

national transition support team

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for disabled young people

National Transition Support Team Policy Briefing

2009 Guidance to Local Authorities on Assessments Relating to Learning Difficulties

Revised guidance on Section 139A Assessments

Department: Children, Schools and Families

Geographical Scope: England

Link to full guidance document download page:

<http://publications.dcsf.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-01112-2009&>

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The Council for Disabled Children and partners working as the national transition support team for the AHDC Transition Support Programme



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Introduction

In November 2009 revised guidance was issued to local authorities on assessments carried out under section 139A of the Learning and Skills Act 2000 for people with learning difficulties moving into Further Education. The purpose of these assessments is to inform decisions about educational provision for the young person. Such assessments were formally carried out by Connexions under section 140 of the Learning and Skills Act 2000.

There are a number of changes in the revised guidance that will make the assessment process and local authorities responsibilities clearer. The revised guidance makes clearer, for example, the need to consider what provision can realistically be secured for a young person including what they need to access this provision. It also goes further to encourage local authorities to involve the young person in their assessment, to ensure staff involved have adequate expertise and establish robust quality control measures.

The guidance signposts to the Learning and Skills Council (LSC) framework *Learning for Living and Work* as a guide to implementing the assessment process effectively. This document is available here:

http://readingroom.lsc.gov.uk/lsc/National/learning_for_living_and_work_complete_2.pdf

Further revised guidance is expected in spring 2010 to reflect the transfer of responsibility for providing 16 to 19 (or 25) education from the LSC to local authorities, as set out in the Apprenticeships, Schools, Children and Learners Act 2009. The 2009 guidance, however, was issued in anticipation of these changes and further revised guidance is not expected to give a different message on what the assessment process should involve. Funding for independent specialist provision will be transferred to local authorities in 2012.

One reason for revised guidance being required was a perceived a lack of clarity about what the assessment should involve. In September 2008, for example, there was a judicial review of Connexions in relation to their assessment of a young person with a diagnosis of autism, learning disability and epilepsy in the case of *Alloway v. London Borough of Bromley*. This case revealed correspondence between Connexions and the LSC over several years trying to establish whether a proper assessment had taken place, what placement was suitable and what funding could be justified for the young person. The judgement in this case was that the assessment carried out by Connexions for this young person did not comply with the law.

There are also broader policy developments feeding into the revision of this guidance. In line with the raising of the participation age (RPA), for instance, the needs of young people with learning difficulties will need to be assessed in a robust way to enable these young people to realise the maximum potential benefit of these changes. The September guarantee, in preparation for RPA, also places a duty on local authorities to find a suitable place in education and training for all young people by the beginning of their first academic year after key stage 4.

Learning Difficulties

In the context of this guidance the term learning difficulties applies to both young people who have significantly greater difficulty learning than their peers AND those who have an impairment that would make it difficult for them to access mainstream FE provision (see the next page for the relevant legal definition). The guidance states that it is intended to cover the same range of young people who, in the FE sector, are commonly referred to as learners with learning difficulties and/or disabilities (LLDD). It therefore covers a broad range of disabilities and difficulties including autism, sensory and cognitive impairments and other difficulties in learning which may or may not have been identified as Special Educational Needs (SEN). The term Special Educational Needs is generally not used as much in the FE sector, although some young people will have their statements maintained until they are 19.

Learning Difficulty Assessments – Legal Background

Local authorities have a duty to carry out a learning difficulty assessment for young people with a Statement of Special Educational Needs if they believe they intend to continue to further education. They have, additionally, a power to assess young people who do not have a statement but appear to have learning difficulties. This means that young people with statements must have an assessment but local authorities have some flexibility around who else receives one. How this flexibility should be used is one of the things that is clarified through guidance.

Currently, the Learning and Skills Council (LSC) have a duty to have regard to the report that arises out of an assessment in their securing of provision of post-16 education. They may also require providers to make provision specified in a report as a condition on providing financial resources. New guidance to be issued in spring 2010 will describe how these powers and responsibilities are translated to apply to local authorities.

A learning difficulty assessment is defined in section 139B of the Learning and Skills Act 2000 (as amended by section 80 of the Education and Skills Act 2008) as:

an assessment of a person that results in a written report of:-

- (a) His/her educational and training needs, and
- (b) The learning provision and support required to meet those needs.

The judgement in the case of *Alloway v. Bromley* has set a precedent clarifying the above.

“the assessment must not simply be a set of recommendations in theory but must deal with what actual real provision can be made.”

The term learning difficulty is defined in section 13 of the Learning and Skills Act 2000 as follows:

A person has a learning difficulty if:

- (a) he has a significantly greater difficulty in learning than the majority of persons of his age, or
- (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training.
- (6) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.

It should be noted that this a separate definition to that given in the Education Act 1996 and the SEN code of practice, which is used in primary and secondary education.

Other key pieces of legislation include:

- Section 139A of the Learning and Skills Act 2000 (as amended by section 80 of the Education and Skills Act 2008) – this imposes the ‘duty’ and grants the ‘power’.
- Section 139C of the Learning and Skills Act 2000 (as amended by section 80 of the Education and Skills Act 2008) – this makes provision for assessment of young people educated at home.
- Section 15ZA of the Education Act 1996 (as amended by the Apprenticeships, Skills, Children and Learners Act 2009) – this gives local authorities responsibility for post-16 education and a duty to have regard to have regard to learning difficulties in this provision (regardless of whether an assessment takes place).

Opportunities to Improve Services for Disabled Young People in Transition

This section provides an analysis of the most notable revisions to the guidance and remaining issues with relevant direct quotes from the guidance the shaded boxes. (Bold type has been added to the quotes for emphasis)

Identifying real provision

The revised guidance makes reference to the interpretation of the law given in the judgement in the case of *Alloway v. Bromley* making clear the precedent that real provision must be identified. The guidance also sets out what interaction with potential learning providers may be appropriate to inform an assessment, which should support local authorities to fulfil the clearer duty specified by this judgement. This strengthening of the guidance should mean that section 139A assessments play a more positive role in securing the further education of disabled young people as opposed to simply assessing needs and acknowledging barriers. Consequently the assessment process should become more meaningful for young people, giving them and their families a clearer idea of what post 16 education they are likely to move into when they leave school.

“2.2 The assessment report should inform decisions about the type of education or training provision a person being the subject of such an assessment should receive. **It should clearly identify their needs and appropriate provision that can actually and realistically be provided to meet them.** This reflects the legal ruling made in the case of *Alloway v London Borough of Bromley* (dated 17 September 2008)1...”

“8.3 The judgement in the case of *Alloway v London Borough of Bromley* (dated 17 September 2008) includes the requirement that **“the assessment must not simply be a set of recommendations in theory but must deal with what actual real provision can be made”.**”

Clearer consideration of access needs

A consequence of the need to identify provision in a more concrete way is that the assessment will also need to look at what a young person needs to access a particular placement. The new guidance addresses this by being clearer that transport needs should be taken into account and highlighting the importance of working with the local primary care trust to ensure that a young person’s health needs are met in way that facilitates their participation (see points 7.8 and 8.4). Cases where, for example, a young person’s access to suitable provision has been obstructed by having to make long or stressful journeys to lessons or not having their health needs properly met should become less common.

“7.3...**Local authorities should view the transport needs of learners with LDD as integral to achieving their learning outcomes when commissioning transport** for this group of learners. Other examples include **where health or care needs of the learner will need to be met to enable learning and assessments should make clear what the health and care needs are** to enable specific commissioning from the Primary Care Trust and through Social Services In some areas it may also be beneficial to involve third sector and voluntary organisations.”

“8.4... [the assessment report] should also include support needed to access learning provision, sensory aids, aids to assist movement or manipulation, staff ratios, level of supervision needed, specific professional support e.g. nursing or physiotherapy.....**Travel arrangements should be among the first considerations ensuring that the learner is able to access identified provision and does not spend lengthy periods travelling which may aggravate conditions or mean that the learner is not ready to learn on arrival.** Local authorities will be better placed to commission more effective transport if learner needs are widely shared through the assessment process... “

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Involving the young person

The new guidance puts an increased emphasis on the importance of involving the young person and listening to their views as part of the assessment (see points 6.6 and 7.7). It makes clear that local authorities should still try to do this if the young person has complex communication needs (point 6.8). Local authorities are encouraged to look at adopting some of the good practice identified through the Transition Support Programme¹ to help achieve this. Increased involvement of young people in their assessments should facilitate a more accurate and broader assessment of their needs and enable their preferences and aspirations to be taken into account.

“6.6 The person conducting the assessment should make every effort to ensure that the person being assessed (and where appropriate their parents and/or carers) understands that the assessment is necessary to help safeguard their interests. **The individual being assessed should play an active part in the assessment.** The assessor should explain to the person being assessed that the purpose of the assessment is to enable well informed decisions to be made about the kind of post 16 education and training or higher education they need to succeed, building on their aspirations and on their chosen career path. It is important to recognise the wider context in which decisions are being made by the learner. For example there may be person-centred planning approaches being adopted by a local authority which may provide choice and control over services being provided for the learner such as in housing or care services. These are effective means to creating independence and **it is important that the individual is actively involved in decisions about learning provision and next steps.** There may also be new work on person-centred approaches being undertaken by local authorities through Aiming High for Disabled Children and the Transition Support Programme, and we would expect assessments to reflect new and effective practice.”

“6.8 If the person being assessed has significant communication difficulties, the person conducting the assessment may need to establish their views and wishes through (as appropriate) their teachers, parents/carers, other representative, or an interpreter. **Even where communications difficulties are profound the person conducting the assessment should use best efforts to involve the person being assessed to the greatest extent possible.** The young person and family may have already been very involved in the Transition Plan in Year 9, and review of this annually since, so they might not need to go through all the details again. The assessment should build on this earlier process.”

“7.7 We expect the process to raise learner’s expectations and particularly of work... It is essential that LLDD are made aware of opportunities and expect to be prepared for these opportunities, and the s139A process should identify the outcomes expected.”

¹ The Transition Support Programme is a national government programme that has been developed to make sure support is available to local areas to work on improving practice in every aspect of the transition to adulthood for disabled young people and their families. It is part of a wider government programme called Aiming High for Disabled Children (AHDC). For more information visit: www.transitionssupportprogramme.org.uk

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Competency of the assessor

The new guidance gives a clearer message that those undertaking and recording the assessment, who are usually Connexions (or other local IAG provider) Personal Advisors, should have the appropriate expertise and support to carry out the task effectively. It states, for example, that assessors should be qualified to NVQ level 4 and should stay within the bounds of their competence (see points 6.1 and 6.3). This new emphasis may help to avoid people without the appropriate experience being tasked with carrying out assessments. It should be remembered that the guidance set out minimum expected levels of expertise and in order to ensure assessments are properly carried out local authorities could build on this by arranging additional training and making efforts to use existing expertise of the workforce effectively. Experience could be shared, cross-agency by, for example, the person carrying out the assessment drawing on the experience of the SENCO (Special Educational Needs Coordinator) from a local special or mainstream school.

“6.1 ...We expect professionals conducting assessments to be qualified to NVQ level 4 and to have received sufficient training (on disability impacts and differentiation of needs according to different disabilities) to act with authority on their judgements. Further training may be essential and we expect continuing personal development to encompass widening skills and knowledge of specific disabilities to improve the service to learners. **All PAs should have received basic disability awareness training but this is not sufficient to carry out assessments.** It is also essential to maintain a thorough knowledge of learning and training provision both locally and nationally, as well as employment opportunities. It is not good practice to expect trainees or staff working towards a NVQ level 4 qualification to undertake s 139A assessments until after the completion of their qualification and additional training.”

“6.3 Assessment can be a challenging task and those undertaking assessments should have the relevant expertise and a professional responsibility to stay within the bounds of their competence. For cases where assessment issues are particularly difficult, local authorities would want to decide what actions (such as further training or consultancy support) are needed in order to produce reports that are fit for purpose.”

Quality assurance

The new guidance reminds local authorities that for reports such as those arising out of learning difficulty assessments to be produced to the appropriate level of quality and consistency it is good practice to implement robust quality assurance processes (see point 8.6). Specifically the guidance suggests line management sign-off and regular checking of assessment reports for compliance with law and statutory guidance. An example is given in a case study of a quality assurance system that involves random sampling of 20% of reports for evaluation regarding compliance. This should help to avoid cases such as that explored in the case of *Alloway v. Bromley* involving ongoing arguments between assessors and funders of provision and ultimately a young person being placed in inappropriate provision. It is very important to monitor the quality of assessments so that potential difficulties can be identified and addressed before the transition of young people into further education is made unnecessarily difficult for themselves, their families and local authorities.

“8.6 It is expected that reports are produced to a high quality and consistently. To assist this it is good practice to ensure that reports are subject to robust quality assurance systems, which include line management sign-off and checking compliance on a regular basis. Senior managers will want to be assured that assessments conform to organisational standards and there should be regularly updated guidelines available as part of the quality assurance system. Local authorities may wish to consider how they can be assured of high quality assessments which meet learner’s needs and should consider building in quality standards such as expected outcomes in their commissioning process. “

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Timing and bringing assessment processes together

Although it is important for the assessment to be able to take into account information that is up to date and focussed on educational needs it is also important to plan ahead and draw on a range of information to ensure that the most appropriate provision can be secured in time for the young person's transition out of school. The guidance recommends that the assessment build on other assessment and monitoring activities such as the annual review for young people with a statement of SEN (see especially points 1.4 and 6.13). It puts a stronger emphasis on the advantages of planning ahead and completion of an assessment in year 10 (as apposed to year 11) to be updated later if necessary (timing is covered in section 7 of the guidance). Local authorities may want to build on this by using the year 9 review process to decide whether it would be appropriate to carry out an assessment at an earlier stage. Carrying out the assessment in year 10 or 11 may not allow enough planning time, for example, for application for placements in specialist provision which may have waiting lists of several years. These will be welcome changes as many disabled young people and their families have found having to repeat themselves for different assessments frustrating and some have had problems with assessments not been carried out in time to support applications for placements, especially for specialist provision.

"1.4 ...We expect person centred planning to commence as early as possible in a young person's life and transition planning centred around the individual to improve, building on developments through the Transition Support Programme..."

"6.13 It is also likely that other assessments will have taken place. **The assessment relating to learning difficulties is designed to update, add to and build on previous assessments and interventions taking account of changing needs and circumstances – it should not duplicate them.** The principle the personal adviser should try to follow is to reduce the burden of assessment and to gather and utilise existing information and assessment data wherever possible."

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Deciding who gets an assessment

If a young person has had a learning difficulty assessment, they will be able to take a further education placement funded by the local authority up to the age of 25, while those without an assessment will have until the age of 19. Under the Learning and Skills Act 2000 local authorities have a duty to carry out a learning difficulty assessment for young people with a statement of special educational needs if they believe they intend to continue to further education. They have a power to assess young people who do not have a statement but appear to have learning difficulties. Guidance clarifies what the duty means for local authorities and advises how the power should be used. More detail on which young people should be assessed and on using the power is given in section 4 of the guidance.

The new guidance is clear about the need to use the power in the best interests of young people (see especially point 4.4). Local authorities' new responsibilities for post 16 education make it more important for them to plan how they will do this. Deciding to undertake an assessment for a young person will mean that the local authority may incur extra costs as they have responsibility funding their placement to higher age and any additional costs that may arise from providing specialist provision locally. This makes it especially important that the processes for carrying out assessments and for budgeting decisions are clearly and separately defined. Setting out these processes clearly will help to prepare for the transfer of funding for independent specialist provision to local authorities in 2012, when learning difficulty assessments will gain more potential cost implications. The need to plan commissioning taking into account the likely needs of all young people, including those with learning difficulties, will be outlined in the National Commissioning Framework.²

“4.4 The power to arrange for assessments to be conducted is there for the benefit of those reaching transition points from schooling into post 16 education, or training, enabling their special educational needs to be met as far as possible. This is essential if they are to fulfil their potential and reduces the risk of them dropping out of learning. It is also important to recognise that those who will benefit most from an assessment process will be learners whose needs are around the level where they would be considered for statementing in a school setting but whose needs have been met without the need for a statement...”

² The final version of the National Commissioning Framework is due to be published as statutory guidance in April 2010 by the Young People's Learning Authority. The draft version is available here:

<http://publications.dcsf.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-00933-2009&>

Using and sharing data

The new guidance encourages the use of existing information and assessment data where possible to reduce the burden of assessment on the young person (see point 6.13). To ensure that this is done in an effective and accountable way, local authorities will need to establish a clear process for the sharing of information that includes seeking the permission of the young person. This will make the assessment process easier for both assessor and the young person but should not replace the involvement of young person in the assessment.

As the resulting assessment report will contain valuable information about a young person's learning needs a clear process for the sharing of this information with the provider of a young person's further education will also be needed.

The new guidance also states that assessments should be recorded on the Client Caseload Information System³ and that local authorities should consider how they might share this information with partner agencies through Children's Trusts (see point 10.2). It is important that this is done in a way that makes it possible to ensure that all young people with learning difficulties receive an assessment, including those who are not in school and those who are in young offender institutions.

"6.13 It is also likely that other assessments will have taken place. The assessment relating to learning difficulties is designed to update, add to and build on previous assessments and interventions taking account of changing needs and circumstances – it should not duplicate them. **The principle the personal adviser should try to follow is to reduce the burden of assessment and to gather and utilise existing information and assessment data wherever possible.**"

"10.2 All assessments should be recorded on the Client Caseload Information System (CCIS). This will also enable local authorities to make sure that all eligible young people have received an assessment and to identify any that have been missed. Local authorities, through the Children's Trust, should also consider how the information held on CCIS is shared with other local authority services and partner organisations."

Appeals processes

The guidance is not clear about what should be done if a young person or their family is not satisfied that their needs have been appropriately assessed. This means that in most cases, the only official course of appeal available would be to seek a judicial review of the process undertaken by the local authority. This makes it particularly important to work with the young person and their family on the assessment and take into account other points in the guidance about making sure the assessment report is fit for purpose. This will benefit young people with learning difficulties and their families by reducing the potential stress involved in the assessment process and facilitate the local authorities monitoring of the quality of their assessment reports. Further revised guidance may address the issue of appeals in more detail

³ This is a database maintained by Connexions/local IAG providers on behalf of local authorities

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Conclusion

This revised guidance reflects the need to have a robust procedure for assessing and recording a young person's learning needs in preparation for their transition into further education. What is expected of local authorities has been made clearer with regards to several aspects of the process. The need to identify real provision, to consider broader access needs, to involve the young person, to ensure those carrying out the assessments are appropriately trained and to implement quality assurance measures is given stronger emphasis. In addition, the importance of planning ahead and sharing data are also set out more clearly. Local areas may want to consider developing this further as part of their work on transition as well as in preparation for the raising of the participation age and to support their delivery of the September Guarantee. Particular points for consideration, alongside building on the revisions in the guidance, may include processes for deciding who should receive an assessment and providing young people and families with input that would improve their satisfaction with the process. Such developments should be viewed in the context of broader work to improve the experience of transition for disabled young people, especially the use of more person centred approaches to transition planning. An improved process for carrying out learning difficulty assessments will complement other areas of work, playing a key part in enabling disabled young people to achieve better outcomes.

Further Information

Transition Support Programme

Details on the programme and more resources are available on the TSP website

<http://www.transitionsupportprogramme.org.uk/>

Transition Information Network

Transition Information Network (TIN) is an alliance of organisations and individuals based at the Council for Disabled Children with the aim of improving transition for disabled young people. Through its website, publications and events it is a source of information for disabled young people, families and professionals.

<http://www.transitioninfonetwork.org.uk/>

Transition for disabled young people - education

Learning and Skills Council (2006) *Learning for Living and Work*

http://readingroom.lsc.gov.uk/lsc/National/learning_for_living_and_work_complete_2.pdf

Department for Children, Schools and Families (2007) *A transition guide for all services*

http://www.transitioninfonetwork.org.uk/filestore/TIN_317_801749.pdf

Local areas and 14-19 education reform

Local Government Association – REACT: Raising Expectations Action Programme website

<http://www.lga.gov.uk/lga/core/page.do?pagelId=1157471>

Department for Children, Schools and Families (2009) *Raising the Participation Age: Supporting local areas to deliver*

<http://www.dcsf.gov.uk/everychildmatters/news-and-communications/news/151209nirpa/>

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