

Birkenhead Sixth Form College

Confidentiality Policy for ALL staff regarding disability disclosure by students

(This Policy is available on request in alternative formats)

Legislative Framework

The Disability Discrimination Act (DDA) Part 4 raises many concerns about the ways in which the College encourage students to disclose a disability, the procedures they have in place for passing on relevant information, and the ways in which they can respect a student's desire for confidentiality. This policy addresses these issues.

Disclosing a disability

At Birkenhead Sixth Form College we actively encourage individuals to let us know about reasonable adjustments we may have to make in order to support students with disabilities as effectively as possible. There are a number of situations at which students may be asked or wish to disclose the existence and/or nature of a disability. Examples include:

- When contacting the College for information before applying to enrol on a course
- When arranging to make an information visit
- During enrolment
- At a first meeting with student's personal tutor or subsequent tutorials
- When arranging work placements or field trips.
- And subsequently at appropriate times throughout the course

There is no duty on a student to disclose a disability. The College will take reasonable steps to find out if a student has a disability so that appropriate action can be taken. Not knowing about a student's disability cannot be used as a defence if an adjustment (Appendix 1) could have reasonably been anticipated or if the college failed to make attempts to find out. All attempts will therefore be made to encourage students to disclose any kind of disability or access need so that appropriate adjustments can be made at the appropriate time.

Some students (particularly those with hidden disabilities) might be reluctant to disclose their disability because they are worried that they may be discriminated against. The College will ensure that all students are treated equally and fairly and can feel confident in disclosing a disability. Students may also fear that by disclosing details of a disability this will become generally knowledge. Students will always be informed that any disclosure will not be circulated to students or staff who do not need to know and will only be shared with agreed personnel.

Some students may disclose details of a disability or support need to staff other than teaching staff. In all cases staff must comply with this policy.

For further information concerning disclosing a disability contact the Learning Support Team.

Informed Consent to pass on information

Sensitive personal data will only be released (to the appropriate staff) within the College if two criteria are met:

- With the student's permission
- On a 'need to know' basis (Appendix 2).

Sensitive personal data would not normally be released outside the College. It will be made clear to the student to whom their disability will be disclosed. Apart from the agreed people (Appendix 2), the information will remain strictly confidential.

The student will be informed why there is a need to disclose the information, who will have access to that information, and what the likely consequences are of giving or withholding consent. Written permission must be obtained from the student before any information regarding their disability can be shared (with the exception of the circumstances listed under Exceptional Disclosures).

Student Confidentiality Request

A student has the right to request that the existence or nature of their disability is treated as confidential. The College will continually be endeavouring to meet the requirements of students with learning difficulties and disabilities. On occasion it may be necessary to make an additional adjustment when the student has requested confidentiality to ensure that the disclosure remains confidential. In determining to make an adjustment, the College will have due regard to the extent that making the adjustment is consistent with a disabled student's request for confidentiality. In some cases, this might mean that reasonable adjustments have to be provided in an alternative way to ensure confidentiality or that no reasonable adjustment can be provided (Appendix 3). If this is the case, full consultation with the student will take place and the potential outcome identified, agreed and recorded.

If a student discloses their disability to a member of staff and asks for confidentiality, the advantages/disadvantages of not disclosing must be discussed. The decision to disclose ultimately rests with the student. It would be sensible to explore ways in which any reasonable adjustments could be made without compromising the student's request for confidentiality. Written consent must be obtained of the student's decision not to have information disclosed.

For further information on the procedures to follow contact the Assistant Principal (Estates and Services) or Learning Support Manager.

Exceptional Disclosures

The College has a duty not only to students with disabilities, but also to other staff and students. Certain exceptional circumstances may allow for the alternative action to be taken. This could result in a student being restricted in their activities within college or in extreme cases release of personal sensitive data. These include:

- Where there is an immediate and serious threat to the personal safety of the student or member of staff concerned
- Where there is an immediate and serious threat to the safety of others
- Where there is a legal requirement to disclose that information (e.g. a crime has been committed or it is covered by health and safety legislation)
- Where professional fitness to practice may be compromised.

In cases of exceptional disclosure the consent of the student should not be sought where it is likely to increase the risk to that student or to the third party.

Data Protection

Information relating to physical or mental health constitutes sensitive personal data. Under the Data Protection Act 1998, explicit permission from the data subject must be sought before this type of information is passed on to third party, unless there is a legal obligation to provide the information. Further information on Data Protection is available from **Colin Hawksworth (Data Protection Officer)**.

Annex

Appendix 1 – Reasonable Adjustments

A reasonable adjustment might be action that helps to alleviate a substantial disadvantage. It might involve:

- Changing college procedures
- Adapting curriculum, electronic or other materials, or modifying the delivery of teaching
- Providing additional services, such as a sign language interpreter or material in Braille
- Training staff
- Altering the physical environment

Under the Act, there is a responsibility to make anticipatory adjustments. This means that the College should consider what adjustments future disabled students or applicants may need, and make them in advance.

The College is only expected to do what is “reasonable”. What is reasonable will depend on all the individual circumstances of the case, including the financial or other resources of the College and the practicality of the adjustment. Other issues, such as the need to maintain academic standards,

the relevant interests of the other people (including other students), and health and safety are also important.

Appendix 2 – Informed Consent: Further Information

What constitutes a ‘need to know’ basis?

Teaching and other services may need to be adapted as a result of the student’s disclosure. Representatives within such services would ‘need to know’ of the student’s disability so that appropriate adjustments can be made.

Who are the agreed people?

The ‘agreed people’ should be those who would have to make adjustments to support and enhance the learning experience of the disabled student, and may include:

- Teaching staff
- Learning Support Team
- Learning Resources Team
- Examinations Officer
- Administrative (or other support staff)
- **Equality and Diversity Committee** Representatives.
- First Aiders

Appendix 3 – Student Confidentiality Request: Reasonable Adjustments

Case Study A

A student with a visual impairment can only read clearly if he has text enlarged into 16-point type. He is very embarrassed by his disability and has requested strict confidentiality. Normally his tutors would give a visually impaired student large print handouts at the beginning of each lesson. However, because he has requested confidentiality, they agree to give him handouts in advance so that he can look at them before the lesson but does not have to be seen reading them during the class.

Case Study B

A student has a mental health problem and, because of the medication she is on, finds it difficult to get to her first morning class. After several weeks during which she has missed all her morning classes, and without approaching the student to find out why she has not turned up, the college decides to remove her from the course. The institution has not taken reasonable action to find out whether the student’s failure is due to a disability, and so is likely to be acting unlawfully.

In the same situation the tutor approaches the student and asks her in private if there is any reason preventing her from coming into her first class. The student denies that there is any particular reason for her non-attendance. The college decides to remove her from the course. This is likely to be lawful. It is vital that any such interaction between tutor and student is documented.

Source:

DDA Code of Practice for providers of post - 16 education and related services.

Further Information

For further information concerning this policy please contact the Assistant Principal (Estates and Services) or Learning Support Manager.