



The Rotherham Parent Partnership Service

Rotherham
Metropolitan
Borough Council
Where Everyone Matters

FACTSHEET

THE LEGAL FRAMEWORK AROUND SPECIAL EDUCATIONAL NEEDS

This brief summary of the main Acts concerned with disability will give you some background to how and why services are developed and to highlight the legal rights of children.

THE CHILDREN ACT 1989

The children Act 1989 is the legal framework for provision of services for children with disabilities, who are now included within the Act's definition of 'children in need' (Section 17), for whom the local authority has particular responsibility to provide a range of services and support.

Disabled children and young people have the same rights to health care and treatment as their non-disabled peers. The Children Acts 1989 outlines a child's right to good physical and mental health, as well as protection from harm.

Some key responsibilities of Rotherham Metropolitan City Council include:

- Develop an index of children with disabilities in the area.
- Provide services which are designed to minimise the effects of disability and provide opportunities for children to lead lives which are 'as normal as possible'.

An amendment to the Act was made in 1996 to introduce Children's Services Plans. The purpose of these is to:

- assess the need for provision
- consult with various bodies as to how these needs should be met
- to publish and regularly review the resulting plans.

These Service Plans present opportunities for parents of disabled children to have their views represented and to influence service delivery.

The Service Plan must include services for children with disabilities and their families, and show clear, targeted and timed objectives which will be regularly reviewed.



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THE CHRONICALLY SICK AND DISABLED PERSONS ACT 1970

The Act places several duties upon local authorities in relation to children and adults with disabilities.

These include:

- identifying the number of people with disabilities in their area and publishing information about Social Services
- providing a range of Social Services if the local authority feel they are necessary to meet a disabled person's needs. These could include home adaptations, holidays and practical assistance in the home.

THE DISABLED PERSON'S (SERVICES, CONSULTATION AND REPRESENTATION) 1986

This Act applies to disabled people of all ages and supplements the provisions of the Children's Act 1989 and The Chronically Sick and Disabled Persons Act 1970.

Under this act, the local authority is expected to:

- assess needs for services
- identify and assess the needs of disabled school leavers in relation to Social Service provision. This links in with the requirement of the Local Education Authority to make transition plans for young people with statements of Special Educational Needs at the 14+ annual review.

LOCAL GOVERNMENT AND HOUSING ACT 1989

This Act enables the local authority to give Disabled Facilities grants to disabled people (including children) to help with the costs of adaptations, so that they can live as independently as possible in their own homes.

THE NHS COMMUNITY CARE ACT 1990

This Act provides the legal framework for the provision of health care and community care for children and adults in England and Wales.

THE CARERS (RECOGNITION AND SERVICES) ACT 1995

Since the implementation of this Act in 1996, carers can request and



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receive independent assessments of their needs when the person or child they care for is undergoing an assessment. The results of both assessments should be considered when looking at service provision.

The definition of a carer is someone who is providing or intending to provide regular and substantial care. This includes young carers. The Act does not command additional resources, but does raise the profile of carers' needs within the community.

THE SPECIAL EDUCATION NEEDS AND DISABILITY ACT 2001

The aim of this Act is to ensure that people with disabilities have equal opportunities in terms of access to employment, goods and services, buildings and the environment in general. Although it primarily relates to adults, there are sections focusing on children and young people.

These include:

- **Section 29**, which requires schools to consider access issues, report annually on their admission procedures for disabled pupils, and take effective steps to prevent discrimination.
- **Section 20**, which requires Further Education Colleges and other Higher Education Institutions to include disability statements on their access and admission arrangements.
- The Act places an onus on all service providers - such as RMBC, hotels and shops - to consider access and discrimination issues.

THE EDUCATION ACT 1996 AND SPECIAL EDUCATION NEEDS

The Education Act 1996 as amended by the Special Educational Needs and Disability Act 2001 provides a legal framework for the assessment of and special education provision for children with special educational needs (SEN). The new Code of Practice on the identification and assessment of SEN (Department for Education and Skills 2001) provides guidance on the identification and assessment process and the way in which pupils' special educational needs should be met. There is detailed information about the responsibilities of Social Services Departments and the Health Authority with reference to their role in the importance of working in partnership with parents and pupils. The Code of Practice highlights the importance of



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working in partnership with parents and pupils. Parents also have a right of independent appeal to the SEN Tribunal. From September 2002, the Tribunal will also be able to deal with claims of disability discrimination.

All maintained schools must have SEN policies which clearly set out how they intend to identify, assess and meet special education needs and involve parents in their children's education.

Also outlined in the Code of Practice are the arrangements for transition from primary to secondary school and from secondary to further and higher education. This requires local education authorities to consult with a variety of bodies, including Social Services, the Health Authority, the Careers Service, the Learning and Skills Council and the Connexions Service in planning for a young person's transition to adult life.

THE DISABILITY DISCRIMINATION ACT 1995 AS AMENDED BY THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001

Part 4 of this act makes it against the law for the responsible body of a school to discriminate against a child for a reason related to his/her disability in:

- Admissions
- Education and associated services, including school trips, the curriculum, teaching and learning, school sports, the serving of schools meals
- Exclusions.

Discrimination is referred to in two aspects, less favourable treatment and failure to take reasonable steps. A school may be discriminating if it treats a child "less favourably" for a reason related to his/her disability and it cannot justify that treatment. In some cases, the school may be able to justify treating your child "less favourably" if it can show that it did so for a 'material and substantial' reason. This means that the reason must relate to your child's particular case and be significant enough to justify discrimination. A responsible body can also be accused of discriminating if it does not take "reasonable steps" to ensure your child is not at a substantial disadvantage compared to the other pupils at the school.



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LEAs and schools have duties to prepare and implement accessibility plans to improve access to education for disabled pupils.

MENTAL HEALTH ACT 1983

The Children Act 1989 and NHS and Community Care Act 1990 provide for children and young people with mental health difficulties. However, it is useful to know about the Mental Health Act 1983, as it clearly defines learning disabilities and mental illness. It gives young people of 16 and over the right to give consent to treatment, except in an emergency, and provides arrangements for guardianship to protect a vulnerable person or to ensure that they receive treatment.

THE CARE STANDARDS ACT 2000

The main purpose of the Act is to reform the regulatory system for care services in England and Wales. Care services range from residential care homes and nursing homes, children's homes, domiciliary care agencies, fostering agencies and voluntary adoption agencies through to private and voluntary healthcare services (including private hospitals and clinics and private primary care premises). For the first time, local authorities will be required to meet the same standards as independent sector providers.

THE CITIZENS CHARTER

The Charter covers all public services and states the need for:

- full and accessible information about all services and performance
- informed choice
- effective complaints procedure

OBTAINING LEGAL ADVICE

For advice on legal issues, you could contact:

- Your solicitor
- Citizens Advice Bureaux (see local phone book for details)
- Sheffield Law Centre, tel: 0114 273 1888
- Children's Legal Centre, tel: 01206 873 820
- Advisory Centre for Education, tel: 0808 800 5793

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Legal Aid may be available for many situations involving children and young people with disabilities. You should ask your solicitor for advice about this since it might mean that legal advice could be free, or cost very little.

Useful Further Reading:

'Disability Rights Handbook'

Published by Disability Alliance Education and Research Association.

Updated yearly, ring 020 7247 8776 for an order form.

'Legal Action Magazine'

Published monthly by Legal Action Group. Includes updates on recent court cases.

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