exception of financial compensation. Although SENDIST will not be able to award financial compensation it will be able to order schools and LEAs to take compensatory action to take account of past discrimination and shape the future prospects of the disabled child. Examples of the kind of orders that SENDIST might make are:
- that the LEA or school provide disability awareness training for some or all staff;
  - that the LEA or school prepare guidance on combating disability discrimination for issue to all staff;
  - that an LEA Equal Opportunities Officer arrange and attend, at specified times, meetings between the school and the child's parents to review what reasonable adjustments (short of adjustments to the physical premises or provision of auxiliary aids) might be required;
  - that the school/LEA change policies, for example, those that prevent visually impaired pupils going into the science laboratory, those that prevent disabled pupils going on certain school trips and anti-bullying policies so that they deal with bullying on the grounds of disability;

*These notes refer to the Special Educational Needs And Disability  
Act 2001 (c.10) which received Royal Assent on 11 May 2001*

- that additional tuition is provided to enable a child to catch up on things he has missed due to discrimination (such as science lessons in the example above);
  - that a library is relocated to the ground floor (short of requiring an adjustment to the physical premises), or if not possible, that the school provides a list of available books and ensures that they are brought down to the child for him to read in a quiet room;
  - that an independent school must admit a disabled pupil (where the school had previously refused) or must admit the pupil on the same terms as pupils who are not disabled (where, for example, the school had offered a place but at an increased fee); or
  - that a maintained school which has temporarily excluded a disabled pupil must provide additional tuition to enable the pupil to catch up on education missed due to discrimination.
92. SENDIST will be able to set rigorous deadlines when directing action by schools and LEAs. If a responsible body fails to comply within the deadlines, the parent can ask the Secretary of State to make a direction to require compliance.