

SECTION 139A LEARNING DIFFICULTY ASSESSMENTS  
GUIDANCE FOR LOCAL AUTHORITIES,

## **1 ABOUT THIS GUIDANCE**

1.1 This is statutory guidance from the Department for Education. This means that local authorities must have regard to it when carrying out duties relating to Learning Difficulty Assessments conducted under section 139A of the Learning and Skills Act 2000., Comments from the organisations below have been considered during drafting of this guidance.

- The Local Government Association,
- Hampshire County Council, post 14 learning team;
- The Young People's Learning Agency;
- connexions Buckinghamshire,
- connexions Merseyside,
- Association of Colleges,
- National Association of Independent Schools and Non-Maintained Special Schools (NASS);
- Natspec: the Association of National Specialist Colleges;
- Disability Alliance.

1.2 This guidance replaces the document *Supporting young people with learning difficulties to participate and progress - incorporating guidance on Learning Difficulty Assessments* and any other previous guidance relating to Learning Difficulty Assessments (LDAs) for post 16 students.

## **2 EXPIRY/REVIEW DATE**

2.1 The SEND Green Paper *Support and Aspiration: A new approach to special educational needs and disability* sets out our proposals to replace the current LDAs and the SEN Statement with a single assessment process and 'Education, Health and Care Plan' which will follow the young person from birth to 25. Until this new approach is introduced this statutory guidance for LDAs will remain in place. It will next be reviewed in March 2013.

## **3 WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?**

- The Education Act 1996 (as amended by the Apprenticeships, Skills, Children and Learning Act 2009 ("the ASCL Act")<sup>1</sup>)
- Sections 139A to 139C of the Learning and Skills Act 2000 ("the 2000 Act") which were inserted into that Act by section 80 of the Education and Skills Act 2008

## **4 WHO IS THIS GUIDANCE FOR?**

4.1 This guidance is for local authorities to help them make consistent, effective and robust judgements that will lead to well informed decisions relating to education and training for young people with learning difficulties and/or disabilities but it is not designed to be prescriptive in every individual case.

4.2 The guidance may also be of interest to young people and their families, staff working directly with young people and their managers, Further Education Colleges and

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<sup>1</sup> Section 13(5) of the Education Act 1996 (as amended by section 59, and Schedule 2, paras 1, 2(1), (3) of the ASCL Act defines a learning difficulty assessment as an assessment under section 139A or 140 of the 2000 Act.)

other providers including Independent Specialist Providers, and the Young People's Learning Agency (YPLA) and from April 2012 the Education Funding Agency (EFA).

## **5 KEY POINTS**

- Local Authorities are responsible for ensuring that high quality and timely LDAs take place. Early identification of those requiring a LDA is essential to allow time for the commissioning of any necessary provision and support to take place.
- Having determined that a young person requires a LDA a local authority must continue to support the young person up to the age of 25 if they stay in further education or training (provided they still have learning difficulties);
- Local authorities must use the evidence from the LDA to make consistent, effective and robust decisions that will support the young person to move towards positive outcomes;
- The LDA report must be specific about the level of need required and the support and learning provision required to meet those needs;
- The LDA should have a specific focus on the learning programme that is required to enable the young person to progress towards greater independence and where appropriate employment
- The LDA should take account of the young person's aspirations and views;
- The LDA should build on the views, and where appropriate, expertise of other people who have already supported the person being assessed;
- Unless the learner/parent/carer has expressly refused permission, the local authority should share the LDA with the college or other education or training provider and do so in sufficient time to ensure provision and support are in place from the outset;
- The local authority should ensure that the young person and their parents/carers understand the Learning Difficulty Assessment process and the decisions that are made as part of that process;
- LDAs should be shared with the young person and/or their parents or carers;
- Local authorities should ensure that the young person and their parent/carers are aware of the duties and powers an local authority has in relation to learners with learning difficulties or disabilities, the procedure for obtaining a LDA and the complaints process;
- The LDA should provide robust and impartial information;
- It is for the Local Authority to assure themselves that they have made fair and reasonable decisions and have met their responsibilities as set out in legislation;
- Young people and their parents can make a complaint to the Local Government Ombudsman and/or seek a judicial review, once they have exhausted the local authority complaints process, if they believe that their local authority has not met their duties and responsibilities.

## **6 LOCAL AUTHORITY DUTIES AND POWER IN RELATION TO LDAS**

6.1 Section 139A of the 2000 Act places local authorities under a duty to arrange for a LDA to be conducted for all persons in respect of whom they maintain a statement of Special Educational Needs and who they expect to leave school at 16-19 to receive post 16 education<sup>2</sup>, training or higher education.

6.2 Local authorities also have the power to undertake a LDA for those young people who do not have a statement but appear to have learning difficulties, and are receiving or are likely to receive post 16 education.

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<sup>2</sup> In this instance post 16 education is defined as education other than at a school.

6.3 In exercising its functions under this section an authority must have regard to this guidance issued by the Secretary of State.

## **7 DEFINITION OF LEARNING DIFFICULTIES**

7.1 The definition of learning difficulties is set out in Section 15ZA(6) and (7) of the Education Act 1996 (as inserted by section 41 of the ASCL Act).

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.

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.

7.2 Learning difficulty is the term used in legislation while 'learners with learning difficulties and/or disabilities' is a deliberately wide definition in common usage in the FE system, and includes people with mental health difficulties, autistic spectrum conditions, dyslexia, attention deficit hyperactivity disorder, behavioural emotional or social disorders, physical, sensory and cognitive impairments and other identified and non-identified difficulties in learning. All of these conditions could fall within the definition of learning difficulties for the purpose of a Learning Difficulties Assessment.

## **8 WHICH LOCAL AUTHORITY IS RESPONSIBLE FOR ASSESSING A PARTICULAR YOUNG PERSON AND ISSUING A LDA?**

### **8.1 A student for whom a statement of SEN is being maintained**

Responsibility for the assessment rests with the local authority that is maintaining the statement of SEN even if the young person is receiving their education outside the local authority.

### **8.2 A student who does not have a statement**

Section 139B(4) of the 2000 Act sets out responsibilities for this group of students:

- A local authority is responsible for arranging an assessment for a person where the person is receiving education or training in its area.
- If the young person is not currently receiving education or training, then arranging an assessment lies with the local authority where the young person is normally resident.
- If the young person is not receiving education or training and is not normally resident in any area but is otherwise within a local authority's area, that local authority is responsible. For example, if a young person splits their time equally between the homes of two parents or carers in different local authorities, the young person could ask either local authority to arrange the assessment, and the local authority which was asked would be the responsible authority. Local authorities should make every effort to speedily agree which authority is responsible, avoiding

confusion and delay for the young person.

8.3 The arrangements set out above for making decisions about which local authority is responsible for assessing a young person reflect the statutory responsibilities. ***Where Local Authorities choose to discharge their statutory duty by working together to put alternative local arrangements in place to decide which local authority is responsible to undertake the LDA, they must ensure that those arrangements are set out clearly and made available to students, their parents, and providers.*** Even if alternative arrangements are in place the statutory responsibility remains on the Local Authority as set out above.

## **9 THE POWER TO UNDERTAKE LDAS**

9.1 Local authorities should have a transparent policy setting out the circumstances in which they will use the power to undertake a LDA and they **should ensure that young people and/or their parents and carers are aware of this policy.**

9.2 Many young people who have additional needs can be supported with additional learning support without a formal LDA. **It is for the Local Authority to assess whether a LDA would benefit the young person.**

Local authorities should use their power to undertake an LDA for:

- a. any young person with a learning difficulty but without an SEN statement, in his/her last year of compulsory schooling, *who in the opinion of the local authority* is likely to need additional support as part of his/her future education or training and who would benefit from an LDA to identify his/her learning needs and the provision required to meet those needs.
- b. any young person with a learning difficulty but without a SEN statement, who is over compulsory school age but under 25 who is receiving, or in the opinion of the authority, is likely to receive post 16 education or training if they:
  - i. are likely to leave school, during or at the end of the current school year, are likely to need additional support as part of their future education or training and who, in the view of the local authority, would benefit from an LDA to identify their education and training needs and the provision required to meet those needs;
  - ii. are currently in, or about to start, post 16 education or training, have not previously received a statement of SEN or a LDA, but whose circumstances are now considered by the local authority to indicate that an assessment of his/her learning needs and the provision required to meet them is appropriate;
  - iii. have previously received an assessment but whose circumstances have since changed to such an extent that in the opinion of the local authority a further assessment is necessary to ensure their learning needs are met; or
  - iv. previously had an SEN statement, but did not have an assessment under the local authority's duty, because they did not move directly from school into other education or training. This might apply where a young person undertakes employment for a period of time before returning to education or training.

- c. Those who acquire a learning difficulty and/or disability through injury or disease where in the opinion of the local authority an assessment will benefit the young person.
- d. Students who continue learning beyond 19 and in the view of the local authority need to be reviewed and reassessed to ensure the most appropriate provision and support is provided to meet changing needs.

## 10 PRINCIPLES THAT SHOULD UNDERPIN ALL LDAS

The purpose of an LDA is to identify the young persons' needs and suitable provision to meet those needs,

***Local authorities are encouraged to work with other local authorities and agencies when deciding how best to meet these aims, not least to develop consistent approaches across the country.***

A set of common principles should underpin all assessments. This will ensure that the process is consistently delivered and is of a high quality ensuring continuity and appropriateness of support when it is needed. These are:

### 11 All LDAs should result in a clear report

11.1 An assessment relating to learning difficulties is an assessment of a person that results in a written report of:-

- (a) his/her educational and training needs and
- (b) the learning provision required to meet those needs.

11.2 The assessment report should be viewed as a long term document, subject to any material changes in circumstances, that is used to inform decisions about the type of education or training provision the young person should receive.

11.3 It should clearly identify the young person's 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- reference [2008] EWHC 2499 Admin, (the Alloway Judgment). ***Local authorities should seek their own legal advice if they are unsure about the practical implications of this ruling.***

11.4 The report should take account of the expected outcomes for the young person on the completion of their learning. There should be a clear emphasis on the student's realistic aspirations, focusing on progression towards independence and eventual employment where appropriate.

11.5 During the assessment process all possible options which support the aspirations of the young person should be considered, including work based learning, apprenticeships and supported internships. An LDA is not necessary if the student plans to move straight into employment without further education or training.

### 12 All LDAs should be supported by an appropriately trained workforce

12.1 Those undertaking an LDA should have the relevant expertise and a professional responsibility to stay within the bounds of their competence. They should have the skills to

communicate with the young person and their parents/carers and take account of their aspirations and wishes. We expect professionals conducting assessments to have an advice or related qualification at level 4 or above and to have received sufficient training to enable them to act with authority on their judgements. Young people and their parents should also have confidence that the person conducting the assessment will be impartial.

12.2 An LDA should always be conducted by the person/s who is/are best placed to identify - and make judgements about - the needs a student has or is likely to have when they undertake further education or training. Assessors should be independent of any provider both locally and nationally.

12.3 Whilst many people will contribute to the LDA one person should work closely with the young person and their parent/carer and be responsible for co-ordinating the information and the process. The process should be actively supported by senior leadership teams monitoring the quality and sufficiency of the assessments produced through robust quality assurance systems.

### 13 LDAs should have a person centred approach focusing on progression.

13.1 We expect person centred planning to begin as early as possible with transition planning centred around the young person. **The assessment should be a seamless transition from previous assessments and any SEN statement and must allow time for the commissioning of any necessary provision and support to take place.** The LDA should build on existing transition plans which will have already been agreed with the young person and be integral to the young person's career guidance.

13.2 Discussions focusing on the wider aspirations of the young person should take place at an early stage with the young person and their parents/carers. Discussion should focus on progression, wherever possible encouraging education and training that will lead to greater independence and where appropriate employment. Person centred planning should be at the heart of this discussion, focusing on an in depth analysis of the appropriate education and training provision for the young person, promoting a positive culture leading, where appropriate to independence and a future career.

13.3 The LDA should be reviewed regularly to ensure it continues to meet the needs of the young person. LDA reports completed or reviewed after the age of 19 should continue to reflect the individual needs of students. LDAs for older students may include a greater emphasis on pathways to independent living and links to job seeking eg Jobcentre Plus and adult social services.

### 14 LDAs must take account of the young person's views and wishes

14.1 Local Authorities should ensure that the student and their family/carers understand the LDA process and they must ensure that they have a copy of the completed LDA.

14.2 Those undertaking the LDA should seek agreement from the young person to share the outcomes of their assessment with the appropriate education and training providers. If the LDA is not shared with the provider, that provider may not be able to put into place provision and support that is a) identified in their LDA and b) meets their assessment needs. The local authority should, therefore, make the young person and their parents/carers aware of how important it is for the education and training provider or potential provider to be aware of the young person's needs. **The Local Authority should seek their own legal advice on data sharing if they are unsure about their**

## ***responsibilities.***

14.3 If the young person has significant communication difficulties, the assessor(s) conducting the assessment may need to establish their views and wishes through (as appropriate) their teachers, parents/carers, or other representatives such as speech and language therapists or an interpreter. Even where communication difficulties are profound the person(s) conducting the assessment should use best efforts to involve the person being assessed to the greatest extent possible.

14.4 It is important to recognise the wider context in which decisions about education or training are being made by the young person. 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 student 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.

## **15 Young person's wider needs must be considered during the LDA**

15.1 The assessment should include a focus on progression and include the support that the young person needs to access appropriate provision. Ideally the provision should be identified at an early stage so the provider will have a good understanding of the student's needs and can prepare to address them well in advance. Consideration should be made of any travel/transport needs including the recommendation of travel training as an aid towards independence, where appropriate. Where transport needs are identified these should be communicated to the authority's transport commissioner and to those responsible for 'travel training' and other similar schemes.

15.2 Funding to meet activities that provide direct support for learning which is related to an assessed need that is over and above that provided in a standard programme in mainstream general further education colleges, is provided through the YPLA/EFA Additional Learning Support. Providers should use previous assessments and their own evaluations to determine what reasonable adjustments (including those required by the Equality Act 2010) are needed to ensure access and sustain learning. This should be done with the student's active involvement and agreement and should take into account the LDA.

## **16 Multi agency working**

16.1 We expect local authorities to embed multi-agency approaches into the LDA process. There should be a strong focus on seeking information from other professionals, so that the assessments which form part of the LDA process are not duplicated and that specialist services and resources of all relevant agencies are co-ordinated to benefit each young person.

16.2 Local authorities should ensure that the relevant links are in place across services. for example for travel, health, medical and social care needs, to enable specific commissioning from the appropriate agency. In some areas it will be beneficial to involve third sector and voluntary organisations.

16.3 All LDAs 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 should also consider how the information held on CCIS is shared with other local authority



services and partner organisations. Providers are responsible for ensuring that every student in receipt of a LDA is recorded on the Individual Learner Record.

16.4 In accordance with the *Alloway* judgment it is important to ensure there is some provider interaction, but this should not influence the assessment decision. LDAs should be conducted **independently** of providers and prior to any other providers' assessments. This does not prevent the young person from attending a provider to receive taster sessions and to explore the type of support they will need or can realistically access, before the LDA is completed. However evidence from this process, and formal acceptance from a provider should not be a central plank of the assessment or be used to disproportionately influence the outcome of the LDA.

16.5 Subject to agreement from the young person being assessed, the local authority should share the LDA with the appropriate provider/s.

### 17 Local authorities should take into account value for money considerations when making Placement decisions.

17.1 The LDA must result in a written report that is clear and specific about the student's identified education and training needs, setting out the provision required to meet those needs. ***The LDA should be impartial, and focused on the needs of the young person.***

17.2 Once the student's education and training needs have been clearly identified the placement decisions should be made in the light of the overall budget available. The model for commissioning provision should take account of value for money considerations ensuring that the placement proposals that local authorities make remain within the indicative budget allocations made by the EFA (or YPLA as appropriate) while delivering positive outcomes for young people. Consideration should include the total cost implications such as the additional social and health care costs that might be needed.

### 18 There should be a clear complaints process

18.1 Local authorities have the legal responsibility to make arrangements for assessments of learning difficulties to be conducted. ***Should a young person who requires such an assessment not receive one, or the assessment does not comply with the provisions in the Act, then local authorities would be open to legal challenge through judicial review and/or complaint to the Local Government Ombudsman.*** Local Authorities should ensure that young people and their parents or carers are aware of and understand the process to challenge a decision made by the local authority.

18.2 Students with learning difficulties and/or disabilities should have a choice in the education and training provision that is made available to them and wherever possible and appropriate the system should allow an individual's preferences to be met. However, as with other young people entering post 16 education, choice is constrained by the availability and cost, both of learning and additional support. Through the assessment process pre- and post-16, the system should encourage agreement to be reached between young people and their parents and the local authority. This will not always happen, and parents or the young person may wish to challenge the decisions of the local authority. How this will happen will vary according to the circumstance:

- i) if the local authority decides not to carry out a LDA, the parent could complain using the local authority's complaints procedure.
- ii) where a parent does not agree with the placement decision of the local authority, following a LDA, the local authority should undertake an initial review of the decision, most usually by a senior officer not involved in the original consideration. This initial review needs to be undertaken in a timely manner to enable later stages of the challenge process to be undertaken.
- iii) if the original decision is upheld and the young person remains dissatisfied, access to the local authority mediation service could be considered. Local authorities may want to consider using independent mediation services to support this process
- iv) Having complained to a local authority, parents or students, if they remain dissatisfied, may raise the issue with the Local Government Ombudsman or seek a judicial review.

## **FURTHER SOURCES OF INFORMATION**

### **Associated resources (external links)**

<http://communities/sites/YPQSR/qdd/Lists/WorkplaceDocuments/LLDD/clusters%20and%20beacons/annex%201.doc>

<http://communities/sites/YPQSR/qdd/Lists/WorkplaceDocuments/LLDD/clusters%20and%20beacons/annex%201.doc>

### **YPLA Funding information and guidance**

<http://www.ypla.gov.uk/aboutus/ourwork/funding/>

[http://readingroom.ypla.gov.uk/ypla/ypla-Funding\\_Guidance\\_Regulations\\_2011-12\\_gn-Jul11-v1.pdf](http://readingroom.ypla.gov.uk/ypla/ypla-Funding_Guidance_Regulations_2011-12_gn-Jul11-v1.pdf)

### **THE ASCL ACT 2009**

<http://www.legislation.gov.uk/ukpga/2009/22/contents>

### **The Equality Act 2010**

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

### **Ofsted thematic surveys**

<http://www.ofsted.gov.uk/resources/current-provision-and-outcomes-for-16-18-year-old-learners-learning-difficulties-and-or-disabilities>

<http://www.ofsted.gov.uk/resources/special-educational-needs-and-disability-review>

### **National Audit Office Report of post 16 special education**

[http://www.nao.org.uk/publications/1012/special\\_education\\_for\\_young\\_pe.aspx](http://www.nao.org.uk/publications/1012/special_education_for_young_pe.aspx)

### **You may also be interested in (internal links)**

#### **The SEND Green Paper**

<http://www.education.gov.uk/childrenandyoungpeople/sen/a0075339/sengreenpaper>

Building Engagement, Building Futures:

Our Strategy to Maximise the Participation of 16-24 Year Olds in Education, Training and Work

<http://media.education.gov.uk/assets/files/pdf/building%20engagement%20building%20futures.pdf>

