

# Quality Manual

## 01.23.01 **CONFIDENTIALITY POLICY AND PROCEDURE - DISABILITY**

**PURPOSE** To provide procedures on disclosure and confidentiality for the use of all staff who will from time to time deal with disclosure of disability and related matters of confidentiality concerning learners with disabilities as defined in the Disability Discrimination Act 1995, amended by DDA 2005

**SCOPE** All staff

**RESPONSIBILITY** Disability & Basic Skills Manager

### *Context:*

- This area is governed by the Disability Discrimination Act 1995, the Special Education Needs and Disability Act 2001 and DDA 2005 (“the legislation”) and guidance contained in the Post 16 Code of Practice.
- If you are in any doubt over the actions you need to take please contact Andy Carmichael, the Disability and Basic Skills Manager. In addition to this, if you have any questions relating to the legal aspects of disability confidentiality Ian Mathers, as Equality and Diversity Co-ordinator, may be able to assist you.
- This procedure only relates to those who are 16 or more and who are deemed competent to decide matters of confidentiality. Those under 16 are dealt with under a separate SEN Code of Practice for Schools.

### *Policy:*

The College aims to provide education in an environment which enables effective learning and which avoids disadvantage in learning resulting from disability. This aim must, however, be considered within the context of the College’s mission statement and strategic and operational plans.

In order to do this, the College will:

- Create an atmosphere and environment that allows and encourages learners and potential learners to disclose their disability and additional learning needs that arise from this. Repeated, appropriate opportunities will be provided to learners for effective and discreet disclosure of disability.
- Ensure that there are procedures that enable information to be disseminated appropriately within the College so that reasonable adjustments can be made in order to ensure that learners are not disadvantaged in their learning as a result of their disability.

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- Where learners seek to preserve confidentiality regarding their disability, ensure that these wishes are respected, identifying and agreeing with the learner the extent of any adjustments that might therefore be made.

## PROCEDURE

### *Disclosure and Confidentiality*

1. Staff dealing with admissions and enrolments should ensure that the importance of declaring information about disability, for example to enable reasonable adjustments to be considered, is emphasised to students
  - Any questions regarding disability or learning difficulty should normally be asked in a supportive, helpful manner which puts the applicant at ease regarding the purpose of the information gathering i.e. that we want to know so we can enable the learner to do the best s/he can.
  - Staff could ask, for example, at interview, if the applicant has anything s/he would like to say about any help with learning or access s/he has had in the past and that would be helpful for us to know about now.
  - If anything arises through this line of questioning it may be useful to offer a further discussion at College with the Disability Manager or another person s/he would like to nominate.
2. Where learners identify disability and/or additional needs on the College application or enrolment form, the Senior Guidance Adviser will contact the applicant to identify, initially, any additional support needs and then inform, with the learner's permission, the Disability Manager. (See also procedures 02.04.01 Applications Process and 02.05.01 Admissions Information for Staff).
3. In the case of a student enrolling on an Adult Education course and identifying a disability/additional need, contact will be made in the first instance by a member of the Adult Education staff at the relevant Local Learning Centre. If the matter cannot be resolved satisfactorily at local level, this member of staff will, with the learner's permission, duly noted, contact the Disability Manager for advice and/or assistance.
4. All full-time students should undertake the College's initial assessment programme so that undisclosed disabilities can be identified as soon as possible. All Workbased Learning (WbL) learners should undertake the WbL initial assessment.
5. The process of encouraging disclosure by tutors, lecturers and other staff in contact with students should be ongoing.

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- Tutors, WbL Co-ordinators and assessors should offer opportunities to discuss any disability-related issues at interview, during induction and at other times through the course.

Key points will include:

- reviews of progress
  - planning trips, visits and residentials
  - planning work experience
  - exam entries
- It is important to complete the latter with plenty of notice (normally months!).
  - Applications to exam boards for special adjustments to meet the needs of candidates with disabilities should be made before entries are submitted or in some cases at the same time, not later. See Procedure 04.14.01
6. Consent to any written disclosure of information must also be obtained in accordance with the Data Protection Act 1998.
- This consent is normally given by the Equal Opportunities statement on the College Enrolment Form and Learning Agreement; however, it is good practice to obtain a signature and a clear statement giving consent to disclosure on interview documents, WBL Requests for Support, Individual Learning Plans (ILP) etc.
7. The right of the student to have his or her disability kept confidential should be made clear to the student but the advantages of full, or at least partial, disclosure should also be stated.
- Within Workbased Learning, the Mentor role is completely confidential and learners can self refer if they wish to talk to someone who is not tutor. NB under such circumstances, the procedure continued below should still be followed.
8. Even if a student expresses a wish for full confidentiality regarding his/her disability, the member of staff to whom the disclosure is made must explain to the student that disclosure, in confidence, should nevertheless be made to the Disability and Basic Skills Manager and the Health and Safety Manager (or equivalent) and must report to them accordingly.
- Health & Safety requirements must not be compromised by disability or confidentiality issues and further advice must be sought. This may of course be achieved without naming the learner.
  - It is the responsibility of the member of staff to whom disclosure has been made, to make this clear to the learner.

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9. If disclosure of disability and a wish for confidentiality is confirmed, a written record must be made and signed by the learner.
  - If this arises in a tutorial situation, (see 4. above) a note can be made, signed by the tutor and the learner, and placed in a sealed envelope in the learner's personal file.
10. The College Information Unit Manager must be informed by the person to whom the disclosure was made, that restrictions are to be applied to the learner's record.
11. Under normal circumstances where additional learning support is required, the college forms ASU1 (at pre-entry) and/or ASU2 (on-programme) should be completed at the earliest opportunity, including part-time and telephone enrolment, and returned to the College Information Unit Manager. (see Procedure 04.16.01)
12. The Disability and Basic Skills Manager will work with the student (and staff as appropriate) to see what reasonable adjustments can be put in place with due regard to the student's request for confidentiality.

### *Legal Framework*

A disabled student under the legislation is someone who has a physical or mental impairment, which has an effect on his or her ability to carry out normal day-to-day activities. The effect must be substantial, adverse and long term.

It is discrimination for the College to treat a disabled person less favourably for a reason relating to the person's disability than it treats a person to whom the reason does not apply unless the treatment can be justified. It is also discrimination to fail to make a reasonable adjustment when a disabled student is placed at a substantial disadvantage in comparison with a person who is not disabled.

If the College does not know, and could not reasonably have known of the disability there is no discrimination. If a disabled person has told someone within the College of his or her disability the College cannot claim that it did not know.

However, by section 28T, sub-sections (3) and (5) Disability Discrimination Act 1995 a disabled person has the right to request that the existence or nature of his or her disability be treated as confidential. In such a case the confidentiality must be preserved from staff and students as agreed with the learner and recorded confidentially.

It is important in determining whether it is reasonable to make adjustments to accommodate the student to have regard to the extent that making the adjustment is consistent with the disabled person's request for confidentiality. Reasonable adjustments might have to be provided in an alternative way in order to preserve the confidentiality.

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However, preserving the confidentiality may mean that a less satisfactory reasonable adjustment or no reasonable adjustment can be provided. In such a case, reasonable efforts should be made to persuade the student that it is in his or her best interest to let the information about his or her disability be disclosed.

### *Data Protection Act 1998*

Written information about disability is classified as sensitive information under the Act and can only be revealed to others with the specific written consent of the person supplying it. This consent is given primarily by the Enrolment Form and Learning Agreement. Learners may, however, benefit from reminders about this at appropriate times.

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