

Comparative Report on National Legislations for People with Learning Disabilities Case Study Germany by VSBI

Job Coaching people with Disabilities Leonardo da Vinci Partnerships Project

Definitions

What is disability?

There were a lot of different definitions of disability during history. The current definition in our social security code is:

“People are disabled if their physical functions, intellectual skills or mental health are likely to deviate more than just temporarily and hence their participation in the life of the community is adversely affected”

Disability is a stable, serious impairment of social and economic participation. We categorize in following types of disabilities:

- physical
- mental
- sensory
- speech impediment
- learning disability

Conditions causing disabilities are classified as:

Congenital Disabilities:

- Inherited (Genetically transmitted)
- Prenatal damages

Acquired Disabilities

- Perinatal damages
- By Illnesses
- By injuries
- By aging.



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What is learning disability?

The term Lernbehinderung (Learning Disability) exists since the 1960s. The most used definition says, a learning disability is a “long-lasting serious and large-scale failure in school performance” (Kanter), which usually goes along with low intellectual ability, but not serious enough to be a mental disability.

It is difficult to establish a border between learning disability and mental disability or (partial, temporary) learning difficulties. A learning disability exists, when the overall intellectual development is affected. Learning is impaired in academic as well as in non-academic areas.

A learning disability can be caused by different factors, like biologic and psychosocial factors.

Current Situation

Disability:

In Germany 8.6 million people are officially recognised as being disabled. This means that one in every ten people is disabled (according to information from the German Federal Statistical Office). According to statistics three per cent of all children are born with a disability. Two out of every hundred suffer some sort of impairment during pregnancy or at birth. Most of the disabilities however develop in the course of people's lives due to illness or accidents, resulting in 74 per cent of disabled people being over 55 years of age. Most of them, about 6.7 million, are severely disabled; 1.9 million are classed as slightly disabled.

Most disabled children have to go to a special needs school and 15 per cent of them leave it without any qualifications. Among non-disabled schoolchildren the rate is a mere three per cent. When it comes to the German higher education entrance examination 11 per cent of disabled students pass – 15 per cent less than non-disabled students. 70 per cent of all disabled people are gainfully employed up to the age of 44, only 15 per cent are jobless. About 27 per cent work in the fields of education, health and social services, eleven per cent in public administration. Most of them find work in the supervised workshops for outside on the labour market only a few manage to get a job

Learning Disability:

There are no official figures for people with learning disabilities outside of schools. According to estimates 800.000 – 1.000.000 people of all ages with learning disability live in Germany.

In Germany live 180.000 children with a learning disability. There is no data what happens with them after leaving school. Some research (Bickmann and Engruper, 2001) found, that most of the people with learning disabilities have no constant professional life after school, but [discontinuity](#), unemployment, insecure employments and precarious financial situations.



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Legal Framework

What is the national strategy put in place to ensure equality and inclusion of people with learning disabilities into the labour market? (What are the most important Acts/Laws/Legislations on the matter? What is their key message? How and how well are they applied? Do you believe there are major gaps in the current legislation?)

The national strategy and policy concerning the Inclusion and the participation of disabled people in general at society and also the access to employment and the regular job market has its legal basis in the Social Law Book IX and in the ratification of the UN Convention concerning the rights of disabled people which is also national law in Germany. These laws are linked or based on the German constitution called "Grundgesetz", in which the discrimination because of a disability is constituted as act against the human rights.

In general the Social Law Book IX gives people with learning disabilities the right to have access to the regular job market and to get financial and technical support for training, rehabilitation and integration in the job market. These supports are available as direct services of institutions financed by the responsible local, regional and federal public authorities or as personal budget directly to the disabled people. The disabled people have the right to decide if they want the personal budget.

But the Social Law Book IX doesn't regulate the different services, supporting measures and financial contributions in detail. It obliges the so called "Träger der Rehabilitation" as other social security institutions to guarantee and organize these services and the financial support. For these different institution are existing special Social Law Books.

For the medical rehabilitation in general the Social Law Book V means the medical health system which is financed by individual contributions of all employees in a public, or under special conditions in a private, health insurance system.

For the rehabilitation and re-integration into the job or labour market during existing employment-contracts is responsible the pension-insurance, regulated in the Social Law Book VI. In case of accidents on the job is responsible the public accident insurance (Berufsgenossenschaft), the legal basis is the Social Law Book VII.

For short term unemployed people, means people lost their job and are jobless in a period up to 12 months, is responsible the so called labour agency. The legal basis is the Social Law Book III.

Long term unemployed people (longer than 12 months unemployed) and members of so called "Bedarfsgemeinschaften" get support by the so called JobCenter. The legal basis is the Social Law Book II. "Bedarfsgemeinschaften" are families/households in which one member of the family is long term unemployed and the family income is lower than a fixed sum which depends on the number and the age of the family members.

Both Social Law Books, II and III, have own regulations how to support disabled employees and employers to employ disabled people. Mostly used are trainings and an integration grant for employers.



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The federal ministry for labour and social affairs is setting up different pilot programs to increase the employment rates of disabled people. Together with the labour agencies the ministry started in the former government period the program Job 4000. With financial contribution from the federal budget and the so called countervailing charge (see below) 4000 new jobs for unemployed disabled were created. The ministry has financed also pilot activities to support the introduction of the personal budget for disabled people. The ministry used also money from the European Social Fund for special program called "Integration through Exchange II". It offers through round about 45 regional cooperation of NGO, Jobcenter and private organisation internships for unemployed disabled in other European Countries. The participants get a training before the internship abroad and a special support afterwards to find a job or vocational training. The results are quite successful. More than 50% of the participants could find a regular job afterwards. But there are no data actually available how many people with learning disabilities have taken part.

The Social Law Book XII constitutes the social contribution money and for people in special social crisis but also the money to support disabled people to have equal participation in society, housing and also employment and sheltered work as well as therapeutic work. These contributions are mostly in dependence of the family income or the property of the beneficiaries, which has to be used preferable for covering the cost of rehabilitation and social participation.

The Social Law Book IX and the UN Convention constitute, that disabled people should work with priority in the regular job market. It constitutes also the public integration authorities, which are organised by the regions. The duty of these integration offices are the advice and support of employers how to deal with disabled employees and they give support to them to continue the employment contract as well as to give disabled employees a job. They give also advice to employees. The integration authorities can give financial support to employers for technical equipment, training or to minimize lost of reduced working results (Minderleistungsausgleich). They are also supporting the founding of integration companies in which minimum 25 % per cent of employees have to be disabled. The services are financed by a countervailing charge which is paid by enterprises which not fulfil the minimum rate of employment of disabled people. But only employers with more than 20 employees are in duty to employ 1 disabled for each 20 jobs means 5% of the employees.

The technical and financial support based in the Social Law Books II, III and VI (pensions) are only available if the beneficiary was employed before for a certain period, has started with a vocational training or is actually employed and if the person has the status of employable. A state commission in the labour agencies is doing the surgery and the judgement if a person is employable or not.

If persons are not employable (not able to work on the regular job market for more than 3 hours per day) the people get the right to have access to sheltered workshops. If disabled people are not able to work in a sheltered workshop they have access to therapeutic work or sheltered work.



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The main duty of the sheltered workshops is to train the disabled people, employ them and to organise for them a path back or into the regular job market. Instruments for re-integration or integration in the job market are e.g. supported employment, external - workplaces of sheltered workshops integrated in regular companies. For people for which the status of employability is not clear enough does exist a so called specialised diagnostic process. This process should prevent too early decisions away from the regular jobmarket. Responsible are the rehabilitation teams/departments of the labour agencies, the public medical service for employment and external/contracted partners.

Instead of a huge bundle of measures and opportunities and also the clear preference for disabled people to work in the regular job market the reality is a different one. Actually round about 300000 disabled people are working in sheltered workshops. Only 0,17 per cent of them are leaving the sheltered workshop into the regular job market.

Two German regions, Rheinland-Pfalz and Niedersachsen, created a special personal budget for employment. This personal budget shall give sheltered workshops an incentive to make more efforts to find regular jobs for their participants. This personal budget gives financial support to the sheltered workshops and as well to the employer. The program is quite successful and based on the special dynamic in these regions to support the inclusion process. The other regions have the legal position, that these personal budgets for employment are illegal.

Although of the Social Law Book IX was implemented as intermediary and link between all other regulations based in the other social law books dealing with the employment of disabled people, the success especially for people with learning disabilities to have access to the regular job market is still poor. One reason is the different interests of the individual public institutions based on their own budgets and the root of the financial resources. The social security system in Germany based at first on a public insurance system. In this system are paying only regular employed people and the employers by round about 50% each. The policy in Germany is, that this share of the income and then also the share for the employers should not be too high to reduce the labour costs in Germany and to keep the enterprises competitive. To increase the employment in general is helping to finance the system in a better way, but the rehabilitation and integration of disabled people means a permanent financial contribution to have a real impact. We can consider, that the labour agencies try to shift very "expensive" disabled people into the sheltered employment sector and making justices as "unempmoyable", because these services are later on financed by the social money of the social authorities of the municipalities or regions. And these services are payed by tax-income of the state.

On the opposite the self-help organisations and the regional and local responsible public authorities have the interest to reduce the places in the sheltered workshops and to support regular employment, but they have not the access to the rehabilitation scenario of the other public institutions like labour agency, pension insurances and health insurances which are payed by their members or employees instead of taxes like the local, regional and federal bodies.

In the last government period a new reform process started to renew the Social Law Book IX. One main part of the reform should be the reduction of own contributions of the beneficiaries and the relatives to the services, means changing the modus using the own incomes and properties first. The idea was to create an participation-money independent form incomes and properties.

The second reform idea was to change the Social Law Book IX in a Law Book which gives more than a link or intermediary to the other Social Law Books. The New Social Law Book IX should give no direct access for the beneficiaries with own financial resources.

Resume:

There is a need for more reforms and new laws in Germany as described above.

Additionally we need more regulations which give the provider of sheltered workshops more incentives to find strategies for their employees into the regular job market and not to hold the best worker in the workshops.

And we need a law which cuts the actual split in employable and not employable persons. The UN convention makes no differences like that, it constitutes the access for all disabled people to a regular job. This law must constitute person centered and individualised support for each disabled at “the” job, means first we have to place the person on job and then we have to define and measure the necessary technical and human support.

Institutions Involved

Please discuss the institutions/organizations working with people with disabilities/learning disabilities and particularly the ones focusing on improving their employability (number, scope, size, coverage, number of people helped per year etc). Do they cooperate enhance their impact and how?

In Germany a wide range of public and private institutions are involved in the work with people with disabilities/learning disabilities:

Public Institutions are Labour agencies and Jobcenter (see above) and the “Integration Offices” of the regional administration. They are responsible for the advice and counselling, medical examination concerning employability and the demand for personal and technical support/equipment, granting of money for employer, employees/trainees as well as for wide range of private institutions which are responsible for the different measures, programs, projects and trainings, as well as sheltered workshops.



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Public vocational training schools are offering opportunities to prepare young people, mostly with learning disabilities, to get a first school degree or to become ready for vocational training in the dual system (theoretical learning in public or private vocational training centres and the practical training in the regular enterprises).

Private professional/vocational support centre offer the young disabled a vocational training and also to get a first school degree.

The biggest part of services and support is organised and served by the 6 federal Welfare Umbrellas, which are at all non profit organisations and with a huge number of regional and local sub-institutions and thousands of small and bigger members, also NPO with legal status as association, foundation or Limited (GmbH) or also joint-stock companies, and also an increasing number of private enterprises.

The 6 welfare umbrella organisation have along tradition in Germany, some of them are close to the churches (CARITAS-catholic church, DIAKONISCHES WERK-protestant church, the Welfare organisation of the jewish church, but also to the Labour/Trade Union= ARBEITERWOHLFAHRT (AWO) and finally the German Red Cross (DRK) and the Paritätischer Wohlfahrtsverband (DPWV). These are organised together on federal, regional and local level in so called "Liga der Wohlfahrtspflege".

The public institutions don't serve this kind of social services or trainings because of the subsidiary principle in social welfare state in Germany, if private institutions could do it also and better.

The result is, that nearly all services are actually given by private institutions and mostly paid by the public institutions by grants, regular payments based on frame contracts between the public institutions and the umbrella organisations of the NPO (Liga der Wohlfahrtspflege) and FPO and some also with own contributions of the beneficiaries. That is why we are calling it now the "social economy" or the "social business".

The actually available data from the "**Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen**" (**Federal Ministry of Labour and Social Affairs, august 2013**) are the following:

In Germany are living 290.000 people with a learning disability, this are only 4 % of the total number of registered disabled people.

The employment rate of disabled people in general is 58 % of all employable disabled (male and female same number) in comparison of 83 % male and 75 % female of not disabled employable people. Disabled people are longer unemployed, have mostly a lower qualification, and very often only Mini-Jobs. Exact data for people with learning disabilities are actually not available. But most of them have not a regular school degree and also not a regular professional degree. Finally after finishing the special school system, the special classes in the vocational training centres and also the special vocational training in the vocational training support centre they get the status of unemployable and with this status they have access to a special support system of employment, therapy or sheltered workshops. In 2010 the social economy provided



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252.000 places in sheltered workshops and 7350 working places for disabled in so called integration companies. 77% of the user of the places in sheltered workshops are people with a learning disability = approx 192.000 people. The tendency is increasing. In comparison the number of disabled in regular vocational training is decreasing.

And the number of user of sheltered workshops having access to the regular job market (which is one of the main duties of sheltered workshops) is a lower number of hundreds per year.

Integration companies or projects are special enterprises or departments of regular enterprises. They are working with regular employment and 25 % up to 50 % are registered disabled employees. A sheltered workshop called "WfbM" is an institution for participation of disabled at work and employment. They are regularly open for those disabled which are not or actually not able to work on the regular job market. The salaries in WfbM are in average 180 Euros per month. The WfbM are financed by public subsidies and the income for the services and products.

Determination

What are the current methods/tools employed in your country to assess the type severity of learning disabilities? Are those useful in determining the vocational skills/competencies that individual could potentially learn/acquire?

1) „MELBA“ –Psychologische Merkmale zur Eingliederung Leistungsgewandelter und Behinderter in Arbeit (Psychological criteria for the integration of disabled into the job)

The MELBA instrument was developed at the 80ies of the last century by order of the Federal Ministry of Labour and Social Affairs through the „Arbeitsmedizinisches Zentrum Siegerland e.V.“ of the university of Dortmund and the university „Universität-Gesamthochschule Siegen“ (see Enggruber/Bleck 2005: 49-53, Handbuch „Kompetenzcheck Ausbildung NRW“ 2006:113-117) .

The instrument was originally developed for the rehabilitation of disabled employees back to the job after medical treatments or therapies. Through a comparison of requirements of the concrete working place and the resources of disabled employees the integration into the job should be fit better. In the centre of the instrument are the cognitive and social competences, the competences of work and psycho motoric as well as cultural and communication technics. It is one of the most used instruments and because of the flexible and general approach it is in use in much more areas actually. MELBA influenced a lot of other competence assessment instruments like the Assessment Center "START".

5.2) „START“ – Stärken ausprobieren – Ressourcen testen (Try the Strength – Test Resources)

The Assessment Center „START" was developed by the „Institut für Maßnahmen zur Förderung der beruflichen und sozialen Eingliederung (IMBSE e.V.). It offers concrete orientation support for young people by changing from school to profession/work. (see Enggruber/Bleck 2005:57ff, Handbuch „Kompetenzcheck Ausbildung NRW" 2006:90-95). Target of the Assessment Center is, that the young participants will evaluate and get



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knowledge of their professional, social and daily routine competences as well as their professional interests (see „MELBA“). With START they are learning in the same time different professions and their requirements (17 different professions are available). The diagnostic results show, how strong the examined competences are and how the individual support and training must be planned and organised.

5.3) „HAMET“ –Handwerklich-motorischer Eignungstest (hamet bzw. hamet2)(handcrafted motoric aptitude test)

„HAMET“ was developed at the end of the 70ies of the last century in the vocational training centre Waiblingen (Berufsbildungswerk Waiblingen). End of the 90ies of the last century HAMET 2 was developed by order of the Federal Ministry of Labour and Social Affairs. The instrument uses 4 modules „professional basic competences“, „learning abilities“, „Social competences“, and „Structured ability to see failures and problems“ (Vernetztes Denken-Fehlersuche und Problemerkennung“).

This instrument is used to determine the ability for a certain profession and support of young people with learning disabilities by the move from school to job. It is used also in vocational schools and training departments of enterprises. The results shall give a better orientation and transparency for the shareholder in cases of the correct selection of a profession.

5.4) „PROFIL“

The instrument „PROFIL“ was developed during a project with the same name of the „Christliches Jugenddorfwerk (CJD) Offenburg“, the „Berufsausbildungswerk Ostalb (BAW)“ and the „Berufsbildungswerk Waiblingen“ in the period of 2000-2003 (see. Enggruber/Bleck 2005:62ff).

The Assessment Center supports young people with learning disabilities and higher demand of support by the move from school to job and for the finding of the correct job. The results are transparent not only for the young disabled but also for employer and public granting institutions. They are covering cultural technique, social competences, self competences and competences of methods. It shall reduce the period of supporting measures and at least costs. „PROFIL“ shall give a fast and evident result of competences and also a suitable range of individual supporting measures.

Area for Development

What are the weaknesses of the current system? Are there any problems on national scale not addressed by the existing legislation?

This system is actually looking not very successful concerning the integration of people with learning disabilities in the regular job market. What could be the reasons for the high number of unemployed disabled and user of sheltered workshops.

The employment rate of disabled people in Germany is only 4,5 % of all employed people and one of the lowest in Europe. One third of the private companies have less than 1 % of disabled employees or none.



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The number of user of sheltered workshops was raising between 2005 until 2010 from 211000 up to 250000 with an annual rate of plus 3% places. The change from the sheltered workshops into the regular job market is very small. Women are longer employed in sheltered workshops than men.

One reason could be the principle of subsidiary. The state doesn't offer own services if private and non-for-profit organisation of the welfare-sector can offer these services themselves, but the state has the duty to make regulations, contracts concerning the concepts, the quality and the financing of these services. Before the right of getting a personal budget and direct payments for services has been installed in Germany, it was only the triangle principle existing. The service provider has a contract with the state authority for delivering special social services to the beneficiaries. The beneficiary has the right to get the service and the state authority gives the service provider the confirmation of paying these services. After serving the provider is making an invoice by the state authority and become paid. This system is very comfortable for the service provider because they can calculate the costs as budget for the future and must not declare the real costs. At least the business strategy of these welfare companies is to make their places of rehabilitation full and not empty. They are not promoting the personal budget because they are afraid of losing money and having more complications with the invoices.

The beneficiary can choose now if he wants a personal budget but the biggest number of beneficiaries is actually in this system of institutional services (round about 750.000 beneficiaries in totally in Germany). Although all reforms, new measures and instruments the UN-Convention etc. this old system is looking very stable and established. This access barrier for the inclusion process is described more detailed in the next chapter.

The reasons are the business concepts of the social economy running the sheltered workshops and the whole system of cooperation and benefits in this system. Basic reforms to close down and change this system are not visible. The alliance of the old system contains of the parents and families of the disabled people, the service provider (for profit also non for profit ones) and also the public authorities (they are mostly sufficient with the situation, the relatives have daily routines, a social security), the social economy/welfare industry (they have got subsidies and have made investments in infrastructure and human resources) , the most capable disabled workers are guaranteeing the economical success and the efficiency, to take them out to the regular job market brings no benefit for the sheltered workshops, there are no incentives

The quality of the counselling and support of disabled unemployed in labour agencies and job centres are quite poor. Very often the focus of their work is not to fulfil the objectives of the Social law Book IX, means equal access to regular jobs for disabled, but the fast integration of not disabled.

The actual public legislation tries to implement new incentives and new support measures like the program "4000 Jobs for disabled", a big variety of support measures and also the personal budget. But at the end, the influence to the enterprises and the social economy is not sufficient. To give people with disabilities the right to chose which



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kind of support service they want, the classical system of the social economy (triangle) or the personal budget, is not enough to show a clear and evident priority of politics in implementation of the UN Convention of the rights of disabled people. Also a lot of classical structures and seams between public and private system must be changed.

Recommendations

Do you have any suggestions/ideas on how to address the aforementioned issues or simply to improve the current system (changes in legislation, awareness campaigns, different approaches to education/training, keeping better statistics etc.)?

One question is, if the system of fixed employment rates for disabled (5% of employees in enterprises with more than 20 employees) is working or only again a kind of discrimination. It seems better to have more adequate instruments to match the needs of employers with the resources of disabled employees and to have a more easy access to grants and subsidies. We need more qualified personal assistance on the job, better paid and a bigger number.

We need a clear decision against sheltered workshops and a strategy how to decrease the number and to give more incentives to integrate former user of these workshops into the regular job market. There is a huge demand for evident changes, like a personal budget for employment and new definition of employability.

We need less special institutions and more flexibility to get school and vocational degrees, means more flexibility to get degrees only by practical competences and less with formal tests. There is demand for special competences and professions also in vocational schools.

The quality of counselling and support by the labour agencies and job centres should be better through an higher accessibility and personal assistance as well as peer-counsellor as employees in the public institutions.

We see a demand for a new definition of employability on the basis of the UN convention for the rights of disabled people. Every person is able to work in an individual way, it exists only a different demand for qualification, rehabilitation, support and assistance. The benchmark of employability, to be able to work for three hours daily on the regular job market must be cancelled, the demand for sheltered workshops is failing.

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