

04_ The Duty to Provide Reasonable Accommodation

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Welcome to the Inclusive Education Law course.

This MOdule explores the obliGAtions for State Parties to provide reasonable accommodation.

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This tuTOrial FOCuses on reasonable accommodation and includes

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- the definition of reasonable accommodation,

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- the scope of reasonable accommodation,

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- the addresSEES of reasonable accommodation,

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- the ELEments of reasonable accommodation.

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Let us start with the defiNItion of reasonable accommodation.

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“Reasonable accommodation” means making NEcessary and apPROpRIate modification and adJUSTments not imposing a disproPORTionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms.

The duty to acCOMmodate is a legal obligation as is EVident from the definition of discrimination contained in Article 2 of the Convention.

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“Reasonable accommodation” is an important concept in disability discrimination law and a NOVelty in United Nations human rights conventions.

DeNIal of reasonable accommodation is a form of discrimination.

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How to REalise the right to inclusive education?

Articles 24(2) and 24(5) impose a duty to provide reasonable accommodation.

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Article 24(2) obliges States Parties to REalise the right to inCLUusive education. It conTAINS a general prohibition on excluding people on the 'basis of disability' from an inCLUusive education system.

It guarantEES access on an equal basis with other members of their community.

It provides effEctive indiVIDualised support measures

It ensures that persons with disabilities receive the necessary support to 'faCILitate their effEctive education'

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Article 24(2)(c) states that States Parties must ensure that '[r]easonable accommodation of the individual's reQUIrements is provided'

The onus is on States Parties to ensure that the education provided is an inCLUusive setting.

Tools deemed NECESSary to assist in accessing that right include the provision of reasonable accommodation.

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What is the scope of reasonable accommodation?

Who has to provide reasonable accommodation?

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TraDitionally, human rights treaties are adDRESSed to States Parties and require States Parties to undertake actions to enFORce or to enHANce the human rights of a parTicular group.

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A NOtable element of the impoSItion of a duty to provide reasonable accommodation within the Convention (CRPD) is that private actors, are also engaged in the enFORcement of the ConVENTion. The VARious state and non-state education providers will thus ALL have to do the work of reasonable accommodation for persons with disabilities.

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Article 24(5) of the Convention (CRPD) SPEcifies the right to access 'general TERTiary education, vocational training, aDULT education and lifelong learning'.

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There is therefore a duty on all education providers to deliver reasonable accommodation for learners with disabilities.

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A LEGislative basis is required to oblige also private actor to provide reasonable accommodation for learners with disabilities.

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In practice, providing reasonable accommodation for learners with disabilities is a colLABorative effort.

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Who are the addressEES of reasonable accommodation?

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The right to reasonable accommodation in education does not cease at the atTAINment of maJOrity. The addressEES of the right to education in the Convention are 'persons' with disabilities and not only children with disabilities.

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Let us know ANalyse the elements of reasonable accommodation.

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The ComMITtee on the Rights of Persons with Disabilities notes that the Convention (CRPD) imposes exTENSive obligations on States Parties including a duty to LEGislate 'to ensure that reasonable accommodation provisions are enSHRined in law as an imMEDiately enforceable right in all areas of law and policy'. (CRPD/C/DEU/CO/i [14-(b)])

Such laws should ensure that the DEFinition of reasonable accommodation is RECOgnised 'and PUNishable as a form of discrimination'.

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The duty to provide reasonable accommodation can be broken down into two conSTituent parts.

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In the first INstance there is a duty to provide a 'modifiCation' or an 'adJUSTment' that is 'necessary and appropriate' where it is required 'in a particular case'. It imposes POSitive obligations to identify barriers in the way of a disabled person's enjoyment of their human rights and to take appropriate steps to remove them'.

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The second part of the duty to provide reasonable accommodation provides that any required accommodations should not impose a 'disproportionate or undue burden' on the duty-bearer.

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The duty to provide reasonable accommodation is, in the main, an individualised duty in that it must respond to the specific circumstances of the individual disabled persons as well as to the needs of the duty-bearer concerned.

Article 24(2)(c) requires reasonable accommodation of the 'individual's requirements'. People with disabilities do not form a homogeneous group. Consequently any adjustment or modification will depend entirely on the individual needs of the person in question.

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For example, two students with visual impairments may have different accommodation needs, assuming that the barrier to equal participation is a difficulty or an inability to access the reading materials for the course. The educational institution should identify the necessary modification or adjustment to allow both students to participate on an equal basis.

The nature of the visual impairments may vary and it may be that one of the students could be accommodated by the use of large print while the other student may require braille text.

The accommodation or adjustment necessary must be what is required for that individual in a 'particular case'.

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According to General comment No. 4 paragraph 30, on the right to inclusive education of the Committee on the Rights of Persons with Disabilities, the definition of what is proportionate will necessarily vary according to context.

The availability of accommodations should be considered with respect to a larger pool of educational resources available in the education system and not limited to resources available at the academic institution in question.

Transfer of resources within the system should be possible. There is no "one size fits all" formula to reasonable accommodation, as different students with the same impairment may require different accommodations.

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The duty to provide accommodation, is not an unbounded obligation. It is limited by the need to avoid imposing a 'disproportionate and undue burden' on the duty-bearer.

A number of factors need to be considered in order to determine what amounts to a 'disproportionate or undue burden', including the cost, disruption and potential benefit of any proposed accommodation.

If the analysis of a proposed accommodation determines that such an accommodation does impose a disproportionate or undue burden on a duty-bearer, then it is contended that they are no longer bound by the duty to provide reasonable accommodation.

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The interactive dialogue is the natural consequence of the principle of good faith and the recognition of the dignity of the person with disability.

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For example, where a student with a mobility impairment wishes to attend a university open day, a brief conversation notifying the university of his or her intention to attend should suffice.

The university may hold the open day in an accessible venue or provide a removable ramp to ensure that the venue is accessible on that day.

In contrast, where a relationship is ongoing or long term, such as the relationship between a student and a school, the dialogue may be 'formal and extensive'.

As education is a process, and the accommodation needs for a student with disability are not necessarily stationary or fixed (as they may vary or change over time), the accommodation provided could be ended, modified, expanded or replaced, as needed', which gives rise to the necessity for ongoing dialogue.

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The duty-bearer can deny a reasonable accommodation without incurring discrimination on the basis of disability by demonstrating that (IE) either it is not feasible, relevant or proportional.

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The first Element of the objective justification process is feasibility.
When providing reasonable accommodation, the institution cannot breach the law
Moreover, the institution can only provide accommodations that exist and are available

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The second Element of the objective justification process is relevant accommodation.

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The third Element of the objective justification process is proportionality.
This requires an assessment of the relationship between the means employed (time, cost, duration and impact) and the aim (which is the enjoyment of the right concerned).
Financial feasibility focuses on the possible financial options for the requested party.
Economic feasibility looks at the overall assets rather than the cash flow alone.

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The last Element is confidentiality.

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This slide provides an overview of the (K) characteristics of reasonable accommodation.

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The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is the first international human rights convention to explicitly hold that the failure to provide reasonable accommodation amounts to an act of discrimination.

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'Reasonable accommodation' is an important concept in the United Nations Convention on the Rights of Persons with Disabilities. Governments could issue enforcement guidance on how to best comply with accommodation requests.