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## Executive Summary

Equality and Diversity Guidance 02/2002

Date: 1 February 2002

Subject: *The Special Educational Needs and Disability Act 2001*

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Name of intended recipient: Local Learning and Skills Councils

Status of document: for information and guidance

### Summary content

The document advises colleagues of the implications for providers of the introduction of the *Special Educational Needs and Disability Act 2001*.

It suggests ways in which local Learning and Skills Councils might work with providers to help them prepare to meet the requirements of the legislation

# EQUALITY AND DIVERSITY GUIDANCE 02/2002

## The Special Educational Needs and Disability Act 2001 (SEND Act or SENDA)

### Linkages to:

*Learning and Skills Act 2000*

*Disability Discrimination Act 1995*

Learning and Skills Council Strategic Framework to 2004: Corporate Plan

National Learning and Skills Council Equality and Diversity Strategy

Equality in Practice: A guide to mainstreaming

1 This guidance will inform colleagues in the Learning and Skills Council (LSC) of the implications of the *Special Educational Needs and Disability Act 2001 (SENDA)*. It is produced by the equality and diversity team. Any enquiries about the content of the guidance should be sent to Lynn Macqueen (Tel: 02476 703285, e-mail: [lynn.macqueen@lsc.gov.uk](mailto:lynn.macqueen@lsc.gov.uk))

### What is SENDA?

2 SENDA amends the *Disability Discrimination Act 1995 (DDA)*. The DDA makes it unlawful to discriminate against disabled people in employment, the provision of goods and services, and the selling and letting of property. Education was not originally covered by the DDA although the provision of other services by educational institutions was covered. The SENDA amends the DDA to make it unlawful to discriminate against disabled people in the provision of education. The relevant provisions come into force in September 2002.

3 As employers of over 15 employees, further education (FE) corporations have always been covered by the DDA in the area of employment and in so far as they are providers of non-educational goods and services, colleges are covered by the provisions of the DDA in relation to this. The SENDA now makes it unlawful for an

FE corporation, as the body responsible for an education institution, to discriminate on the grounds of disability in respect of the provision of education.

4 The provisions in relation to discrimination in education also apply to further education secured by local education authorities (LEAs) and/or provided by schools. Therefore adult and community learning (ACL) providers funded to deliver education by LEAs in receipt of LSC funds for their Adult Learning Plan are covered by the provisions of SENDA. Former external institutions, which come under LEAs, will also fall within the scope of the Act as deliverers of further education.

5 Independent colleges for those with learning difficulties and/or disabilities are specifically named in the regulations made under the SENDA.

6 The provisions of SENDA do not apply to private training providers. However where they employ 15 or more people (this threshold is likely to be reduced to two employees by 2004, depending upon final decision by the Government) the provisions of the DDA in relation to discrimination in employment will apply and also the provisions in relation to non-educational goods and services.

7 Guidance on practical measures to avoid discrimination will be provided in a statutory Code of Practice, the final version of which should be available in April 2002.

8 There will also be a code that advises on SENDA as it refers to schools. The Act strengthens the rights of parents wishing to secure a mainstream place and places duties on LEAs to plan for access. A separate Code of Practice will be available on the impact of the new legislation on schools. Further guidance is planned for schools from the Disability Rights Commission (DRC).

9 The Codes are not statements of law but may be used in evidence in legal proceedings.

#### **What have colleges been required to do until now about disability?**

10 Colleges were required to produce an annual disability statement - designed for students - which outlined the facilities and support students might expect from each college. The statements were sent to the Further Education Funding Council (FEFC) and were a condition of funding.

All colleges completed these statements. Former external institutions funded by FEFC also produced statements, often an umbrella statement from their LEA.

11 In addition the FEFC reported annually to the secretary of state on its work in relation to disability.

12 All local Learning and Skills Councils have recently received guidance from the national office on the desirability of

continuing with statements as a matter of good practice. This guidance is posted on the LSC intranet.

13 SENDA removes the legal requirement for both the production of statements and an annual report on disability. Disability statements will however continue to be requested of education providers as a matter of good practice and of training providers for the first time in September 2002.

14 The LSC has a specific duty to have regard to the need to promote equality between persons who are disabled and those who are not, under section 14 of the Learning and Skills Act 2000 (LSA). Section 14 requires the LSC to report annually to the secretary of state on the actions it has taken to promote equality of opportunity and the impact of those actions. It must further outline plans for the year ahead.

#### **What is the timescale?**

15 A key element of the new duties is that they are **anticipatory** – colleges must not wait until approached by a blind student, for example, to consider what steps are necessary to support learners with visual impairments.

16 The new duties are being introduced in three stages:

- the main sections of the SENDA will come into force on 1 September 2002. From this date it will be unlawful to discriminate against disabled people or students by treating them less favourably than others. In addition, responsible bodies will be required

to provide certain types of reasonable adjustments to provision where disabled students or other disabled people might otherwise be substantially disadvantaged

- from 1 September 2003 responsible bodies will also be required to make adjustments that involve the provision of auxiliary aids and services
- from 1 September 2005 responsible bodies will be required to make adjustments to physical features of premises where these put disabled people at a substantial disadvantage.

#### **How do these new duties sit with the LSC's responsibilities set out in the LSA 2000?**

17 The duties of the LSC are set out in the Learning and Skills Act 2000. In particular, its duties towards learners with learning difficulties and/or disabilities are set out at section 13. A definition is to be found at 13(5).

'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 and training'

18 The definition focuses on barriers to learning. LSC sees this as a broad remit

– there is no list of 'conditions' which are defined as falling within the term learning difficulty or disability.

19 A different definition is used in the DDA and SENDA.

Disability is defined as:  
'having a physical or mental impairment which has a substantial and long term adverse effect on the ability to carry out normal day to day activities'

20 A learner would need to be disabled within the meaning of the DDA definition if they wished to enforce the right not to be subjected to discrimination under that Act. However if a learner wished to claim that the LSC had failed to comply with its statutory duty to them as a learner with a learning difficulty or disability under the LSA, the relevant definition would be that in the LSA.

21 It should also be noted that section 57 of the DDA provides that someone can be treated as having acted unlawfully under the DDA if they have knowingly aided another to carry out an act of unlawful discrimination. It is therefore important that the LSC ensures that it does not secure the provision of education and training from a provider who acts in contravention of the DDA in delivering that provision.

22 What are the implications for LSC?

- LSC as an employer must comply with the DDA
- LSC must take the new provisions of the DDA as amended by SENDA

into account in its work with providers

- LSC staff who deal with providers need to understand the implications of the DDA
- LSC must ensure that it consults adequately with local disabled people when planning provision.

23 What are the implications for providers?

Providers will need to address the needs of learners with disabilities in the planning process including consultation and needs analysis.

Local LSCs will consider providers' responses to the legislation within the equality and diversity aspect of provider review.

Providers will receive capital and recurrent funding to support the implementation of the Act.

Capital funds will be allocated by the Property and Infrastructure Team (Operations Directorate) to FE colleges and ACL providers. Allocations will be linked to costed accommodation strategies which address the process of physical access. Separate advice is available on these capital allocations. (Contact LSC National Office Property and Infrastructure Team (02476 70 3205). Separate strands of recurrent funding are also available. Funding for FE colleges is held by Kit Roberts in the Inclusive Learning team in the Learning Programmes Directorate – tel: 02476 703421. For ACL providers, funding is

held by Sue Yeomans, from the Community Learning team in the Learning Programmes Directorate – tel: 02476 70 3371. Details of how these funds will be used will be available shortly.

### Issues arising from the new legislation Transport

24 For many students with disabilities, transport is a major factor in determining access to provision. Some students need to be escorted and some may require vehicles with adaptations. If students are to have choice about the programme they follow, and if they wish to participate in student life outside of formal learning, they need transport which is available at various times throughout the day.

25 The responsibility for transport remains with local authorities. No budget has transferred to LSC specifically to meet this requirement. It will be important for local LSCs to work closely with local authorities on this issue and to identify in specific areas the nature of transport demands.

26 The Department for Education and Skills (DfES) is currently undertaking research into transport for disabled people in the context of education.

### What constitutes 'reasonable adjustments'?

27 Colleges will naturally focus on ensuring that their actions are within the scope of the law by making reasonable adjustments to promote access. It is important that colleges see this activity

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also in the context of continuing to widen participation. Colleges' plans should include reference to the anticipated needs of learners with disabilities in terms of accommodation, curriculum, staff training and student services.

### **Complaints procedures**

28 Colleges will need to review their procedures to ensure that they are presented in an accessible format. All learners should be made aware of the procedures and provided with guidance on how to use them. In addition colleges should undertake training for all staff to ensure that the implications of the new legislation are understood.

29 While the DDA allows for students to seek redress in the county courts if discrimination occurs, the LSC expects that colleges will act on complaints received and respond to the concerns of people with disabilities in a way which ensures speedy access to the education and training provision they are seeking.

30 What should local LSCs do now?

- understand and disseminate the implications of the legislation across all staff
- be aware that the LSC is covered as an employer and in the provision of any goods and services
- attend the DRC presentations to accompany the Code of Practice in April 2002
- attend LSC briefings on this guidance planned for March 2002. Details to follow shortly

- review procedures relating to providers to ensure that LSC encourages compliance with the legislation
- collect disability statements from colleges and ACL providers
- work with other providers to develop statements for September 2002
- use the introduction of SENDA as an opportunity to remind training providers of their duties under DDA not to discriminate against people with disabilities
- ensure consultation arrangements are in place with appropriate organisations/groups of people with disabilities

31 What should colleges do now?

- understand and disseminate the implications of the legislation across all staff
- take note of the guidance provided by the Association of Colleges (due in Spring 2002) and the DRC
- provide training for all staff
- include the requirements of the new legislation in all planning including accommodation strategies
- carry out access audits
- review disability statements and complaints procedures

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## Sources of advice and information

### ***Disability Rights Commission***

The Commission's remit is to promote equal opportunities for disabled people, support students with any grievance under the Act, and to advise service providers.

The DRC help line offers advice and information about the DDA.

Tel: 08457 622 633

E-mail: [ddahelp@stra.sitel.co.uk](mailto:ddahelp@stra.sitel.co.uk)

Website: [www.drc-gb.org](http://www.drc-gb.org)

### ***Skill – the National Bureau for students with disabilities.***

Skill has worked with the DRC to produce a code of practice on the post 16 aspects of SEND. The Code gives practical guidance on how to avoid unlawful discrimination against people with discrimination.

Skill has produced a guide to DDA 1995 for colleges and HE institutions

Tel: 020 7450 0620

E-mail: [admin@skill.org.uk](mailto:admin@skill.org.uk)

Website: [www.skill.org.uk](http://www.skill.org.uk)

### **Association of colleges**

AoC is working on a toolkit for colleges supporting them in their preparations for meeting the requirements of the legislation.

Tel: 020 7827 4600

Website: [www.aoc.co.uk](http://www.aoc.co.uk)

### ***NIACE- national institute of adult and continuing education***

Niace is providing advice for local authorities, adult and community providers on how to meet their duties under the Act. Briefings to accompany the guidance will be organised by NIACE.

Tel: 0116 204 4200/1

Web site: [www.niace.org.uk](http://www.niace.org.uk)

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