

# EAST AYRSHIRE COUNCIL

## EDUCATION COMMITTEE – 13 NOVEMBER 2001

### DISABILITY DISCRIMINATION ACT DRAFT CODE OF PRACTICE (SCHOOLS)

#### Report by Director of Educational and Social Services

#### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise Elected Members of the Draft Code of Practice (Schools). This provides detail which outlines the new duties which extend the Disability Discrimination Act 1995 to cover every aspect of school life.

#### 2. BACKGROUND

- 2.1 The Special Educational Needs and Disability Act 2001 amends the Disability Discrimination Act 1995 and inserts a new Part IV to prevent discrimination against disabled people in their access to education and associated services. The new duties come into effect in September 2002.
- 2.2 The Disability Rights Commission have produced a Draft Code of Practice (Schools) and have invited parents, local authorities, school boards and others to submit their views on the Code by completing a questionnaire.
- 2.3 East Ayrshire's Department of Educational and Social Services established a group with representation from Primary, Secondary and Special Head Teachers, Co-ordinators from Hearing Impairment and Network Support Services, Support to Community and Planning and Resources to prepare an authority response.

#### 3. NEW DUTIES

- 3.1 The new duties will ensure that children and young persons who are disabled are not discriminated against in education. The duties contained in the Act are statutory but the Code does not impose legal obligations. The duties apply to all education authorities, schools and nurseries in Scotland.
- 3.2 The definition of disability as set out in the Act establishes that a disabled person is someone who has a physical or mental disability which has an adverse effect on his or her ability to carry out normal day-to-day activities. Physical or mental disability includes sensory impairments. Hidden disabilities are also covered. These include;
- mental illness
  - mental health problems
  - learning difficulties
  - dyslexia
  - diabetes
  - epilepsy
- 3.3 Every aspect of school life is covered by the duties. Responsible bodies such as the education authority must not discriminate in:
- admissions,
  - education and associated services, or
  - exclusions
- 3.4 Three distinct aspects of admission are covered by the duties. Responsible bodies must not discriminate against a disabled person;
- in the arrangements that they make for the determining admission of pupils to school;
  - in the terms on which the responsible body offers pupils admission to the school

- by refusing or deliberately omitting an application for admission to the school from someone who is disabled.

- 3.5** Education and associated services may include;
- preparation for entry to the school;
  - the curriculum;
  - teaching and learning;
  - classroom organisation;
  - timetabling;
  - grouping of pupils;
  - homework;
  - access to school facilities;
  - activities to supplement the curriculum, for example a drama group visiting the school;
  - school sports;
  - school policies;
  - breaks and lunchtimes;
  - the serving of school meals;
  - interaction with peers;
  - assessment and exam arrangements;
  - school discipline;
  - schools trips;
  - the school's arrangements for working with other agencies;
  - preparation of pupils for the next phase of education.
- 3.6** The duties make it unlawful for a responsible body to discriminate against a disabled pupil by excluding him or her from the school for a reason related to the pupil's disability.
- 3.7** There are two ways that a child or young person with disabilities can be discriminated against by their education provider:
- treating a disabled pupil or prospective pupil **less favourably** than they would give to a child without a disability;
  - failing to **make reasonable** adjustments to ensure that disabled pupils or prospective pupils are not placed at a substantial disadvantage in comparison to their non-disabled peers.
- 3.8** There are two exceptions to the reasonable adjustments duty. Schools are not required to:
- provide auxiliary aids or services;
  - make physical alterations to the buildings.
- 3.9** The reasonable adjustments duty is owed to disabled children in general, not just to individual disabled children. This means that the duty is anticipatory. It means that, even if there are no disabled pupils in the school at present, responsible bodies will need to consider changes, in the expectation that there will be disabled pupils in their school.
- 3.10** The Act includes provision to prevent responsible bodies from being liable to a claim of discrimination if they did not know that a pupil was disabled, and if they could not reasonably have known.
- 3.11** The Act says that if a parent or a pupil asks a school to keep confidential the fact that the pupil has a disability, or the nature of that disability, the responsible body should comply with that request.
- 3.12** Members would wish to be aware that the Code of Practice will have a significant and major impact on service delivery. In particular, the policies and practices of the Authority will require review to ensure that they are compliant with the Act. The Act will also raise the expectations of parents and pupils. Awareness of the Act and its implications is already high. It is likely that this will have significant, but as yet unquantified implications for the allocation and distribution of resources.

#### **4. THE DRAFT CODE OF PRACTICE**

- 4.1** The code gives practical guidance to help responsible bodies and schools for ensuring that the duties of the Act are implemented. There is no legal obligation to comply with the code. However, total compliance with the Code will give greater protection from allegations of discrimination under the Disability Discrimination Act.
- 4.2** Throughout the Draft Code there are examples in the text to support an understanding of the legislation and to illustrate how the duties might be met or breached. All the examples are drawn from real situations and from what is already happening in schools and in the lives of disabled pupils.
- 4.3** The Draft Code of Practice is a substantial document. A copy is available in the Members' Library.

#### **5. CONSULTATION**

- 5.1** A multi-disciplinary group met to consider the Draft Code of Practice. The Disability Rights Commission required a response by 31 October 2001. A consensus was reached and the questionnaire was completed. This is also available in the Members' Library. The Disability Rights Commission will accept further comments resulting from this meeting of the Education Committee.
- 5.2** Overall the group were of the opinion that the Code was an excellent document and will provide support to schools and the authority with the implementation of the Act. The main points highlighted in the response were;
- the document was clear, concise and easily understood;
  - the examples given throughout were helpful but more examples which described situations where action taken was lawful and where reasonable adjustments had been made would give more balance to the document;
  - the examples tended to be clear cut. Situations where there were areas of doubt would be welcomed;
  - the document included guidance for England and Wales. Although this was a useful overview separate documents for England and Wales and Scotland would cut down considerably the length of the document and make it more easily accessible

#### **6. FINANCIAL IMPLICATIONS**

NIL

#### **7. LEGAL/AUTHORITY IMPLICATIONS**

- 7.1** The implication for the authority are wide reaching in terms of the implementation of the Act. As the duty to make reasonable adjustment is anticipatory and covers all aspects of school life, schools and the authority will need to review their policies, practices and procedures to ensure that they do not discriminate against any disabled child.

#### **8. RECOMMENDATIONS**

- 8.1** It is recommended that Elected Members:
- (i) agree this report as a basis for the consultation response to the Disability Rights Commission; and
  - (ii) otherwise note the contents of the report.

John Mulgrew  
Director of Educational and Social Services

MJR/MJR  
19 October 2001

**LIST OF BACKGROUND PAPERS**

Draft Code of Practice (Schools) Disability Rights Commission

Members wishing further information should contact Graham Short, Head of Schools  
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**IMPLEMENTATION OFFICER** Graham Short, Head of Schools

**AGENDA**