RBWM Policy and Procedures for the Assessment of Learning Difficulties and Disabilities and the Placement of Post-16 Learners

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1. TITLE

RBWM Policy and Procedures for the Assessment of Learning Difficulties and Disabilities and the Placement of Post-16 Learners

2. POLICY STATEMENT

To support, where possible, young people with learning difficulties and or disabilities to further their education and training.

3. PURPOSE

3.1 Legislation requires each local authority in England to make the necessary arrangements for young people with learning difficulties and disabilities to receive suitable education or training over the age of 16.1 This document has been developed to clarify the Royal Borough’s policy and procedure on commissioning the provision of further education and training for its resident learners with learning difficulties and/or disabilities, aged 19 but under the age of 25.

3.2 It also sets out how a S139A Learning Difficulty Assessment should be conducted.

4. SCOPE

4.1 This policy applies to resident post-16 learners with learning difficulties and disabilities of the Royal Borough of Windsor and Maidenhead.

4.2 This document applies to academic year 2014/2015.

5. OBJECTIVE

5.1 The objective of this document is to assist the local authority to make consistent and effective decisions relating to the post-16 education and training for young people with learning difficulties and or disabilities.

6. POLICY DETAILS

6.1 What is a learning difficulty assessment?

6.1.1 A learning difficulty assessment (LDA), often referred to as a Section 139a assessment, is an assessment required by statute.2 Its purpose is to provide a comprehensive report of the support needed by a young person between the ages of 16 and 25 with learning difficulties or disabilities to ensure he or she is able to succeed in post-16 education or training.

6.2 When and for whom will a LDA be made?

6.2.1 A LDA will be made if a statement of special educational need is maintained for a young person, and it is believed that the young person is expected to leave school at 16-19 to receive post-16 education (in this instance post-16 is defined as education other than at school or home) or training or higher education. There will be occasions when a LDA will be

1 Education Act 1996, s.15ZA, as amended by the Apprenticeship, Skills, Children and Learning Act, 2009, s.41 as in the Appendix to this policy document

2 See Appendix and also Learning and Skills Act 2000, s.139A to 139C, as inserted by Education and Skills Act 2008, s.80.
made for a learner not previously the subject of a statement of special educational need and
where it appears to the authority that the learner has a learning difficulty and is moving to, or
in the opinion of the authority is likely to move to, post-16 education or training or higher
education.

6.2.2 A LDA may also be arranged for a young person not attending school if he or she intends to
return to further education, training or higher education; such an assessment may be deemed
necessary when it has not been so previously. These LDAs will be written in as good time as
possible so as to help the learner consider options for further learning, and give providers
enough time to arrange appropriate provision and support. The Statutory Guidance (section
9) contains further information about occasions when a LDA might be appropriate.

6.3 Procedure where the authority chooses not to make a LDA

6.3.1 Where a learner, parent or guardian wishes for a learning disability assessment to take place
but the authority refuses to make one, the learner should invoke the review procedure
described in paragraph 6.12 below.

6.4 Who completes the LDA?

6.4.1 The LDA will normally be prepared by the local authority’s designated Special Needs Adviser
or Personal Adviser (PA) or officer in the Children and Young People Disability Service

This duty may be delegated to another organisation/unit such as Directions. This person will
be referred to as the Personal Adviser (PA).

6.5 What does the LDA draw on?

6.5.1 In carrying out the LDA, PAs build on previous assessments such as:

   • The statement of special educational need
   • The transition plan
   • Recent annual reviews
   • Individual Education Plan
   • Pastoral Support Plan (if in place)
   • Directions Action Plan (if in place)
   • Record of Achievement (Progress File)

This list is not exhaustive. However, the LDA is dependent solely upon advice offered by
suitably qualified professional persons.

6.5.2 Information must be relevant and up to date and where appropriate and/or necessary,
medical evidence must be provided. Evidence must also include the view of the learner and
consent for information sharing. The professional reports informing the LDA will be appended
to the LDA in the manner of appendices to a statement of special educational need.

6.6 How should the LDA be written?

6.6.1 The LDA should be thorough, clear and specific about the provision required to meet needs.
The PA will have up to date information about education and training provision, relevant
support services, and of future plans for provision in the local area and to some extent
nationally. This will inform decisions over the options that should be agreed.

6.6.2 It is recognised that a LDA may reflect conflicting views, where, for instance, the family and
some professional persons come to differing opinions. Local authorities are expected to
come to an independent view and may on occasion have to prefer one body of evidence to another. The PA is expected to give appropriate guidance on this and may make a recommendation. This expectation is intended to prevent the LDA from appearing ambiguous or not providing a robust evidence-based assessment as to the education and training provision needed.

6.6.3 The LDA seeks to ensure that “necessary”, “suitable” and “reasonable” education and training is recommended. It is appreciated that these terms are open to interpretation. It is therefore the aim of the local authority through the PA to secure that which is as robust and objective as possible.

6.7 The LDA and RBWM Approach

6.7.1 The local authority will consider what local provision or arrangements can be created locally, and will look to joint arrangements with local providers wherever possible, tailor-made for the particular learner where necessary. The local authority may choose to commission new provision where appropriate for a particular learner.

6.7.2 When determining the level of provision required by a learner, the learning difficulty assessment will remain the leading informative document. Recommendations for certain services and therapies will be considered only where they are identified in the learning difficulty assessment by suitably professional persons. Local authorities are under a duty to provide a generally appropriate education, and are required to do so in a cost-effective way.

6.7.3 A potential placement will be regarded as appropriate if it meets generally most of the educational need of the learner. It will not be necessary to meet each and every aspiration of the learner.

6.7.4 Education and training will be provided to young people with learning difficulties and or disabilities in a local mainstream environment where possible. It is expected that this will include all or nearly all learners with additional needs. The local authority will seek to make a placement locally before looking elsewhere. Where the needs of the learner cannot be met in mainstream provision, ‘high cost’ or more specialist local provision will be sought. Because of the quantity and quality of existing local provision it is only when education for a learner in a mainstream or ‘high cost’ local setting or specialist local provision is not possible will education in an Independent Specialist Provider (ISP) be considered. Such independent provision will not be agreed where suitable local provision can be made. The breadth and scale of provision locally, regionally and nationally will be considered when determining how best to meet the learner’s need, in the most cost effective way.

6.7.5 Any recommendation for placement at an ISP must include evidence that clearly demonstrates that education in a mainstream or ‘high cost’ local setting or specialist local provision has been considered but is clearly not appropriate. Local authorities will not consider requests for funding a placement at an ISP where there is insufficient evidence to demonstrate that all other options have been properly considered. The evidence must further demonstrate, through relevant and up to date assessment that independent specialist provision is essential to enable the learner to participate in education and training. An ISP may be considered if the learner has medical or care needs which mainstream local provision or specialist local provision cannot address and which would otherwise prevent his or her access to education.

6.7.6 Such evidence will form part of the LDA, which will also show the likely benefits that the granting of the placement would provide, including how the placement will impact on the learner’s reasonable long-term prospects, in terms of educational, employment and social
aspirations. In this regard, local authorities will assess the costs of the placement in line with the benefits that the learner is expected to gain. Benefits must be commensurate with the cost of the placement.

6.7.7 It is recognised that independent provision is usually more expensive and that the budget available to local authorities is limited. Any placement decision is made within the context of the limited resources available. 3

6.7.8 Periodic reviews of the LDA will be arranged depending on the changing needs of the client. These may be requested by the learner, parent/guardian, education and training providers, local authority, or other professionals.

6.7.9 Local authorities in considering the provision of education will take into account the Equality Act 2010, which imposes duties upon providers to make support available for learners with learning difficulties. Local authorities will also take into account their duty to encourage diversity in the education and training available to learners.

6.8 Review requests

6.8.1 Decisions to fund a placement at an ISP will be agreed on an annual basis.

6.8.2 The authority expects the relevant ISP to provide a learner review report at the end of the learner’s first term, each summer term, and in the final term of a placement. The responsibility to make such a report lies with the ISP.

6.8.3 The report will demonstrate the learner’s progress towards agreed outcomes and transition planning.

6.8.4 The authority will use such reports to inform future funding decisions for learners who are due to continue their agreed programme of study for a further academic year. Amongst other things, the authority will consider whether the programme of learning is still relevant, whether appropriate progression is being made, recent developments and changes in the learner’s circumstance or programme.

6.9 Requests for extensions

6.9.1 Any request for extending the duration of an originally agreed placement should be made only in exceptional circumstances, such as if a medical emergency has prevented a programme of study from being completed.

6.9.2 Any extension request must be accompanied with reasons to justify the extension together with appropriate evidence. Extension requests must be made to the local authority by no later than 31st May in the calendar year in which the extension would take effect.

6.10 Procedure for Decision and Review

The Local Authority Meeting

6.10.1 The local authority will meet during the spring term in the calendar year in which the learners will commence placement. These will examine in turn the requirements of each learner for whom high cost provision is an option or is being sought. At these meetings the

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3 The Statutory Guidance states specifically that ‘the model for commissioning provision should take account of value for money considerations ensuring that placement proposals ... remain within the indicative budget allocations made by the Education Funding Agency ... while delivering positive outcomes for young people’ (section 17.2)
recommendations of the LDA will be considered; the PA will present the case for each potential high cost learner and a minuted discussion will take place. The minutes will record the decision of individual cases and any relevant background information. The minutes will not be a verbatim record of the meeting. Cases will be considered in accordance with the principles explained above in the section entitled The LDA and the RBWM Approach.

6.10.2 The meeting will normally be attended by representative/s from Children and Young People Disability Service, Directions, Social Care, Health if necessary and possible. There is no quorum for the meeting.

6.10.3 The learner and his or family will not be invited to this meeting. However, it will be the responsibility of the PA to ensure that the views of the learner and his or family are properly represented at this meeting. All paperwork should be forwarded to the meeting chair who will make it available to participants at least one week before the meeting. This should include all papers required for a decision to be made.

Criteria for Decision

6.10.4 In deciding whether the available education is suitable to meet the learner’s reasonable needs the following will be considered.

(a) The learner’s age, ability and aptitude

(b) The learner’s learning difficulties as identified

(c) The learning and career aspirations and wishes of the learner and his or her family

(d) The quality and suitability of the education or training available locally; and

(e) The locations and times at which the education or training is provided.

6.10.5 The outcome for each learner will be one of the following:

1. Local non 'high cost' provision
2. Local 'high cost' provision
3. Neighbouring local authority 'high cost/ provision
4. ISP day provision
5. ISP residential provision
6. Social Care placement (day or residential)
7. Non take-up in the year in question for health or other reasons
8. Other
9. Further consideration required/evidence to be obtained

6.10.6 A decision should be made at the meeting unless there is good reason for further evidence to be obtained.

6.10.7 For learners in categories 1, 2 and 3, and where it is known that the decision will not be contested, the LDA and supporting documentation should be prepared for handing to the local provider.

6.11 The Decision

6.11.1 The local authority will make a final decision as to the placement of all potential ISP learners and write to the parents or guardians of the learners to inform them of that decision (‘the Decision Letter’). The letter will also explain how that decision can be reviewed if the learner, parent or guardian is dissatisfied with the decision or any part of it.
6.12 Review of Decision

6.12.1 The Review is intended to provide learners with learning difficulties or disabilities and their parents or guardians with a means of securing a review of a local authority's decision in respect of the contents of the young person’s learning difficulty assessment. Such a review can be of any part of the assessment, including the placement. It follows the requirements prescribed in the Statutory Guidance.

6.12.2 Every local authority is required to operate a complaints procedure. To have a Review carried out, a young person or his or her parent or guardian must invoke the complaints procedure of his or her local authority. Operation of the complaints procedure by the authority constitutes the Review. Reference must be made at the appropriate time to the procedure for the young person’s home authority.

6.12.3 If both parties (that is, on the one hand the authority and on the other hand the learner, parent or guardian) agree, the matter may be referred to an independent mediation service. It is possible that one or both of the parties may feel the matter to be inappropriate for mediation, and so this cannot be an obligatory step. It is open to either or both parties to propose and both to enter upon mediation at any time during the operation of the complaints procedure. Mediation is normally expected to be binding upon both parties, but it may also sometimes be helpful in clarifying issues, whatever the outcome of the mediation meeting. There can be no requirement for a party to agree to independent mediation.

6.12.4 If the learner, parent or guardian remains dissatisfied with the adjudication at the end of the local authority complaints procedure, he or she must refer the matter to the Local Government Ombudsman or seek judicial review. It must be remembered that the Ombudsman normally expects an authority to have been given the chance to do something about a complaint before he will begin to investigate it. It is strongly recommended that legal advice be sought before seeking a judicial review.

7. ROLES AND RESPONSIBILITIES

7.1 The Section 139A Learning Difficulty Assessments Statutory Guidance sets out the roles and responsibilities for the local authority.

8. MONITORING, EVALUATION AND REVIEW

8.1 This document will be reviewed in view of the forthcoming special educational needs legislative changes in September 2014.

9. DEFINITIONS AND ABBREVIATIONS

9.1 In this Policy, except where the context otherwise requires, the following expressions shall have the meanings ascribed to them:

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<th>Term</th>
<th>Definition</th>
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<td>Learning Difficulty Assessment (LDA)</td>
<td>means the assessment carried out by the Authority which defines the needs and provision required for young people with a learning difficulty and/or disability aged 16-25 who expect to leave school to receive Post 16 education, training or higher education. From September 2014 consideration will need to be given to convert a Learning Difficulty Assessment to an Education, Health and Care Plan.</td>
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4 Statutory Guidance provides for this to be optional
10.ASSOCIATED DOCUMENTS

10.1 Refer to Appendix 1

10.2 Section 139A Learning Difficulty Assessments Statutory Guidance for Local Authorities – April 2013
Appendix 1

Statutory Background

1 Section 15ZA of the Education Act 1996, as amended by s41 of the Apprenticeship, Skills, Children and Learning Act (ASCL Act) 2009, places a duty on local authorities to secure enough suitable education and training to meet reasonable needs of 16-19 year olds, and those aged 19-25, who are subject to a learning difficulty assessment. Section 15ZA(1) and (2) provides:

15ZA Duty in respect of education and training for persons over compulsory school age: England

(1) A [local authority] in England must secure that enough suitable education and training is provided to meet the reasonable needs of—

(a) persons in their area who are over compulsory school age but under 19, and

(b) persons in their area who are aged 19 or over but under 25 and are subject to learning difficulty assessment.

(2) A [local authority] may comply with subsection (1) by securing the provision of education or training outside as well as within their area.

2 As a result, the responsibility for the education and training needs of 16-19 year olds, and up to the age of 25 years, for learners with learning difficulties and/or disabilities (LLDD), who are the subject of a learning difficulty assessment, passed to local authorities with effect from 1st April 2010.

3 Section 15ZA(6) AND (7) of the Education Act 1996, as inserted by section 41 of the ASCL Act 2009 provides:

A person has a learning difficulty if –

(a) he has a significantly greater difficulty in learning than the majority of persons 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

4 In relation to the provision of boarding provision, Section 514A of the Education Act 1996, as amended by Section 46 of the ASCL Act 2009 provides local authorities with the power to secure boarding accommodation for persons who are subject to a learning difficulty assessment who are over compulsory school age, and states:

“514A Provision of boarding accommodation for persons subject to learning difficulty assessment

(1) A local education authority in England may secure the provision of boarding accommodation in connection with the provision of education or training for a person in their area who is—

(a) over compulsory school age but under 25, and

(b) subject to learning difficulty assessment.

(2) A local education authority may secure the provision of boarding accommodation under subsection (1) either within or outside their area.
(3) For the purposes of subsection (1) it is immaterial who provides, or secures the provision of, the education or training.

(4) In this section “education” and “training” have the same meanings as in section 15ZA.”

5 Also of relevance is section 10 of the Education and Skills Act 2009, which places a duty on local authorities to promote participation in education or training of young people in their area.

[end]