

CARING FOR CHILDREN WITH MEDICAL CONDITIONS IN SCHOOL – LEGAL INFORMATION

The laws relating to looking after children with medical conditions in school in the UK vary depending on the particular nation. The following is a summary of the relevant legislation and guidance in each nation.

The Equality Act 2010 (England, Scotland and Wales)

The NHS, local authorities and all schools in England, Scotland and Wales all have duties towards children with medical conditions, many of whom are legally defined as being disabled. Fee-paying independent schools are also legally obliged to meet the duties in the Equality Act 2010.

The relevant aspect of this act to schools is that governing bodies or proprietors must make reasonable adjustments to ensure that children and young people with disability are not put at a substantial disadvantage compared with their peers.

Importantly, this duty is anticipatory, which means adjustments must be put in place in advance to prevent disadvantage from occurring.

This is particularly relevant to schools in making sure they have enough staff trained so that a child with a medical condition can take part in all aspects of school life. If all the trained staff leave contingency plans must be in place to train up replacements quickly.

The Equality Act also states children with disability must not be discriminated against, harassed or victimised.

You can find out more on the Equality and Human Rights Commission website – www.equalityhumanrights.com/

The Disability Discrimination Act 1995 (Northern Ireland)

The equivalent legislation in Northern Ireland is the Disability Discrimination Act (DDA). Further information on the DDA can be found on the Equality Commission for Northern Ireland website. www.equalityni.org/Home

Specific legal information by nation

England – legal duties on schools

Children and Families Act 2014

The Children and Families Act 2014 includes a duty on schools to support children with medical conditions. This is inclusive of children with medical conditions. Schools must make arrangements for supporting pupils at schools with medical conditions and in meeting that duty they must have regard to the statutory guidance issued by the Secretary of State.

The statutory guidance, Supporting pupils at school with medical conditions, is available to read on the Government website, www.gov.uk

www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions--3

Schools that must meet the duty in the Children and Families Act are:

- a maintained school
- an Academy school
- an alternative provision Academy
- all alternative provision providers
- a pupil referral unit.

The legal duty in the Children and Families Act is on “the appropriate authority”. “The appropriate authority” means:

- The governing body of a maintained school
- The proprietor of an academy
- The managing committee of a pupil referral unit.

The Education Act 2002

Sections 21 and 175 detail how governing bodies of maintained schools must promote the wellbeing of pupils and take a view to the safeguarding of children at the school.

Section 3 of the Children Act 1989

This places a duty on a person with the care of a child to do all that is reasonable in the circumstances for the purposes of safeguarding and promoting the child. With relation to a child with a medical condition, this will mean knowing what to do in the event of an emergency.

Legal duties on local authorities

Local authorities have legal responsibilities to help make sure schools can meet the duties relating to children with a medical conditions. These duties both refer to all children in the local authority and they do not depend on the kind of school the child attends.

Section 19 of the Education Act 1996

When children and young people are unable to continue at school because of illness, the Education Act 1996 requires Local Education Authorities to provide them with 'suitable education' for example in a hospital school or in home tuition. Suitable education refers to efficient education suitable to the child or young persons' age, ability and aptitude and to any special educational needs he may have.

Section 10 of the Children Act 2004

This is a particularly important piece of legislation if schools are struggling to get the support and training they need to allow them to look after a child with a medical condition properly.

Section 10 essentially means the local authority must make arrangements to promote cooperation between the authority and relevant partners. Relevant partners include the governing body of a maintained school, the proprietor of an academy, clinical commissioning groups and the NHS Commissioning Board. They must make arrangements with a view to improving the wellbeing of children, including their physical and mental health, protection from harm and neglect, and education.

If a school cannot get the support it needs to look after a child with a medical condition then they must approach their local authority.

Section of 17 of the Children's Act

This gives local authorities a general duty to safeguard and promote the welfare of children in need in their area. If a school is looking after a child with a medical condition so poorly that the child is put in danger, the local authority must step in.

Legal duties on the NHS

Section 3 of the NHS Act 2006

This gives Clinical Commissioning Groups (CCGs) a duty to arrange for the provision of health services to the extent the CCG considers it necessary to meet the reasonable needs of the persons for whom it's responsible. What this means is that CCGs should provide the healthcare the people in its area need, if these needs are reasonable.

This section also provides for CCGs to arrange such services as it considers appropriate to secure improvements in physical and mental health of, and in the prevention, diagnosis and treatment of illness, in the persons for whom it's responsible.

In relation to children with medical conditions, this means that a CCG should, within reason, make sure support and health care is in place to improve their health or at least keep them healthy. Poor management of a medical condition at school will obviously affect the health of a child. If a school is unable to get the support it needs to help manage a child's condition successfully then both the local authority and the local CCG have a responsibility to the child's health and welfare.

Northern Ireland

Supporting pupils with Medication Needs 2008

This joint guidance, published by the Department of Education (DE) and the Department of Health, Social Services and Public Safety (DHSSPS) in 2008, sets out the key roles and responsibilities pertaining to the medication needs of school pupils in Northern Ireland.

You can download 'Supporting pupils with Medication Needs 2008' on the Department of Education Northern Ireland website –

www.deni.gov.uk/index/7-special_educational_needs_pg/special_educational_needs-supporting_pupils_with_medication_needs-2.htm

This requires schools to have in place a policy for ensuring that children with medication needs, will receive appropriate care and support at school. The Departmental guidance states that:

“As far as possible, policies should provide guidance that enable regular attendance for children with medication needs. Formal systems and procedures for carrying out the policy are drawn up in partnership with parents, education and health staff.”

All schools can contact healthcare specialists for advice on medication and care. Individual Healthcare Plans should be in place agreed by the school, the parents and any relevant healthcare professionals, ideally a specialist if appropriate.

Departmental guidance states that 'reasonable steps' should be taken by schools to encourage pupils with medication needs to participate in school trips.

If a member of staff administers medication to a pupil and faces expenses, liability, loss claim or proceedings as a result, the employer indemnifies the staff member provided that:

- the member of staff is a direct employee
- the medication is administered in the course of, or ancillary to, their employment
- the member of staff follows the procedures set out in the Department of Education guidance, the school's policy and the procedures set out in the pupil's Medication Plan (or written permissions from parents and directions received through training in the appropriate procedures).

Since 2008, the Department of Education has made funding available to the Education and Library Boards to provide training to all school Principals on how to meet the needs of all pupils with medication needs, including those with medical conditions.

Special Education Needs

If a child's needs cannot be met within the resources normally available to the school, a request for a statutory assessment can be made by a school, parent or other agency. This is done by writing to the Special Education Needs section of the local Education and Library Board.

The Special Educational Needs and Disability (Northern Ireland) Order 2005 does not require or prohibit the administration of medicines to pupils. Clauses of this legislation does state that pupils with a disability should not be discriminated against in the education or associated services provided.

Visit the Government's Legislation website for more information – www.legislation.gov.uk/nisi/2005/1117/contents

Dispute Avoidance and Resolution Service (DARS)

If a parent is unhappy about the treatment of their child in school, they can contact the Dispute Avoidance and Resolution Service (DARS) which was established in 2005 to resolve disagreements or disputes between Boards, Boards of Governors, Responsible Bodies and parents. It is designed as an independent, confidential, voluntary and informal service. It is independent of the Special Education section and there is a DARS contact in each Education and Library Board.

Scotland

There are various pieces of legislation that relate in some way to the rights of children with medical conditions at school:

- Children and Young Person (Scotland) Bill (passed on 19 February 2014 but not yet in force)

- NHS (Scotland) Act 1978; The Functions of Health Boards (Scotland) Order 1991
- the Education (Disability Strategies and Pupils' Educational Records (Scotland) Act (2003)
- Standards in Scotland's Schools etc Act 2000
- Education (Scotland) Act 1980
- and the Education (Additional Support for Learning) (Scotland) Act 2004.

The last of these has the most current relevance for parents of children with medical conditions at school.

Education (Additional Support for Learning) (Scotland) Act 2004

"The Education (Additional support for learning) (Scotland) Act (2004) places duties on education authorities to identify, meet and keep under review the additional support needs of all pupils for whom they are responsible, including pupils with medical conditions. The Education (Disability Strategies and Pupils' Educational Records (Scotland) Act (2003) also places duties on bodies responsible for schools to prepare an accessibility strategy which sets out their plans to ensure access to the curriculum, physical environment of schools and school information.

The concept of 'additional support needs' refers to any child or young person who, for whatever reason, requires additional support for learning. These needs can arise from any factor which causes a barrier to learning - social, emotional, cognitive, linguistic, disability, or family and care circumstances. Issues arising from managing a medical condition while at school can, therefore, constitute an additional support need.

Impact will vary from child to child. However, it is how these factors impact on the individual child's learning that is important and this will determine the level of support required.

Education authorities must:

- make adequate and efficient provision for each child or young person with additional support needs, for whose education they are responsible
- keep under consideration the needs and the adequacy of support for each child or young person with additional support needs
- take account of additional support needs of children in providing school education generally.

Parents have the right to:

- request the education authority to find out whether their child has additional support needs
- request the education authority to find out whether

their child needs a Co-ordinated Support Plan* or to review an existing plan

- request a specific type of assessment and/or examination.

Reasonable adjustments for disabled pupils – example

A primary school disabled pupil with ADHD which meets the criteria of a disability, receives some individual teaching assistant support. He is diagnosed with Type 1 diabetes and needs assistance with his injections. Although this could and should be considered as an additional support need, the duty on reasonable adjustments is clear. As his diabetes is likely to be a disability for the purposes of the Act, a failure to provide a reasonable adjustment will place him at a substantial disadvantage. The school trains a teaching assistant to provide him with the assistance that he needs. This would be a reasonable adjustment for the school to make.

A recent case study

Callum Wyper, aged 7, a pupil at Dykehead Primary School in Shotts, requires support during the school day to manage his diabetes, which includes the administration of insulin. However, due to a lack of provision by the education authority, Callum ended up missing nearly two months of school between December 2012 and January 2013.

North Lanarkshire Council had relied on volunteers from among existing school staff to support pupils with diabetes with their insulin regimes, but when this support was withdrawn and the education authority failed to provide alternative provision, Callum's mother Julie and step-father James felt they had no option but to withdraw him from school to ensure his diabetes was safely managed. The Additional Support Needs Tribunal, which determined the case, decided that it would have been reasonable to recruit support staff whose duties included a responsibility for the administration of insulin. In failing to do so, the Council were found to have unlawfully discriminated against Callum in relation to his condition.

Although this is a case which has been decided upon, it is not a 'reported decision' and as such cannot be relied upon. Nevertheless, it provides basis for arguing for support in other schools.

Useful links

- [Govan Law Centre: Test case win for school child with diabetes](#)
- govanlc.blogspot.co.uk/2013/07/glc-scottish-test-case-win-for-school.html
- [Education Law Unit: Disability in schools](#)

- www.edlaw.org.uk/?page_id=43
- [Education Scotland's Parentzone](#)
- www.educationscotland.gov.uk/parentzone/
- [Enquire's guide to Education and disability rights \(PDF, 437KB\)](#)
- enquire.org.uk/20100622/wp-content/uploads/2010/11/education-and-disability-rights.pdf
- [Enquire's Parents' guide to additional support for learning \(PDF, 1.6MB\)](#)
- enquire.org.uk/20100622/wp-content/uploads/2012/09/parents-guide.pdf

Wales / Cymru

Welsh Government guidance – supporting children with medical conditions in schools

Welsh Government guidance to explain the support to be provided to children with medical conditions in school can be found in the May 2010 paper, 'Access to Education and Support for Children and Young People with Medical Needs'.

wales.gov.uk/topics/educationandskills/publications/guidance/medicalneeds/?lang=en

It has been produced for schools and local authorities across Wales and represents a key guidance publication for head teachers, school nurses and all school staff to ensure the children under their care are looked after properly. It is also useful for parents because it provides a clear and accessible explanation of what care the school should provide for their child.

'Access to Education and Support for Children and Young People with Medical Needs' is a long and detailed document which also contains condition specific advice.

We've listed some key areas to make the document more accessible for you:

- Special education needs/statutory assessment (pg 5)
- Healthcare plans (pg 20–22)
- School training (pg 24)
- School trips (pg 27)
- Administering medicines (pg 41)
- Guidance on school policies for supporting children and young people with medical needs (pg 72–73).