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How to assess disabled students without breaking the law

Mike Wray, DEMOS Project

Increasingly, academic staff are being asked to make changes to their teaching methods in order to accommodate the needs of disabled students. These changes can often seem somewhat unreasonable given the competing demands on lecturers' time and the need to maintain academic standards. However, new legislation introduced in September 2002 requires universities to respond on an institutional basis and establish a range of methods in order to provide better opportunities for disabled students. Providing accessible assessment requires significant consideration of the aims and learning outcomes of the curriculum however, traditionally changes to assessment methods for disabled students have been overseen by administrative staff and central services. A more recent approach which values inclusion and has universal design as its underlying principle, places the responsibility at the feet of teaching staff. This article outlines the issues involved in dealing with the assessment of disabled students and offers ways forward for departments in developing solutions.

Context

There are a number of reasons why it is important to consider the needs of disabled students when designing assessment methods. Probably the most important reason is simply that many disabled students are unable to perform to the best of their ability because there are barriers in the assessment methods of their course. If these barriers are not removed there is a danger that these students will fail or at the very least not obtain the degree pass they are capable of. Also, the Higher Education Statistics Agency (HESA) figures show that the number of disabled students enrolled on courses of HE have doubled in the last five years. It is therefore becoming increasingly likely that teaching staff will meet a student who asks for changes to be made in the assessment process. At an institutional level the Quality Assurance Agency have identified students with disabilities in a code of practice that they will use to audit universities in the future. Universities are also facing a legal responsibility under recent legislation, the Disability Discrimination Act (1995) and an amendment to Part IV of the Act, the Special Educational Needs and Disability Act (2001).

Disabled students however, are only part of a wider picture. HEIs are now taking a broader range of students than ever before and are being asked to assess a broader range of skills. Alongside subject knowledge higher education is now tasked with teaching and assessing, key skills, practical skills, cognitive and intellectual skills and employability skills. A broader range of students also means a broader range of educational experiences and universities can no longer assume that their students will possess the skills of the students they enrolled 10 years ago; who to a large extent had shown their tenacity at traditional assessment methods by the very fact that they had reached higher education. It is quite clear that traditional end of term unseen written exams and a series of essays during the rest of the year will not be sufficient to meet the demands of this new era in higher education.

Effective assessment

Educational researchers have pointed out the importance of the assessment process in higher education. Students are highly motivated by assessment (Gibbs 1999) and may spend the majority of their out of classroom time completing them. However, assessment can be used effectively as a teaching tool in the hands of a skilled academic who 'aligns' the assessment methods with the teaching and the learning outcomes of the course.

Biggs (1999) outlined such an approach to curriculum design in which he states that teaching is effective and leads to 'good' learning if the methods used are aligned with the learning objectives. In order to assess that this learning has taken place appropriate assessment methods are also required. Crucial to delivering the curriculum in this way is the requirement to clearly state the learning outcomes in the first place. Clear statements of learning outcomes and Bigg's approach may prove crucial if compliance with SENDA is achieved since parts of the act raise fundamental questions about the teaching process.

Special Educational Needs and Disability Act (2001) - SENDA

The SENDA was passed through parliament in 2001 and is an amendment to the Disability Discrimination Act of 1995. Under the DDA universities are obliged to provide access to goods, facilities and services that are open to the general public and to write disability statements outlining their provision for disabled students. However, most areas of HE were not covered particularly in respect of the teaching and learning environment.

The new act brings in two main duties - not to treat disabled students less favourably (i.e. not to discriminate) and to make 'reasonable adjustments'. One would assume that most staff will not go out of their way to actively discriminate against disabled students and although there might be some instances when certain accepted policies or procedures would be classed as unfavourable without individuals necessarily realising, it is the second duty (providing reasonable adjustments) that is of most concern.

Essentially teaching staff will be required to make changes to their teaching and assessment methods so that disabled students are not placed at a disadvantage.

Examples of this might be providing handouts on cream paper to dyslexic students or allowing a student to sit an examination in a separate room. The Disability Rights Commission have produced a Code of Practice to help institutions understand how the act will be implemented and a more illustrative example is taken from the code:

'A tutor in Zoology delivers one of his modules through a computer-based learning environment and awards marks for students' participation in online discussion. The system does not work with a visually impaired student's software. The student is likely to be placed at a substantial disadvantage.'

However, the legislation does provide instances in which a reasonable adjustment might not be acceptable and these include:

- ?? The need to maintain academic and other prescribed standards;
- ?? The financial resources available to the responsible body;
- ?? Grants or loans available to the student;
- ?? Health and safety requirements;
- ?? The relevant interests of other people including other students.

Case law

Many parts of SENDA are open to interpretation and it won't be clear until case law reaches the courts how these interpretations will develop. The DDA provides very little in the way of case law that is relevant to higher education, however, there are other countries, notably the USA and Australia, where similar legislation has been in force for some time and from which we can learn. Adams (2001) described some of the cases that have been brought under the Americans with Disabilities Act (ADA) which has been in force since 1993. It was noted that many cases won against institutions were related to teaching, learning and assessment. However, it should also be noted that the report mentions that few cases ever reach the courts (being settled financially by the university to avoid publicity) and that the ADA did not necessarily lead to wholesale change. So, punitive action can only help us so far along the path since it can lead to an ad hoc approach with no overriding principle of inclusion or equal participation for students.

Current approaches

Currently universities make changes to the assessment procedure largely on an individual basis. These changes can be classified using four categories:

- * Alternative assessments - such as providing a essay instead of an examination;
- * Additional arrangements - such as arranging for a PC to be available for a candidate during an examination;
- * Adjustments/accommodations/adaptations - such as giving extra time
- * Combinations - such as offering a viva.

Each of these approaches has its difficulties and are the cause of much debate in departments throughout higher education (see Williams & Ceci for example). Some alternative assessments do not assess the same learning outcomes as those intended (Sharpe and Earle, 2000). Additional arrangements cause administrative staff all sorts of headaches because of the

additional workload. Adjustments have been criticised because they can become out of hand, such as giving double the time (see Zuriff, 2000 for a discussion on the issue of extra time). Presumably combinations cause problems for a range of reasons!

For the individual student the process can be equally galling. Although many HEIs have policies which mean there are wholesale solutions such as extra time for dyslexia the onus is often on the individual student to request the changes. Medical evidence is usually required which in most cases has already been provided to the Disability Service. Anything out of the ordinary requires a lot of negotiation and often the change cannot be done in time. This can result in students having to appeal to the exams board and usually these are academic decisions that the student can do nothing about (eg whether a paper has been marked taking into account spelling or grammar). These difficulties are not deliberate attempts by the department to present barriers, rather they are due to a system that is based on reaction at the point of or indeed after the point of assessment and based upon decisions of administrative staff who are not best placed to make them since they often impact on the learning outcomes of the course.

Fundamental questions

If the current approaches to assessing disabled students are peppered with difficulties and case law due to the legislation is unlikely to lead to wholesale change what approach should university staff adopt if they are to provide alternative approaches? Well part of the answer lies in the transparency of learning outcomes that Biggs has proposed. If the law requires academic staff to make judgments on what reasonable steps they can take in providing reasonable adjustments then they must be absolutely sure that their learning outcomes are clearly stated and absolutely essential for the course of study. For example, on a modern languages course how far could lenient marking be accepted as a reasonable adjustment? In certain parts of the course it may not be a problem, when writing about a country's culture say, but if a student was being assessed on their use of grammar and spelling it would not be reasonable.

There are no easy answers here since there are huge variations in learning outcomes between universities and subject disciplines. A course on Drama in one institution might set itself a largely academic curriculum, where students are assessed using a series of essays throughout their years at the university and a dissertation at the end. Students may get through the course without performing in a single stage production. However, in another institution, a Drama course might be designed in which performance is the key aspect of learning and the means by which everyone would be assessed. Written work might be reduced to a minimum.

These issues raise some difficult questions since they ask us to consider fundamentally what the purpose of our courses are and indeed higher education itself. Are we here to teach content and assess whether a student can remember a list of facts; are we here to churn out potential employees into the professions related to our subject area or is university about

development of a set of key skills which could not be acquired in the outside world? One thing we can be certain about is that there is a good deal of work to be done at the course design stage since such questions can not be answered by administrative staff or at an examination board when a student questions how fairly they have been assessed.

Innovative solutions and universal design

More recently, universal design has been discussed in the context of the truly inclusive classroom (Silver et al, 1998). This is an idea, in which the design of objects, environments, learning situations etc. is suitable for broad a range of people as possible and where this is not possible that it is at least compatible with assistive aids, such as specialist software. Proponents of this approach have noted that when the needs of disabled people have been considered the solutions often benefit a range of people. The most oft-cited example being the case of a ramp into a building which is not only beneficial to people in wheelchairs but people delivering large packages, caretakers and people with children in pushchairs. In a teaching context, providing an outline of a lecture before it begins not only helps deaf, visually impaired and dyslexic students, but is good teaching practice and will help all your students in their note taking.

As with any model, there are good and bad aspects and the reality of implementing universal design will be a much more difficult task. Practically it remains to be seen whether teaching staff will be able to create such perfect learning environments. On a day-to-day basis when resources are scarce and competing demands placed on lecturers' time it can be difficult to accept such radical approaches. However, this approach should at least be borne in mind as a guiding principle from which to start thinking about inclusive methods of teaching.

Perhaps staff might ask themselves what teaching methods they can employ (such as electronic versions of materials) so that they won't need to make individual adjustments each time a student comes up with a new request. Academics are beginning to design some innovative solutions to this issue in the context of assessment. For example, various methods might be employed to circumvent the alleged unfairness of extra time - open book exams, untimed exams, reducing the number of questions that are marked in an exam. Such solutions are inclusive since they provide equitable participation to everyone.

Ways forward

Practical examples of inclusive assessment practice are slowly beginning to emerge. The Higher Education Funding Council for England (HEFCE) has provided money to a number of initiatives that have sought to improve provision for disabled students. More recent projects illustrate a paradigm shift in focus which is moving away from support by central services to the support that can be provided through delivery and curriculum issues within academic departments.

Two tools have been developed that can help departments begin to examine their provision. The SWANDS project in the South West has created an audit tool which can be used to check that provision is compliant with SENDA and looks at a broad range of areas from admissions through to professional bodies. Similarly the Teachability Project has produced a tool which has more of a focus on curriculum issues and has been used in a range of higher education providers in Scotland. A new round of project funding has recently been made available and information about the new projects can be obtained from the National Disability Team. Many of the projects have a teaching and learning focus and are based within academic departments including the 'Achieving Accessible Assessment Project' based at the Nottingham Trent University. The Learning and Teaching Subject Network Subject Centres can also be a good starting place for additional support since many of them have begun to consider the issues relating to disabled students and some offer small grants for work in this area.

Conclusions

There may well be difficult times ahead for teaching staff and support services alike as they try to balance providing reasonable adjustments for disabled students against the threat of court action and public scrutiny at the hands of the press. Judging by the response to the deaf applicant who was turned down a place at Cambridge, recent experience shows that the first institution that ends up in court will be in an unenviable position. Also, there is no doubt that improving provision in order to comply with the new legislation will involve extra work. However, many of the solutions, once they are in place, may ultimately lead to a reduction in time spent making arrangements each time an individual student is dealt with. Innovative solutions can also lead to more effective teaching and assessment, which will increase retention and equitable participation by disabled students who can become able graduates if given the chance to achieve.

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Further resources

Details on the new HEFCE funded projects examining learning and teaching issues can be found at:

<http://www.natdisteam.ac.uk>

The SWANDS document on SENDA compliance can be downloaded from:

<http://www.plym.ac.uk/pages/view.asp?page=3243>

Information about the Teachability Project and their curriculum audit tool are available at:

<http://www.ispn.gcal.ac.uk/teachability/>