

Disclosure, Data Protection and Confidentiality

All students with a disability, specific learning difficulty or mental health difficulty must not be treated less favourably than other students, as stated in the Equality Act (2010). Adopting inclusive practices will help to reduce discrimination in general, but some individuals will still need reasonable adjustments as stipulated by the Act to ensure they are not placed at a disadvantage as a result of any impairment. In order for staff at Middlesex University to do this, it is usually necessary to know about a person's disability and, as a result, it is a requirement of the Act for staff to be mindful of whether a student has a disability.

For some students disclosing a disability may be straightforward or their disability may appear to be obvious. Other students, however, may be reluctant to disclose their disability because it is hidden, because it is newly acquired or identified, because they do not think of themselves as disabled, or they are fearful of potential discrimination. As students and applicants are not obliged to disclose their disability, it is important to foster an environment and culture which encourages disclosure.

Students and applicants may tell the University about a disability in a variety of contexts. As a result of such a disclosure, which can be either verbal or written and to any member of staff, the University as a whole could be deemed to know that the student is disabled. There is no requirement for a student to support his or her disability disclosure with documentary evidence. However, evidence will be required prior to putting in place any reasonable adjustments relating to their disability.

Information about disability is also considered sensitive personal data under the Data Protection Act 1998, and such information is subject to additional safeguards. In these circumstances, there are implications for the University in terms of how it records and stores such information, how it disseminates the information and what happens should a student ask that the disclosure be kept completely confidential.

The purpose of these guidelines is to:

- provide guidance to staff in the University on appropriate management of disability disclosures;
- inform potential students, applicants and current students of the management of disability data within the University.

A person is disabled under the Equality Act (2010) if they have a physical and/or mental impairment, and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. In this context:

- a 'substantial' effect is any effect whose impact is more than minor or trivial;
- 'long-term' means that it has lasted for, or is likely to last for, at least 12 months or for the rest of the life of the person;

- effects which are fluctuating or recurring are treated as 'long-term' if they are likely to recur over more than 12 months;
- normal day-to-day activities include things people do on a regular basis, for example, preparing and eating food, walking and travelling by various forms of transport, reading and writing, taking part in social activities or using the telephone.

When determining whether a person is disabled, the effects of any medication, treatment or aid are disregarded. This means that someone will still be protected even if the effects are controlled by medication or treatment.

Please refer to the details on the Disability and Dyslexia Support (DDS) web pages for more information about what is considered a disability within the legal framework. It is important to note that the definition of 'disability' is broader than the every-day usage of the term; many people who are protected by the Act would not choose to call themselves 'disabled' and/or may not recognise that they are protected.

It is important that students are given the opportunity to disclose a disability at any stage during their studies or during their application process. Academic schools should be able to provide information about the support available for disabled students and encourage them to disclose. For courses involving placement learning, field trips or practical work in workshops, it is particularly important to give students opportunities to disclose a disability which they have not yet declared, because in these contexts it may have a different impact in making reasonable adjustments or on health and safety.

Where appropriate, members of staff should use opportunities, such as the first day of a module or during inductions, to remind students about the support available for disabled students and encourage them to disclose.

The Equality Act (2010) gives students the right to request that the nature or existence of their disability be treated as confidential, and students can change the level of confidentiality at any time. To address this, when disclosing a disability, students are entitled to two options regarding the level of confidentiality with which their disclosure can be treated:

Consent to share

When a student agrees for information about their disability to be disseminated, the people who need to know, for instance in order to teach or support the student effectively, can be given the information necessary to perform their role. The information will be kept confidential to those people. Any medical evidence that is required for reasonable adjustments to be put in place is kept in a secure location within DDS and is not shared with other departments.

In general, no more information should be passed to a member of staff than is necessary for that person to perform their role. For instance, staff responsible for making reasonable adjustments may need information on the required adjustment but may not need to know the nature of the disability. It may also be possible to make some adjustments without staff being made aware that there is a disabled student requiring this.

Other staff may be permitted to know where they have lawful grounds under Schedule 3 of the Data Protection Act (1998) to process such information, which includes, when it is necessary for them to know in order to undertake equality and diversity monitoring or to complete obligatory health and safety risk assessments, or to otherwise protect the vital interests (i.e. to avoid serious injury or death) of another person.

Completely confidential

When a student does not wish for the member of staff to disclose to anyone else, access to their information should be restricted to the person to whom they disclosed their disability. However, this level of confidentiality means that additional support most likely cannot be put in place. Also, there are circumstances when complete confidentiality cannot be maintained.

Confidentiality relating to a student's disclosure of a disability should only be broken in exceptional circumstances: if:

- students are in danger of harming themselves or others;
- there is a legal requirement to disclose the information;
- professional fitness to practise may be compromised;
- it is in the substantial public interest to do so.

Unless it will prejudice the purpose of the disclosure, the student's consent should still be sought first. Wherever feasible, members of staff should seek advice from the relevant professional member of staff before breaking confidentiality.

Where a student has requested complete confidentiality this must be respected. In this instance, the student should be asked to sign a Disclosure Form, stating that they do not give permission to share information. This also allows them to state that they accept that reasonable adjustments cannot be put in place via DDS in this instance. However, a student may decide to agree to share this information at any time; in that case, reasonable adjustments could be implemented at that point.

As the information shared is considered to be 'sensitive information' according to the Data Protection Act (1998), members of staff should store the form securely along with any other information that the student has disclosed to them. If the student does decide to share this information in the future, the form and accompanying documentation can be sent to DDS for them to process.

Where a student requests complete confidentiality when registering with the Disability and Dyslexia Service, the same principles apply; the information will be stored securely and no information will be passed on to the student's academic school or other University departments.

There is still a duty to make reasonable adjustments to ensure the student is not substantially disadvantaged as a result of disability. However, many adjustments may be impossible if the request for complete confidentiality is to be respected. It may be necessary to consider alternative adjustments to ensure that the disclosure remains private while still meeting the needs of the student as far as reasonably

possible. Advice on whether an adjustment is reasonable in general terms may still be sought from DDS, as long as no identifying information is shared.

All students who disclose a disability and give consent to this information being shared will have the nature of their disability recorded onto the database used by DDS (MISIS/GOAMEDI). The disability data is held in a field restricted to key users. DDS will only share information with academic schools that the student has agreed can be shared. The Consent to Share Form allows the student to indicate the nature of the information they agree can be shared, and with whom.

The University will collect, consider and publish anonymous monitoring data on disability to ensure that we identify equality issues and priorities for the University and to comply with the public sector duties under the Equality Act (2010). Access to data is limited only to those who require this as part of their role. The University never publishes names of individuals in monitoring data reports and in compliance with its Data Protection obligations will not publish small numbers (less than 5) where this may lead to an individual being identifiable.