# **Definition of Disability**

Equal Status Act 2000

The governing law is the Equal Status Act 2000 (“the Act”), as amended. It governs the provision of services by educational establishments, among other matters. It contains specific provisions in respect of discrimination on the grounds of disability. Section 5 of the Act provides that a person shall not discriminate in providing a service. An educational establishment in the University context is a University or any other third level or higher-level institution, whether or not supported by public funds (Section 7 of the Act). It is important to emphasise that claims can be brought under the Act by a person are students, persons who are former students and persons who are prospective students.

**Educational Establishment**

Section 7(2) of the Act provides that an educational establishment shall not discriminate on the disability ground in relation to:

(a) the admission or terms or conditions of admission of a person as a student,

(b) the access of a student to any course, facility, or benefit provided by the establishment,

(c) any other term or condition of participation in the establishment,

(d) or the expulsion of or any other sanction against a student.

Disability is defined in the Act as:

The legal definition of disability, which is outlined in the Equal Status Acts 2000 (as amended)*,* defines disability as follows:

1. The total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
2. The presence in the body of organisms causing or likely to cause, chronic disease or illness,
3. The malfunction, malformation or disfigurement of a part of a person’s body,
4. A condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
5. A condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

These include “a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future, or which is imputed to a person.” A disability is significant, long term and/or enduring in nature.

Plain english

The definition of disability includes:

* Disabilities that a person currently has.
* Disabilities that a person had in the past but no longer has.
* Disabilities that a person might have in the future.
* Disabilities that people think a person has, even if they don’t actually have it.

In addition, a disability is considered significant if it has a long-lasting or enduring impact on a person's life.

For universities, this means that they must ensure that their services are accessible and non-discriminatory to all students, including those with disabilities. Specifically:

1. **Admission and Enrollment**:
   * Universities cannot discriminate against applicants with disabilities during the admission process.
   * They must provide fair and equal terms and conditions for admission.
2. **Access to Courses and Facilities**:
   * Students with disabilities must have equal access to all courses, programs, facilities, and benefits offered by the university.
   * This includes classrooms, libraries, laboratories, sports facilities, and other university resources.
3. **Participation and Terms of Engagement**:
   * Universities must ensure that all terms and conditions related to participation in university life are non-discriminatory.
   * This includes housing, extracurricular activities, and any other aspect of university life.
4. **Disciplinary Actions**:
   * Universities cannot discriminate against students with disabilities when imposing sanctions or disciplinary actions.
   * Any disciplinary process must be fair and consider the student's disability.

Overall, universities must create an inclusive environment where students with disabilities can fully participate and benefit from their education and university life. This includes making reasonable accommodations and providing necessary support to ensure equal opportunities for all students.

### **Disabilities that a Person Had in the Past but No Longer Has**

1. **Awareness and Sensitivity Training**:
   * Educate staff and students about the nature of temporary or past disabilities to prevent stigmatization.
   * Train faculty and administrative staff on how to provide support and accommodations sensitively.
2. **Flexible Policies**:
   * Implement policies that recognize the impact of past disabilities, such as flexible deadlines, modified attendance requirements, or tailored support services.
3. **Counseling and Support Services**:
   * Offer ongoing mental health and counseling services to help students transition and cope with any residual effects of their past disabilities.

### **Disabilities that a Person Might Have in the Future**

1. **Preventive Health Programs**:
   * Provide health and wellness programs aimed at preventing future disabilities, including regular health screenings and mental health resources.
2. **Proactive Accommodations**:
   * Develop flexible accommodation plans that can be quickly implemented if a student's condition changes or if a new disability arises.
3. **Continuous Monitoring and Support**:
   * Regularly check in with students who have conditions that might lead to future disabilities to provide timely support and interventions.

### **Disabilities that People Think a Person Has, Even if They Don’t Actually Have It**

1. **Anti-Discrimination Policies**:
   * Enforce strict anti-discrimination policies to protect students from assumptions and biases about their abilities.
   * Make it clear that discrimination based on perceived disabilities is not tolerated.
2. **Educational Campaigns**:
   * Conduct awareness campaigns to educate the university community about the importance of not making assumptions about others' abilities or health conditions.
3. **Inclusive Environment**:
   * Foster an inclusive environment where all students feel valued and supported, regardless of their actual or perceived disabilities.
   * Encourage open communication and provide platforms for students to share their experiences and concerns without fear of judgment.
4. **Confidential Reporting Mechanisms**:
   * Implement confidential reporting mechanisms for students who experience discrimination based on perceived disabilities, ensuring they have a safe way to seek help and support.

### **General Strategies for All Categories**

1. **Accessibility Services**:
   * Ensure that accessibility services are robust and well-publicized, offering a range of supports such as note-taking assistance, sign language interpreters, and adaptive technology.
2. **Reasonable Adjustments**:
   * Make reasonable adjustments to teaching methods, assessments, and physical environments to accommodate diverse needs.
3. **Feedback and Improvement**:
   * Regularly gather feedback from students about the effectiveness of the support services and make continuous improvements based on their input.
4. **Inclusive Culture**:
   * Promote an inclusive culture that values diversity and inclusivity, where all students feel welcome and supported.

By implementing these strategies, universities can better support students with past, potential, or perceived disabilities, ensuring that all students have equal opportunities to succeed.

**Guidance on Implementing Reasonable Accommodation for Universities**

The implementation of reasonable accommodations is a critical aspect of university policies, ensuring that all students, particularly those with disabilities, have equitable access to education. This guidance draws on legal frameworks and best practices to provide universities with a comprehensive approach to fulfilling their obligations under the Equal Status Act and international human rights norms.

### Understanding Reasonable Accommodation

**Definition**: Reasonable accommodation refers to the necessary and appropriate modifications and adjustments, without imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities can enjoy or exercise all human rights and fundamental freedoms on an equal basis with others.

**Broad Interpretation**: The Act mandates a broad interpretation of reasonable accommodation, focusing on removing barriers that make it unduly difficult for a person with a disability to access university services. This encompasses a wide range of actions, from modifying examination formats to providing special equipment or technologies.

### The Principle of Nominal Cost

**Nominal Cost Defined**: The requirement to provide accommodations is qualified by the concept of "nominal cost". Universities are expected to bear the cost of accommodations unless doing so would incur more than nominal expenses. What constitutes a nominal cost is assessed on a case-by-case basis, considering the university's size and resources.

**Public Funding and Resources**: In determining what constitutes a nominal cost, the availability of public funds or other resources to the university is relevant. Universities are encouraged to seek out and utilise available funding to support the provision of accommodations.

**International Norms and Standards**: The UN Convention on the Rights of Persons with Disabilities, ratified by Ireland, sets a higher standard, requiring reasonable accommodations unless they impose a disproportionate burden. The Supreme Court has also recognised the need for a purposive interpretation that aligns with EU and international human rights standards.

### Implementing Reasonable Accommodation

**Assessment and Documentation**: Universities should not overly rely on the medical model requiring exhaustive documentation of disabilities. The focus should be on the functional impact of the disability and the accommodations needed to ensure access and participation.

**Cost Consideration**: When assessing the cost of accommodations, universities should consider the entirety of their resources, including any available external funding. Accommodations that impose minimal costs are unlikely to exceed the nominal cost threshold.

**Proactive and Positive Engagement**: Universities are required to proactively engage with students to identify and implement necessary accommodations. This engagement should be based on an individual assessment of needs and the principle of equality.

**Equality of Treatment**: Providing accommodations to students with disabilities is not preferential treatment but a means to achieve equality. The Act allows for positive measures to meet the special needs of students with disabilities.

**Awareness and Training**: Universities should provide training for faculty, staff, and examination panels on disability awareness and the legal obligations regarding reasonable accommodations. This ensures a supportive and inclusive educational environment.

**Timeliness**: Delays in providing accommodations can constitute a failure to comply with legal obligations. Universities should establish clear processes and timelines for responding to accommodation requests.

**Review and Adaptation**: Policies and practices related to reasonable accommodations should be regularly reviewed and adapted based on feedback from students with disabilities, disability services, and legal developments.

By adhering to these guidelines, universities can ensure they meet their legal obligations and foster an inclusive educational environment where all students, regardless of disability, have the opportunity to succeed.

**Guidance for Universities on Standards of Proof and Evidence of Disability**

Universities play a pivotal role in ensuring that all students, including those with disabilities, have equal access to education. This guidance focuses on the standards of proof and evidence of disability, aiming to clarify the obligations of universities in providing reasonable accommodations.

### Recognising Evidence of Disability

* **Individual Testimony**: The testimony of an individual regarding their disability, including the nature and impact of their condition, should be considered valid evidence. Universities should recognize self-reported evidence of conditions like clinical depression as sufficient for initiating discussions on reasonable accommodations.
* **Medical Evidence**: While medical evidence can support a student's claim of disability, the lack of a specific type of medical evidence (e.g., diagnosis by a psychiatrist vs. a GP) should not automatically disqualify a student from receiving accommodations. The absence of formal or comprehensive documentation does not negate the presence of a disability or the need for accommodations.
* **Previous Reasonable Accommodations**: A history of accommodations in secondary education or at another institution is relevant and should inform the university's approach to providing accommodations. This history underscores the student's ongoing needs and the effectiveness of certain accommodations.

### Responsibilities of Universities

* **Assessment of Accommodation Needs**: Universities should assess the need for accommodations based on the information provided by the student, considering the functional impact of the disability on the student's academic experience.
* **Burden of Proof**: In instances where the existence of a disability or the need for accommodations is challenged, the university may be required to demonstrate why accommodations are not provided or justified. The focus should be on exploring all possible avenues to support the student, rather than on disproving the need for accommodations.
* **Exploring Funding and Resources**: The lack of specific evidence required for external funding (e.g., Higher Education Authority Fund for Students with Disabilities) should not limit the university's effort to accommodate. Universities should explore all possible funding sources and consider the overall resources available to support accommodations.
* **Equality and Non-Discrimination**: The principle of non-discrimination mandates that no student should be disadvantaged in accessing education due to a disability. This principle extends to the consideration of accommodations without imposing unnecessarily stringent standards of proof.
* **Inclusive Policy Development**: Universities should develop clear, inclusive policies on evidence and documentation requirements for accommodations. These policies should emphasize flexibility, the credibility of self-reported conditions, and the use of medical evidence as supportive rather than definitive.

### Best Practices for Implementation

* **Training and Awareness**: Provide training for staff and faculty on recognizing and responding to the needs of students with disabilities, emphasizing the validity of different types of evidence.
* **Student-Centered Approach**: Adopt a student-centred approach in discussions about accommodations, where the student's experience and needs guide the process.
* **Documentation Flexibility**: Encourage flexibility in documentation requirements, recognizing the challenges some students may face in obtaining comprehensive medical evidence.
* **Continuous Dialogue**: Maintain an open, continuous dialogue with students about their needs and accommodations, allowing for adjustments as necessary.

By adhering to these guidelines, universities can foster an accessible, inclusive educational environment that respects the rights and meets the needs of all students, including those with disabilities.

# V2 Comprehensive Guidance for Universities on Accommodating Students with Disabilities

Universities hold a crucial responsibility in creating an inclusive and equitable educational environment for all students, including those with disabilities. This comprehensive guidance is designed to assist universities in understanding and fulfilling their legal and ethical obligations under the Equal Status Act 2000 and adhering to international human rights standards.

## Understanding and Implementing Reasonable Accommodations

### What Constitutes Reasonable Accommodation?

Reasonable accommodation is the modification and adjustment necessary to ensure that students with disabilities can participate fully in all educational activities. These accommodations should be provided without imposing a disproportionate burden on the institution. Accommodations can range from modifying examination formats and teaching methodologies to providing specialized equipment or software.

### The Principle of "Nominal Cost"

The concept of "nominal cost" is pivotal in assessing the feasibility of providing accommodations. While universities are expected to bear the costs associated with these accommodations, they are not required to incur expenses that exceed a nominal threshold. This assessment should take into account the university's financial resources and the potential for accessing public funds or other resources to support the accommodation.

### Standards of Proof and Evidence of Disability

#### Recognizing Evidence:

* **Individual Testimony**: Universities should regard a student's own description of their disability and its impact as valid evidence for initiating the accommodation process.
* **Medical Evidence**: The lack of specific medical documentation should not preclude the provision of accommodations. Evidence such as a GP’s diagnosis should be considered sufficient.
* **Previous Accommodations**: The existence of accommodations in a student's past educational experiences should inform and guide the provision of current accommodations.

#### University Responsibilities:

* **Assessment of Needs**: The need for accommodations should be assessed based on the student’s reported experience and the functional impact of the disability.
* **Exploring Resources**: Universities should actively seek out available funding and resources to facilitate accommodations, ensuring the process is not hindered by financial constraints.
* **Equality and Non-Discrimination**: The principle of non-discrimination underlines that accommodations are not preferential treatment but a means to achieve equality.

## Best Practices for University Implementation

### Policy Development and Awareness

* Develop clear, inclusive policies that outline the process for requesting and implementing accommodations, emphasizing the acceptance of various forms of evidence.
* Provide ongoing training for faculty, staff, and administration on disability awareness, legal obligations, and the importance of a supportive educational environment.

### Proactive Engagement and Support

* Adopt a student-centred approach, where accommodations are tailored to the individual’s needs, facilitating their full participation in academic and campus life.
* Establish clear, accessible pathways for students to request accommodations, ensuring the process is straightforward and respects the student’s privacy and dignity.

### Continuous Dialogue and Flexibility

* Maintain open communication with students receiving accommodations to ensure their needs are being met and to adjust support as necessary.
* Encourage flexibility in documentation requirements, recognizing that obtaining comprehensive medical evidence can be challenging for some students.

### Review and Adaptation

* Regularly review accommodation policies and practices, incorporating feedback from students, disability services, and legal advisors to adapt to changing needs and legal standards.

By adhering to these guidelines, universities can ensure compliance with legal obligations and foster an inclusive, accessible educational environment. This approach not only respects the rights of students with disabilities but also enriches the entire academic community by promoting diversity, equity, and inclusion.