

# Access to e-learning in Higher Education by Disabled Students: Current Public Policy Issues

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## ABSTRACT

The emerging public policy issues regarding access to networked learning in higher education by disabled students are presented to disseminate research based on a four-year long self-funded research project at City University. The networked learning has formed a main ingredient of the curriculum in the UK universities in recent years. Unsurprisingly, a substantial body of research emerged in this issue. In the meantime, disabled students continued to be under-represented with a participation ratio of 4.5 % with a differential rate of participation among inter-disability groups. The access to networked learning would be regulated by the Disability Discrimination Act (1995) as amended by the Special Educational Needs and Disability Act (2001) starting from September 2002. This paper disseminates research on the related public policy issues from an interdisciplinary research and policy perspective.

## Keywords

Disabled students, higher education, networked learning, Disability Discrimination Act (1995), Internet, interdisciplinary research, evidence-based policy, good practice culture, higher education law.

## INTRODUCTION

The last decade saw the delivery of the curriculum through web-based technologies (Jones and Bloxham, 2001; Mok and Cheng, 2001). In parallel with this development, a number of public policy initiatives have been deployed to increase access to higher education by disabled students in culminating in the amendment of the Part IV of the Disability Discrimination Act (1995) by the Special Educational Needs and Disability Act on 11 May 2001 (Konur, 2000a, 2001a, f, g; 2002a). These two parallel developments renewed interest in research on access to networked learning by disabled students (Bricout, 2001; Fichten et al. 2000; Konur, 2001b, c, d).

This research particularly included the accessibility of the e-learning platforms such as WebCT, Blackboard, College, and Prometheus (Harrison, Richards, and Trevianus, 2000; Harrison, 2000; 2001). Therefore this paper builds on an interdisciplinary research on access to higher education by disabled students carried out at City University to underline the national and institutional policy considerations. First, the recent data on the disabled student population is presented with a brief classification of disabilities. After outlining the national policy developments in the last decade, present, and in the near future, the duties and rights imposed on universities and disabled students by the current disability law is outlined briefly. The complementary economic and social policy initiatives are also outlined. A comprehensive list of references is provided (which are publicly available as instructed) to refer to the research output from the research project as well as other landmark or exemplar references. It is hinted in this short paper that the evidence-based practice and policy making processes are necessary to enable disabled students to have access to higher education at large but to have access to networked learning in particular, bearing in mind the unequal nature of the university and student legal and institutional relationship (c.f. for example, Crowther, 2002).

## Disabled Students in Higher Education

It would be helpful to look for some recent statistical figures on the participation of disabled students in higher education to inform both the national and institutional policy making processes and the resulting decisions regarding resource allocation to enable them to have access to higher education as their peers. This is especially true in making resource allocation decisions for the networked learning. The data is provided by the Higher Education Statistics Agency (2001) which collects information and flags this information to universities at the pre-admission stage (only for the UK domiciled students, students who meet both three year residency and nationality criteria for the 'home fee' course fee status). There were 74,000 disabled 'home' students enrolled during the academic year 1999/2000 and 89% of them were studying in undergraduate courses. The data in the Table below suggests that the participation of disabled students were affected by the type of disability besides the level of study. In other words, a disability hierarchy emerges. Medically disabled students such as students with diabetes, asthma, and chronic fatigue syndrome formed 34% of the whole disabled student population. Next, learning disabled students, which are labeled as 'students with dyslexia' formed 28% of this population. The students with other disabilities ranged from 3% to 12% as shown in the Table. It would be helpful to note in passing that the participation rate for the visually and hearing disabled students were 3% and 6% respectively since the focus of the service development projects for the communication and information technology in the UK universities have been mostly on these types of disabilities at the expense of other disabled students. It is notable that the participation rate for the mentally disabled students such as clinically depressed students was 3%.

## NATIONAL POLICY CONTEXT

### Introduction

The game of the access to higher education has built on a number of public policy initiatives over the last decade. The introduction of the private Civil Rights (Disabled Persons) Bill in the early 1990s resulted in the enactment of Disability Discrimination Act (DDA) (1995) in November 1995. This Act aimed to regulate access to employment, services and premises by disabled people but not the education and particularly higher education (besides putting some minor duties for universities and funding councils such as publishing disability statements and making funding for disability initiatives). The Part IV of the Act was amended on 11 May 2001 by the Special Educational Needs and Disability Act (SENDA) (2001) to extend its coverage to higher education and education at large. This process was preceded by a number of other initiatives such as the Final Report of the Disability Rights Task Force (Department for Education and Employment) and Final Report of the Select Committee on Education and Employment (1999) of the House of Commons. The later part of the 2001 saw the development of and a consultation process about the Codes of Practices complementing the Amended Part IV of the DDA (1995). It is envisaged that the DDA (1995) would be revised by October 2004 in the light of both the DRTF Final report as well as the European Employment Directive (European Union, 2000) as outlined in Department for Education and Skills (2001a, b).

### Disability Discrimination Act (1995)

The Sections 28R-28T of the DDA (1995) as amended by the Sections 26-28 of the SENDA (2001) on 11 May 2001 brings both statutory duties and rights for the universities regarding the access to higher education by disabled students. In simple terms the Act brings two duties for universities. These are the 'Section 28S(1) less favourable treatment duty' and the 'Section 28S(2) reasonable adjustment duty'. These duties apply to admissions, student services, expulsions by the virtue of the Section 28R(1-3). The Section 3 of the Draft Code of Practice as relevant to universities explain this coverage of the Act in some detail. The Foreword to the Code of Practice as relevant to universities reports that the Section 28S(1) duty would be operational starting from 1 September 2002 and the Section 28S(2) duty (excluding the adjustments to physical features of premises which would be operational from 1 September 2005) would be operational starting from 1 September 2003 (See below for the different interpretation).

Having briefly defined these two major duties for universities it would also be helpful to refer to the rights of universities to discriminate against disabled students. Universities may not comply with the 'Section 28S(1) less favourable treatment duty' where they are not aware of the disabled status of the students concerned by the virtue of the Section 28S(3-4). Furthermore, universities may not comply with the both the Section 28S(1) and 28S(2) duties 'in order to maintain academic standards' or 'standards of any other prescribed kind' by the virtue of the Section 28S(6-7). However, the Section 28S(8) stipulates that the reason for such breach of these duties should be 'material' and 'substantial'. The Section 4 of the Draft Code of Practice as relevant to universities explains the Section 28S(1) duty in some detail. For example Example 4.4A relates to rejection of application from a learning disabled student into a degree course in English due to a blanket rejection policy for such students. The Example 4.27A relates to rejection of learning disabled student's application for a degree course in Journalism since "she does not have the literacy necessary to complete the course because of her dyslexia".

**Table 4 The disabled students in higher education in the UK; 1999/2000 academic year**

Types of disability	First degree	Other UGs	Taught PGs	Other PGs	Research degrees	Overall
medical disability						

	40%	18%	35%	31%	42%	34%
A disability with a medical origin such as diabetes, asthma, and chronic fatigue syndrome etc. and includes terms like 'chronic illness' and 'unseen disability'.						
<b>learning disability</b>	33%	18%	23%	23%	21%	28%
A disability comprising of a reading disability, writing disability, mathematical learning disability, attention disorders, Asperger's syndrome etc. and includes terms like dyslexia, dyscalculia, and dysgraphia, and 'learning difficulties'..						
<b>other disability</b>	10%	15%	15%	15%	11%	12%
Other disabilities such as speech disability, HIV, facial disfigurement, and eating disorders, among others						
<b>multiple disability</b>	3%	26%	4%	12%	4%	9%
More than one disabilities, such as learning and mobility disability, hearing and visual disability, hearing and language learning disability among others.						
<b>hearing disability</b>	4%	8%	8%	8%	7%	6%
A disability arising from hearing loss and related loss of speech discrimination and includes terms such as 'deaf', 'Deaf', and 'hard of hearing'.						
<b>mobility disability</b>	4%	6%	8%	6%	7%	5%
A disability arising from having a mobility difficulty and or any such difficulty and includes terms such as 'wheelchair user'.						
<b>visual disability</b>	3%	4%	4%	4%	4%	3%
A disability arising from sight loss and includes the terms such as 'blind', 'partially sighted', and 'visually impaired' among others.						
<b>mental disability</b>	2%	5%	2%	2%	3%	3%
A disability comprising of such as schizophrenia, personality disorders, clinical depression, clinical anxiety, test anxiety and includes terms such as mental illness, 'mental health difficulties', 'emotional and behavioural difficulties' and 'mental health problems' among others.						
<b>Total HE student population (numbers)</b>	903,770	414,760	123,430	122,630	67,080	1,631,670
<b>Total disabled student population (numbers)</b>	47,260	18,130	3,720	2,840	1,880	73,830

Data source: Higher Education Statistics Agency (2001), pp. 220-221. Table 11b. UK domiciled HE students by level of study, mode of study, gender and disability 1999/2000.

Notation: UGs: Undergraduate courses; PGs: postgraduate courses; Other UGs: undergraduate diploma and professional courses; Other PGs: postgraduate diploma and professional courses, Research degrees: research-based degrees such as Ph.D., M.Phil etc.

Perhaps the Section 28T of the DDA (1995) as amended is the most relevant provision for the providers of the networked learning. It explains the Section 28S(2) duty for universities and makes sign-posting to the Statutory Code of Practice prepared by the virtue of Section 53 of the Act. The Section 5 of the Draft Code of Practice for the Post-16 Education which is relevant to universities explains this duty in some detail. It further explains the rights of universities not to comply with this duty and to discriminate against disabled students by not making any reasonable adjustment at all in Section 6. The Section 6(2) of the Draft Code of Practice as relevant to universities lists factors to be considered when discriminating against disabled students. Besides the academic standards, financial resources of universities, availability of the financial support for the students, costs and practicality of the adjustments required; health and safety regulations, and interests of others may be used as justification by universities in discriminating against disabled students in the breach of the Section 28S(2) reasonable adjustment duty'. The example 6.8A relates to the use of the Disabled Students' Allowances to fund the sign language interpreters for accessing the curriculum.

It is envisaged that the three-stage implementation of the Part IV of the DDA as in the case of the Part III would be detrimental to both universities and disabled students in the long run. It is notable that the uncertainty between the Section 28S(1) and Section 28S(2) duty with different starting dates may prove particularly be detrimental. The following discussion list messages which are publicly available highlight this point raised in this paper.

"I understand from a colleague ( Disability Adviser at XXX ) that the new DDA Part 4 comes into force in September 2002. This will require all HEI's to treat all disabled international students the same way as home students. This will include the provision and payment of services to these international students like Dyslexia Tests and tutorials, readers, support workers etc. Does anyone have any comment or advise to give on this. Can we charge additional fees for this, can we use public funds for this like hardship funds etc". (Coopersmith, 2002).

"... we've been trying to establish exactly what other HEI's are up to with this and have taken the preliminary view that anything a home student is funded for by statutory organizations will not be available for free to an international student, but anything that the University provided freely to a home student would not be excluded to an international student. With issues such as screening, EP reports and learning support as this is all paid in one way or another through statutory funding, international students would not be eligible for it unless they paid. We are however (as I've mentioned) waiting to see how it pans out nationally". (Carter, 2002).

"Only reasonable adjustments which require 'auxiliary aids or services' are exempted from the 2002 implementation dates. There is no definition of 'auxiliary aids and services' in Part 4 of the Act, although it was defined under Part 3 (which covers the provision of goods and services). From the Part 3 definition, it seems clear that an auxiliary aid or service is something like an interpreter or notetaker which is completely additional to existing provision, as opposed to an adjustment or amendment to something you already have. Things then which wouldn't be considered auxiliary aids and services, and which would therefore be required from 2002 might include changes to policies and procedures, provision of materials in alternative formats (although there has been some dispute of this one), or making e-learning materials, websites etc accessible" (Lewis, 2002a).

"I've had it suggested to me that "reasonable adjustments" will evolve as a result of court cases but it would be preferable to get a firm grip on this beforehand! I'd be very interested to know how other institutions are responding to the SENDA legislation wrt IT, policy and resourcing. Do other institutions have bodies that have made major resource decisions about eg networking assistive software or web page accessibility initiatives? (Selwood, 2002).

"The institution, in fact, has no discretion at all, because the final arbiter or what is reasonable will be the courts. There are, indeed, a large number of factors which it will be relevant for people to take into account, but the court may revisit any decision and decide that the decision the institution came to was not 'reasonable'. Just a technical issue on that point too, but actually quite an important one, the 'reasonableness' issue is nothing to do with 'justifications'. These are entirely separate things. If you cannot find an adjustment that is 'reasonable', you have, by definition not discriminated. You only need a justification if you have discriminated. Justifications are rather more restricted and only permissible in particular types of circumstances" (Lewis, 2002a).

### **Other National Policy Initiatives**

At the absence of regulation of the access to higher education by disabled students last decade saw the development of a number of policy initiatives. The higher education funding councils were required by the DDA (1995) to have a regard in relation to disabled students and the Higher Education Funding Council (HEFCE) for example has funded disability projects since 1993 and commissioned a number of other projects as well. The current three-year long round of this scheme is currently managed by the 'National Disability Team' who "works towards provision of advice, support and practical guidance to project and other institutional staff; transfer to the whole higher education sector of experience, programmes and models of effective practice emerging from this and three previous disability initiatives integration of disability issues into the core business of every higher education institution" (National Disability Team, 2002). However, perhaps the most relevant initiative as regards to the networked learning has been the development of such national development projects in the area of communications and information technology, funded by the Joint Information Systems Committee (JISC). The second round of this project has been named as 'Tech-Dis: Technology for Disabilities Information Service' and its mission is reported as "enhancing access for those with learning difficulties and/or disabilities; to learning and teaching, research and administration across higher and further education through the use of information and communication technologies" (TechDis, 2002). Perhaps it would be helpful to cite its reported strategic aims due its relevance to the networked learning as below:

"S1. To be the primary information and advice resource on the use of information and communication technologies (ICT) to support learners with disabilities for all staff involved in learning and teaching, research and administration in the HE and FE sectors. S2. To promote the TechDis within institutions, and the FE and HE sector more widely, so that all HE and FE staff are aware of, and have access to, the resources provided by the TechDis. S3. To promote, transfer and broker good and innovative practices in the use of technology to support students and staff with disabilities. S4. To review and advise on the accessibility of current technologies used in learning and teaching, research and administration in light of the needs of learners with disabilities. S5. To develop and sustain effective relationships and partnerships with key stakeholders, to ensure a co-ordinated and coherent UK-wide approach to enhancing the use of technology to support students and staff with disabilities. S6. To develop and maintain an effective service with a clear remit and national identity".

Besides these initiatives, it would be helpful to note the funding mechanisms for both universities and disabled students. Disabled students have been funded by the Disabled Students' Allowances (DSA) provided that they meet the eligibility requirements (Konur, 2000b). On the other hand, universities have been additionally funded since 2000 under the 'Premium funding' initiative where the size of funding is a function of the number of the recipients of the DSAs in these universities.

The other duty imposed by the original version of the DDA (1995) for universities was to provide a copy of their disability statements where they disclose information about the services offered among others to the funding bodies. The last decade also saw the publication of the Code of Practice developed by the Quality Assurance Agency (1999) (QAA). It is mentioned in its preamble that:

"This document is a code of practice for the assurance of the quality of learning opportunities for students with disabilities in UK higher education institutions. The object of the code is to assist institutions in ensuring that students with disabilities have access to a learning experience comparable to that of their peers. It is one of a suite of inter-related documents which, taken together, will form an overall Code of practice for the assurance of academic quality and standards in higher education for the guidance of higher education institutions subscribing to the Quality Assurance Agency for Higher Education (the QAA)."

## **INSTITUTIONAL POLICY CONTEXT**

How the rules of the game are made and how these rules are advocated, implemented, and adjudicated in universities determine the respective incentive structures for a variety set of players. In other words, the rules of the game regarding access to higher education by disabled students and particularly access to networked learning by these students need to be interpreted within this institutional context. Ironically, there has been negligible body of research on the role played by the institutional context in determining incentive sets for the respective players in recent years. Instead, a 'good practice culture' has been encouraged where only the information on the positive outcomes of disability initiatives have been displayed but understandably any information on the failings of universities such as high drop-out rates up to 40% have not been displayed (Brunsdon et al., 2000; Palmer, 2001). The existence of this 'good practice culture' has made it difficult to form informed opinions on the work of universities and funding councils over the last decade (Hayden, 2000; Petrosiono et al. 2001). The following excerpt highlights the importance of developing evidence-based practices and policies in higher education.

"Do any of you keep any retention/progression statistics on disabled students. As part of the evaluation of HEFCE's widening participation which XXXXX is contributing to we are trying to find out if anyone has any statistics on this. Any stats would be helpful even if they only covered a couple of years or a couple of departments. Any information that was used would be used completely anonymously. ... XXXXX is working with the Disability Rights Commission to draft some short (very short) guides for different groups within higher education on their responsibilities under the DDA. To make the guides more readable we are wanting to put in (short) examples of good practice that might fit in with new DDA responsibilities. I am looking for examples under any of the following headings: admissions, marketing and recruitment teaching and learning (including course design and teaching delivery) residential accommodation provisions of services (eg catering, etc) libraries and IT support overall strategic management examinations and assessment. ....offering a discussion around dilemmas that arise over work placements, particular on issues of disclosure, confidentiality, health and safety and duty of care. If you have any nice juicy (anonymous) examples of difficult cases on these or similar issues that link in with the new DDA issues, please do send them along" (Lewis, 2002b).

## **Student-University Legal Relationship**

It has been common rather than exception that nearly all studies on access to higher education by disabled students have not dealt with the role played by the university and student legal relationship in determining relative incentive structures for universities and disabled students. This is particularly puzzling since there has been a substantial body of case law regarding the university and student legal relationship and regarding implementation of the Disability Discrimination Act within the employment contexts to forecast the effectiveness of the rules of the game as devised by the Part IV of the Disability Discrimination Act (1995) as amended by the SENDA (2001).

It is well established by the case law over years that universities do not have any statutory or institutional duty to give reasons for their decisions. For example it was held in 1993 by the High Court that "academic judgements were not in a class of case which required reasons to be given as a routine aspect of procedural fairness, but were in a class where it might be shown that in the circumstances of the particular decision, fairness required reasons to be given" in *Regina v. Higher Education Funding Council ex parte Institute of Dental Surgery* (1994). As an example, an undergraduate student's 'mitigating circumstances' regarding the adverse effects of her pregnancy were not considered by the Examination Board and the Screening Appeal Body (composed of two university administrators) properly and this student was not advised of this fact in *Regina v. South Bank University ex parte Coggeran* (2000). As an another example, The High Court found that the university failed to "take proper account" of an undergraduate student's disability in the examination process where the student complained that "he was not told anything by them and that they did not take any steps, as they should have done" in *Chawda v. University of Portsmouth* (2001). Perhaps the following excerpt highlights the effect of the unequal university-disabled student legal and institutional relationship regarding making reasonable adjustments for assessment of disabled student.

"I am a first year university student. I am deafblind... are there any other deafblind students.. who have been forced by their university to take exams using a reader and dictating your answers. I was forced to do this. I use an FM system but it was not adequate for the exams because my reader had to speak sooo quietly. I resorted to using print on palm! So got hardly any of the paper done. In the second exam my reader refused to continue because she said it was unfair on her and on me. So I couldn't do the rest. I asked for brailled papers and to word process my answers but the university said I had to use a reader", (Parkin, 2001).

## Conclusion

Both network learning and disability law is still young and it should be remembered that both of them need to work within the established higher education law where student-university legal and institutional relationship is not one of equals but unequals as evidenced by the substantial body of case law. Furthermore the rules of the game by the amended Part IV of the DDA may have not been devised to achieve its stated aims to end discrimination against disabled students in higher education as evidenced by the substantial body of case law within the employment context. Therefore it would be helpful to base practices and policy making processes on access to networked learning by disabled students on an evidence-based model rather than 'good practice' model as currently deployed within the higher education sector at large. Perhaps based on such evidence-based practice and policies, it would be possible to devise the rules of the game to achieve the stated purposes of such rules in the long run.

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