**Disability Legislation**

**Introduction**

A disability is defined as a condition which has a ‘long term’ and ‘substantial’ negative affect on day to day activities (Equality Act, 2010). Long term means that the effects are likely to last more than a year

**Equality Act, 2010**

Pupils identified with dyslexia should have their needs met within the Special Educational Needs Code of Practice (2015) (SEND CoP), which provides statutory guidance for mainstream schools, and sets out steps which must and should be taken to identify pupils’ needs and make arrangements to meet them. However, there is some overlap with the Equality Act 2010, which brought together, clarified and strengthened a raft of existing legislation on the subject of disability discrimination. The Act sets out duties and responsibilities for **all schools,**  to ensure that positive action is taken to remedy, as far as possible, any disadvantages a child might suffer as a result of a disability, including dyslexia. For dyslexic pupils attending independent schools, which have no statutory obligation to follow the SEND CoP, there is the added benefit that the Equality Act 2010 applies to all schools, not just those in the mainstream.

The Equality Act 2010 removed any justification for direct discrimination, and made it unlawful to indirectly discriminate against pupils by the application of rules or processes which, although applied equally to all pupils, had a disproportionately adverse effect on disabled pupils. Admissions policies which include academic testing might indirectly discriminate against dyslexic pupils, therefore accommodations would be required to ensure that dyslexic candidates are treated fairly. Schools may not make a charge for any such reasonable accommodations or adjustments (The Equality Act 2010). The definition of ‘reasonable’ remains open to question, especially in the independent sector, where school fees are set to cover whole class teaching, and there is no Special Educational Needs (SEN) funding, as in mainstream schools.

**Rose Report, 2009 - Dyslexia**

Rose made 19 recommendations in his 2009 report, which can be summarised at different levels: improvements to teaching and learning by strengthening SEND coverage in initial teacher training, making funding available for dyslexia and SEND awareness short courses for teachers, and specialist teacher/assessor courses for a smaller number of teachers whose expertise could be shared between schools; improving identification and assessment of children’s difficulties, and monitoring progress; strengthening available interventions and making resources and materials more widely available for example, National Strategies; and providing help and guidance for parents and carers.

Not all recommendations were followed; for example, the National Strategies have long since been archived. Also, the successive waves of intervention described in the report have been replaced with a graduated response, using a simplified model of assess, plan, do and review.

The Rose Report (2009) also provided a useful working definition of dyslexia:

● *Dyslexia is a learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling.*

*● Characteristic features of dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed.*

*● Dyslexia occurs across the range of intellectual abilities.*

*● It is best thought of as a continuum, not a distinct category, and there are no clear cut-off points.*

*● Co-occurring difficulties may be seen in aspects of language, motor co-ordination, mental calculation, concentration and personal organisation, but these are not, by themselves, markers of dyslexia.*

*● A good indication of the severity and persistence of dyslexic difficulties can be gained by examining how the individual responds or has responded to well-founded intervention.*

*(Rose Report, 2009, p.12)*

This definition sets out phonological and cognitive sub skills which could be assessed to distinguish the dyslexic pupil from the ‘garden variety’ poor reader, and also questions the discrepancy model of identification, which relied on a significant difference between measured intelligence and reading skills. ‘Garden variety’ poor readers are those whose poor reading skills stem from reasons other than a specific reading difficulty, for example, general low cognitive ability, limited print exposure due to reading reluctance, poor school attendance or poor teaching.

The Rose Report (2009) has been very influential in the growth and availability of excellent SpLD – dyslexia training courses, in raising awareness of this hidden disability, and in assisting mainstream schools to fulfil their responsibilities and make their best endeavours, as specified in the SEND CoP (2015).

**Special Educational Needs and Disabilities Code of Practice, 2015**

The SEND CoP 2015 is a comprehensive document which applies to mainstream schools, and independent settings in receipt of government and local authority funding. It sets out procedures for identifying and supporting children with SEND. Dyslexic children in mainstream schools should find that the SEND CoP provides the legislative framework to ensure that their school makes their best endeavours to meet their needs. Using the model of assess, plan, do and review, interventions become increasingly intensive and specialised until they begin to have an effect. With access to the expertise of specialist teachers, either within the school or as part of a local authority cluster, mainstream schools must identify dyslexic children at the earliest opportunity, and must take into account the views and wishes of parents and pupils and actively involve them in the decision making process.

Part of developing strong parent partnerships is de-mystifying the SEND process and making information available. Therefore schools are required to provide clear information about interventions provided and their impact.

The SEND CoP also provides guidance on SEND funding, budgets, and applying for an Education and Health Care Plan (EHCP). An EHCP replaced the former Statement of Special Educational Needs, and sets out in detail the provision required to meet a child’s needs, and the level of funding available in addition to the school’s SEND budget. EHCP may be extended up to the age of 25, where appropriate.

**Access Arrangements**

Access arrangements are governed by regulations, such as those published by the Joint Council for Qualifications (JCQ Regulations and Guidance, 2019), which set out menus of potential adjustments and accommodations, as well as guidance on making applications. These arrangements are necessary to “allow candidates fair opportunities to show their knowledge and skills *without* changing the demands of the assessment.” (Dyslexia Matters, 2019). Within the primary school, dyslexic pupils might need to apply for special arrangements for the end of Key Stage 2 assessments (Standards and Testing Agency), and/or for selective tests at secondary transfer, for example the Bexley and Kent eleven plus examinations. Access arrangements also apply to external examinations for qualifications, where it is especially important that the “integrity” of the qualification is retained, and testing of competencies is not relaxed.

Guidance is published each year on the government website, or must be requested from the appropriate local authority/County Council. Guidance may change from year to year, and there are strict timetables for applications to be submitted, as well as supporting evidence required. Evidence is essential in order to present a “*detailed picture of need*”, to identify the “*most appropriate*” adjustments, most likely to be effective in addressing the student’s specific disadvantage.

Various accommodations may be requested, and those which might apply to the dyslexic pupil who may have trouble reading the papers, writing answers, difficulty concentrating, and possibly visual processing difficulties could include early opening of papers to make accommodations, having a reader, prompter or scribe, 25% extra time or rest breaks. These potential accommodations would depend on the pupil’s established way of working, and evidence of the effects of the disability.

**Local SEND Policy and Procedures**

Each Local Authority will have its own specific SEND policy, or policy for dyslexia, and will publish details of available provision and services within the Children’s Services Procedures Manual, or elsewhere. The key points are concerning the Local Authority’s duties to:

* Publish a SEND Local offer;
* Provide information, advice and support regarding SEND;
* SEND educational provision;
* Transport arrangements to and from school for children with SEND;
* Assessment of needs to apply for EHCPs
* Aspects of SEND funding and allocation of personal budgets

Local Authorities may employ multidisciplinary Early Intervention Teams (EIT), who work closely with mainstream schools and families to ensure that needs are identified early, and steps are taken to meet them, either within the team, or by referral and working in partnership with other children’s services, such as Children and Adolescent Mental Health Services, Education Welfare, Specialist Teacher Services (for vision or hearing impairment), or Occupational and Speech and Language therapy Services. The EITs usually comprise an Educational Psychologist, Social Emotional Mental Health support teachers, Social Workers, and unspecified SEN partners. These services may be limited for independent schools due to budgetary constraints.

Local Authorities may also provide online SEND toolkits for schools, which set out the good practice strategies they would expect to see in classrooms for a wide variety of SEND. Although dyslexia may not be specifically mentioned, guidance provided for attention and memory difficulties, cognition and learning, as well as language and vocabulary, will be relevant. Therefore, by searching through the guidance it is possible to find ideas to help with most difficulties.

Guidance is also provided by Local Authorities on applying for an EHCP.

**School SEND Policy and Procedures**

Schools should have a general SEND policy, but may not address dyslexia separately. The key points of a school’s SEND policy should relate to regulatory SEND policy contents, including:

* Aims;
* Objectives;
* Admission arrangements;
* Identification of SEND;
* Triggers for raising concerns, assessments and the graduated approach of assess, plan, do and review;
* How parent and pupil involvement is achieved;
* Roles and responsibilities of school staff;
* Management of SEND provision;
* Actual provision available within school;
* Complaints procedure;
* Information management;

Schools aim to do all that is reasonable to identify children’s needs as early as possible, and make reasonable adjustments and accommodations to enable children to function independently and make progress. However, this may look different in each individual setting. Independent schools receive no government SEN funding, so all diagnostic assessments which are additional to those conducted with the whole class, may attract a fee, as may all one-to-one interventions. SEND policies should be carefully constructed to set out exactly what schools are and are not able to provide, which is necessary to prevent misunderstanding.

Where school and parents are in agreement, early identification of learning difficulties may be followed by informal observations and assessments to determine the barriers to learning. The child may be included in a class target group, for extra attention from the class teacher, before school or lunchtime reading group, or additional phonics instruction. Parents may be invited to workshops where strategies are modelled for use at home. If these small adjustments have no effect, parents’ permission will be sought for additional assessments to locate the area of difficulty, and targeted interventions devised and implemented on a small group or one-to-one basis. Targets are included on a School Support Plan, which the class teacher, parents and SENDCo collaborate to write. Progress should be regularly reviewed.

Where a child’s difficulties are found to lie outside the school’s areas of expertise, a referral to the appropriate external professional, for example, occupational therapist or speech and language therapist, should be arranged.

**Ethical Standards and Professional Practice in Storing and Sharing Information**

It is necessary for schools to develop their own policies and procedures for storage and information sharing concerning assessment results, to meet legal and ethical obligations, and to ensure that pupils and their families are treated fairly. Ethical standards are usually available from a test user’s professional body, for example, the British Psychological Society Code of Conduct, but all ethical guidance will be based on the principles of fairness and doing good work.

Ethical standards include providing pupils and their parents/carers with sufficient information prior to testing, to ensure that they can make an informed decision about the use to which results will be put, who will see the results, how the results may impact on the child, and how (including how long) the results will be stored, before giving their consent. Information about children and their families is very sensitive, and right to confidentiality must be considered. The General Data Protection Regulation (GDPR) 2018, provides that personal data must be processed “*fairly and lawfully*”, in accordance with key principles. The GDPR does not preclude the appropriate sharing of information, and schools and Local Authorities should have their own arrangements to “*establish local protocols*” (Information Sharing, DFE, 2018). To meet the criteria of appropriate sharing , the information must be:

* Necessary and proportionate;
* Relevant;
* Adequate;
* Accurate;
* Timely;
* Secure;
* Recorded (basis of decision to share and material shared).

Storage of pupil records in schools can sometimes be haphazard, but all confidential and sensitive materials must be stored in locked cupboards or cabinets, and access restricted to authorised staff only. Schools will have their own policies on retention of records, but it is good practice to retain them until the pupil has reached the age of 25, which would be the cut-off for bringing any court action for which the records might be required.

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