# Disability
# And
# Discrimination Policy
# includes
# Ability to Study Policy

Gecko Community

Empower, Inspire, Educate

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# Disability and Discrimination Policy

**1. Legislation and Guidance that inform this document**

- SEN and Disability Act (2001) … this extended the
- Disability Discrimination Act (DDA 1995) to cover education
- Disability Equality Duty (2006)
- Equality Act (2010)
- Disability Discrimination Act (2005)

**2. Statement of Intent**

Gecko Community strives to ensure that all young people, regardless of disability, gender, sexual preference or race are able to thrive and learn within its centres. It acknowledges the legal requirements now placed upon it.

**3. Responsibility for Implementation**

It is the responsibility of everyone working at Gecko Community to ensure that no member of the Gecko Community is ever discriminated against, and to promote positive attitudes towards any person who has a disability.

**4. Definitions of 'disability' and subsequent prescribed practice that must inform Gecko Community provision**

Under the Equality Act, there are nine protected characteristics:

- age,
- disability,
- gender reassignment,
- marriage and civil partnership,
- pregnancy and maternity,
- race,
- religion or belief,
- sex.

Gecko Community will work to ensure that there is no discrimination whatsoever within any of the above characteristics.

The definition of disability in the DDA ('definition' may be misleading but the Act identifies those students covered by the Act) is not the same as the definition for SEN. The DDA covers only those who have 'a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities'. This definition is considered in detail in guidance produced by the Disability Rights Commission. The DDA also covers those with:

- severe disfigurements,
- impairments which are controlled or corrected by the use of medication, prostheses, or otherwise,
- progressive symptomatic conditions,
- a history of impairment,
- cancer, HIV or multiple sclerosis.

The DDA does not cover addiction to or dependence on nicotine, tobacco or other non-prescribed drugs or substances, hay fever, or certain mental illnesses that have anti-social consequences. Accordingly, it might be possible for a student to have special educational needs, but not be disabled for the purposes of the DDA, and vice versa (although the majority of disabled students will also have special educational needs).

**5. Protection from Discrimination**

A student who is disabled is protected from discrimination in two ways:

1. They are entitled not to be treated less favorably than a non-disabled student for a reason relating to their disability.
2. They are entitled to have reasonable adjustments made with respect to admission arrangements or in the provision of education and associated services, to prevent them being placed at a substantial disadvantage, unless the refusal to make those adjustments is 'justified'.

Unlawful discrimination against a disabled student can occur in several ways:

- direct discrimination,
- indirect discrimination,
- discrimination arising from disability,
- harassment.

*5.1 Direct discrimination*

Direct discrimination occurs when a school treats a disabled student less favourably than a non-disabled student. An example might be a school refusing to admit disabled students.

Direct discrimination is unlawful whether it is intended or not and regardless of the motive. However, it is not discrimination to treat a disabled student more favourably than a non-disabled student because of their disability.

*5.2 indirect discrimination*

Indirect discrimination might occur when a school has a policy or rule that puts, or would put, disabled students at a disadvantage. An example might be a school having a rule that all students must be able to make their own way to and from after school clubs independently.

Schools also have a duty to make ‘reasonable adjustments’ (see below) for disabled students – in effect making an exception to the rule if the rule would put the disabled student at a disadvantage.

*5.3 Discrimination arising from disability*

Discrimination arising from disability might happen when a school treats a disabled student unfavourably because of something that is a consequence of their disability. An example might be a school refusing to allow a student with attention deficit hyperactivity disorder (ADHD) to go on a class visit to the theatre, because that student has attention difficulties and may disrupt the performance.

The student's attention difficulties are a consequence of their disability.

*5.4 Harassment*

Harassment occurs when a member of centre staff engages in conduct that either:

- violates a student's dignity,
- creates an intimidating, hostile, degrading, humiliating or offensive environment for a student.

An example might be a teacher shouting at a student for failing to carry out an instruction because, as part of their autism, the pupil has receptive language difficulties and may have either misunderstood what has been asked or needs more time to process the instruction.

*5.5 Reasonable adjustments*

Schools have a legal duty to take positive steps to make sure that students with disabilities can participate in all aspects of school life. Failure to make reasonable adjustments to ensure that disabled and non-disabled students have equal access in admission arrangements and to education services is unlawful. The 'reasonable adjustments' duty requires schools:

- to think ahead;
- anticipate the barriers that disabled pupils may face;
- remove or minimise them before a disabled pupil is placed at a substantial disadvantage.

**Gecko Community will strive to meet the legal requirements of the legislation described here.**

# Ability to Study Policy

**1. Introduction**

1.1 Gecko Community is committed to supporting student wellbeing and recognises that a positive approach to the management of physical and mental health is crucial to student learning and academic achievement.

1.2 Ability to study relates to an individual's capacity to participate fully as a student, in relation to academic studies.

**2. Purpose**

2.1 The purpose of this policy is to provide a suitable, co-ordinated response by academic and support staff in circumstances where a student's fitness to study is a cause for concern.

**3. Ability to Study**

3.1 A student's ability to study may be a cause for concern as a result of a wide range of circumstances, including (but not restricted to) the following:

- Where a student is affected by medical conditions that require long periods of absence and treatment.
- Where there are doubts from staff regarding a student's ability to study due to a pre-existing medical condition.
- Where participation in a programme related activity or assessment would jeopardise the long term health and wellbeing of a student due to a pre-existing medical condition.
- When there is a disruption to teaching, learning and support of other students or where unreasonable demands are being made on staff or students due to deterioration in the physical or mental health of a student.
- Where there is a potential risk to a student or others due to deterioration in the student's physical or mental health.

3.2 This policy is intended for use where the situation is deemed to be serious and has not been resolved via the availability of the existing academic and student support resources within Gecko Community.

**4. Scope**

4.1 This policy applies to all students studying towards qualifications, including but not limited to ASDAN.

4.2 This policy is not intended for use during the interview or admissions process.

4.3 This policy has been developed to manage situations where, in light of concerns regarding a student's health or wellbeing, it is not considered appropriate to implement other student processes such as the student disciplinary procedure. There may, however, be situations where it is appropriate to implement alternative procedures and Gecko Community is not prevented from doing so, notwithstanding concerns regarding the student's health or wellbeing.

**5. Overall Responsibility**

5.1 The Designated Safeguarding Lead has overall responsibility for this policy.

**6. Equality and Diversity**

6.1 In responding to and managing situations where a student's ability to study is a concern, Gecko Community remains mindful of its duty of care and of its obligations under the Equality Act 2010, including its duty to make reasonable adjustments to teaching and learning, assessment and other activities, as appropriate. In dealing with cases Gecko Community also remains mindful of its duties under the Data Protection Act 1998 and the College's Data Protection Policy.

6.2 In implementing the procedure Gecko Community will ensure that it offers and encourages students to seek appropriate support from the outset for example by referring students to the DSL or their Mentor.

6.3 When implementing this procedure, each matter will be dealt with in a supportive manner and on an individual basis. Any decision reached about a student's ability to study will be made, wherever possible, through a process involving the student and other relevant parties such as academic staff, parents or carers and internal and external agencies, such as social workers and local authorities, as appropriate in the circumstances.

6.4 Gecko Community is committed to equal opportunities and our aim is to make our procedures easy to use and accessible. We will take reasonable steps to accommodate any reasonable adjustments to enable access to this procedure or receive responses in other formats, and provide such assistance, as may be reasonably required.

**PROCEDURE**

**7. General**

7.1 Any member of staff who has a concern about a student's ability to study, or has had a concern reported to them, should discuss those concerns with the DSL, remaining mindful of the confidential and sensitive nature of the matter being discussed.

7.2 All members of staff must ensure that they consider Gecko's safeguarding procedures alongside this procedure. If an incident occurs where there is critical concern regarding immediate risk to self or others, the Designated Safeguarding Lead must be informed, in accordance with Gecko's safeguarding procedures and the appropriate Emergency Services should be notified.

7.3 Where there is no critical concern of immediate risk to self or others, this ability to study procedure has 3 stages. The student would usually enter the process at stage 1. However, if Gecko Community considers the level of concern to be serious and immediate it may decide that the student needs to immediately enter the process at stage 2 or 3, as appropriate.

7.4 Where there is reference in the procedure to any named role, such references are to be read as including reference to their nominees.

**8. Stage 1 – Initial Concern: Informal action within Gecko Community**

8.1 Concerns at this stage may include deterioration in health, appearance, behaviour, attendance, or the ability to meet deadlines, succeed academically or participate in normal student life.

8.2 It is the responsibility of the student's tutor/course leader to discuss initial concerns with the student using one to one tutorial support.

8.3 In providing support, the tutor/course leader should be liaising with other relevant parties such as teaching staff, parents or carers, student support and the learning support department, employers and external agencies, such as social workers and local authorities, as appropriate in relation to the student's age and individual circumstances.

8.4 The student should be encouraged to use one or more of the support services offered by Gecko Community, e.g. a Mentor. Specific academic arrangements, or reasonable adjustments, should be considered and action plans agreed with the student.

8.5 The student's tutor/course leader must record the one to one support and the agreed actions, with a review date, on the student record. The tutor/course leader must send a record of the discussion with the agreed actions and review date to the student within 5 working days of the discussion.

**9. Stage 2 – Continuing Concern or Sudden Deterioration: Case Review Meeting**

9.1 Stage 2 will be initiated where concerns are continuing or the review date agreed at the stage 1 discussion has passed and the student is still experiencing difficulties. It may also be initiated when there is a significant initial concern which is felt to be too serious to be handled informally at Stage 1.

9.2 The DSL be informed of the continuing concern. It is their responsibility to ensure that Stage 2 of this procedure is followed.

9.3 The DSL will arrange a Case Review meeting with the student's tutor and any other staff or support services as is considered appropriate in the individual circumstances.

9.4 This meeting will usually include the student. The student should be made aware of the purpose of the meeting and that they may be accompanied at the meeting by a relative, friend, student representative or Mentor. In the event that the student is unable or unwilling to attend, the meeting may go ahead in his or her absence, if Gecko Community considers it reasonable to do so.

9.5 The DSL must consider whether any others should also be informed and/or invited to attend based on their ability to best provide expert advice, or those who need to be there because of their relationship with the student. Depending on the circumstances this could include other members of staff, parents, carers, employers, social workers and local authorities.

9.6 In the case of a looked after student or a student with an Education, Health and Care Plan, the Case Review will be in consultation with the Local Authority.

9.7 The Case Review may seek a medical assessment, usually from the student's GP or medical practitioner. The student will be encouraged to consent to the assessment.

9.8 The Case Review meeting will consider whether the student is able to participate as a student, in relation to academic studies and whether any support needs can be met by Gecko.

9.9 If this is considered possible, an action plan will be agreed with the student detailing any steps the student will need to take and the support to be provided to the student. This action plan will normally detail different actions to any plan previously agreed as part of the informal

action taken by Gecko Community. Regular review meetings will be arranged with the student and a nominated member of staff. The student should be made aware of what will happen if the action plan is breached, which will normally involve their case moving to stage 3.

9.10 If this is not considered possible, stage 3 of the procedure will be initiated.

9.11 The outcome of the Case Review meeting must be recorded on the student record and the outcome, with any agreed actions and timescale, sent to the student within 5 working days of the Case Review meeting (and if appropriate, his or her parent or carer and any external agencies, such as employers, social workers and local authorities).

**10. Stage 3 – Serious, persistent and/or critical concerns: Ability to Study Panel**

10.1 The most serious level of concern can be reached either through progression from Stages 1 and 2 or directly if the concerns identified by a member of staff are serious,

persistent or have become critical i.e. the student's behaviour is putting health and safety, well-being or academic progression of self or others at risk.

10.2 In such cases the DSL must be informed.

10.3 The DSL will call a Stage 3 Ability to Study Panel meeting. The Ability to Study Panel will be chaired by the DSL. At the discretion of the panel Chair, the panel may include relevant members of academic staff as well as support staff such as a Mentor. The membership of the panel will be at the discretion of the Chair as is most appropriate taking into account the circumstances. A minute taker will also be present.

10.4 The DSL must consider whether others should also be invited to attend based on their ability to best provide expert advice or those who need to be there because of their relationship with the student. Depending on the circumstances this could include other members of staff, parents, carers, employers, social workers or local authorities.

10.5 In the case of a looked after student or a student with an Education, Health and Care Plan, the Fitness to Study Panel will be in consultation with the Local Authority.

10.6 The Panel may request medical evidence. The student will be invited to attend the meeting and informed that he or she may be accompanied by a relative, friend, student representative, support worker (but not by a legal or other professional adviser unless Gecko Community otherwise agrees). In the event that the student is unable or unwilling to attend, the meeting may go ahead in his or her absence.

10.7 At the Ability to Study Panel, the student's support needs will be discussed and various options considered including a break from study, or postponement or a recommendation for withdrawal.

10.8 In cases where postponement of studies is agreed, a clear time frame must be given to the student. The provision of appropriate documentation/medical evidence within that time frame will be a condition of re-entry to the programme of study.

10.9 The decision made by the Ability to Study Panel will be notified to the student within 5 working days of the meeting. The student will be advised of his/her right to appeal against the decision and informed how that appeal should be lodged and in what timescale.

10.10 Whilst it is envisaged that such cases will be exceptional, Gecko Community reserves the right, at any stage and level of this procedure, to vary the process it follows in the interests of fairness and/or health and safety (for example, where there are concerns that the attendance of the student at a meeting or the provision of information to the student could have a detrimental effect on the student e.g. if the student is self-harming or the student is in hospital).

10.11 Should a student be unwilling or unable to take part at any stage of the procedure or to attend a meeting, Gecko Community may nonetheless follow the procedure where it is reasonable to do so. In addition,

Gecko Community will consider any request from the student to proceed with a meeting in his or her absence on the basis of written reports and/or a written statement from the student.

**11. Right of appeal**

11.1 The student may appeal against a decision of the Ability to Study Panel on the following grounds:

- Gecko Community has failed to follow its own procedure
- The decision is unreasonable
- There is further material evidence which could not reasonably have been expected to have been submitted for consideration by the panel.

11.2 Any request for an appeal should set out the grounds for appeal and be submitted within 10 working days of notification in writing to the Placement Coordinator Emily Hartley-Heaven.. An appeal hearing with the Placement Coordinator will be arranged to take place normally within 21 working days of receiving notice of the request for an appeal. The student will normally be given at least 5 working days' notice of the time and place of the appeal interview and will be entitled to be accompanied by a friend, student representative or relative.

11.3 At the appeal hearing the student or companion will explain his or her case and any special circumstances which may exist. The hearing will review the case, taking into account the original ability to study decision and the student's representations from the appeal hearing.

11.4 The decision by the Placement Coordinator will be confirmed in writing to the student normally within 5 working days

11.5 The right of appeal in the case of a looked after student or a student with an Education, Health and Care Plan will be in consultation with the Local Authority.

**12. Return to study**

12.1 In all circumstances, when a postponement of studies has been recommended or agreed, the process for considering a return to study should be made clear to the student at the time of suspension. The particular process to be followed will be at the discretion of the DSL and will depend upon the context and specific circumstances of the original concern.

12.2 In all cases, return to study will depend on evidence of ability to study. The precise nature of the evidence required from the student will depend on the individual circumstances of each case, but in all cases it is expected that this will involve a report from a recognised independent health professional with sufficient knowledge about the health and wellbeing of the student during the period of suspension and, specifically, the student's capacity to return to study. Gecko Community may require a second medical opinion.

12.3 The decision to allow a student to return will be made by the DSL, in compliance with academic regulations and availability of support upon return. Their decision is final and will be communicated in writing to the student prior to his or her return, clarifying any necessary requirements and special arrangements.

12.4 On the student's return, Gecko Community may decide that there should be regular review meetings with the student that can be used to support and monitor a return to study plan and provide staff with an agreed context in which to provide on-going pastoral care. If so, the student is expected to take personal responsibility for fully engaging with this support.

**13. Equality impact and monitoring the policy and procedure**

13.1 The impact of the policy and procedure will be measured by review of the number of times it is invoked, the actions taken in response and any concerns raised or complaints received. It will be reviewed annually. In monitoring the impact of this procedure, Gecko Community will have due regard to the Equality and Diversity Policy and its general Equality Duty.

Policy prepared by Emily Hartley-Heaven: November 2021

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