

Compensation of Disadvantages in University Examination Procedures

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ABSTRACT

Active social participation of disabled people is one of the major tasks of modern society. That also includes access to the academic community by higher education. Universities all over the world work hard to give handicapped students a chance to graduate. In this context, compensation of disadvantages in examination procedures is an important matter. But, also chronic illness may impair the student's examination performance. To ensure equal examination opportunities for all students, responsible university officials must be creative to find individual compensation solutions. The paper analyzes examination regulations at universities in different countries and offers solutions to compensate disabled and chronic ill students' disadvantages. It discusses the necessity of compensation for different types of disability and chronic illness. Finally, an overview of current German case law and solutions for compensation problems are provided.

Keywords: examination procedures, compensation, disability, equal opportunities.

1. INTRODUCTION

Year by year, millions of students all over the world apply for special examination arrangements as a compensation for disadvantages that disability or illness entail. In Germany, 7 per cent of students are handicapped with a disability or chronic illness which negatively affects their studies (E. Middendorff et al. 2013). To ensure equal examination opportunities for all students, examination regulations of most universities know rules of compensation for these special cases.

A careful planning and realization of the examination process is half the battle. For this reason, responsible university officials are obliged to organize the exams in a way that no student will be discriminated. But, the examination process entails a wide variety of risks for universities. This begins with the admission to exams and ends with an appeal against examination's results.

2. PRINCIPLES IN EXAMINATION PROCEDURES

International principles

Legal basis for university examinations are the relevant national regulations, for example the Americans with

Disabilities Act of 1990 and ADA Amendments Act of 2008 (Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008) and the regulations of the respective university. If disabled or chronic ill students will take part in the examination process, the departmental examination committee must pay attention to the United Nations Convention on the Rights of Persons with Disabilities as well. It states in Article 24 (5) that it shall be ensured that "persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities" (United Nations 2006).

At most of the universities worldwide, examination regulations or other ordinances exist regarding special examination arrangement for disabled and chronic ill students. Below, various university regulations on special examination arrangements for handicapped students will be analyzed, for example from the Norwegian Telemark University College, the German Ludwig-Maximilians-University Munich, the Swiss University of St. Gallen, the British University of Oxford and the US-American Texas A&M University. All of them contain instructions how to deal with disabled and chronic ill students during an examination procedure.

German specialties

In Germany, the United Nations Convention on the Rights of Persons with Disabilities came into legally binding effect on 26th March 2009 (Act on the Convention on the Rights of Persons 2008). Rights of disabled people in Germany will be protected by Article 3 of the Basic Law for the Federal Republic of Germany as well (Basic Law for the Federal Republic of Germany 2014). From that fundamental right of equal treatment the right of compensation of disadvantages in universities examination procedures results.

These principles of equal treatment therefore can be found in all universities' examination regulations basing on the Higher Education Acts of the German Federal States. Furthermore, in the complete university examination process, the right of occupational freedom of Article 12 of the Basic Law for the Federal Republic of Germany (Basic Law for the Federal Republic of Germany 2014) in connection with relevant federal state law shall apply.

Some universities offer guidelines for lecturers how to deal with handicapped students. By this handouts, information are given about types of impairment, possibilities of assistance in special situations and how to organize the lecture to meet the needs of disabled and chronic ill students.

3. TYPES OF DISADVANTAGES

In the discussion about compensation of disadvantages in university examination procedures a distinction has to be made between temporary ill students and disabled or chronic ill students. This difference is important because temporary ill students have other rights in the universities' examination procedures than disabled or chronic ill ones. Students with short term diseases can withdrawal from an examination under special conditions if they are not able to perform at their best. These students have the possibility to wait for a health improvement and to start the examination again. But, students with disability or chronic illness are suffering from non-temporary impairments generally their whole life.

Therefore, first it is to define if a person is chronic ill or disabled. In some cases, especially regarding mental impairments, the differentiation is difficult, even for medical experts. Beside the defined kinds of disability always the individual case must be examined. Often students have not only a single impairment but a variety of disabilities or chronic illnesses.

Compensation measures in university examinations only will be offered for impairments that are not dependent on the examination and which make it more difficult for the student to complete examinations. This means that only these types of disability must be compensated which make it harder for students to proof his or her knowledge and skills e.g. by visual or writing impairments (N. Niehues and E. Fischer 2010). For handicaps which are significant for the competences to examine, compensation cannot be offered.

Chronic ill or disabled students must substantiate their impairment by disabled person's pass or medical certificate. Absolutely essential is the information at the examination committee about the impeding circumstances before the student's attendance at the examination.

Disability

A definition of disability can be found in the United Nations' Convention on the Rights of Persons with Disabilities. Thus, Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (United Nations 2006). But, also other regulations or handbooks contain definitions of disability. Thus for example a Guide for College and University Students published by California's Protection & Advocacy System about Rights of Students with Disabilities in Higher Education. It contains the explanation that impairment will not meet the ADA or Section 504's (Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008) definition of a "disability" if it is expected to, or in fact does, affect a person for six months or less (California's Protection & Advocacy System 2013). A disability, as defined by German Social Law, exists when bodily functions, mental abilities or mental health deviate, for

more than six months, from the condition typical for a given age so that participation in society is impaired (Book IX of the German Social Code IX 2015). The same definition can be found in Section 3 of the German Act on Equal Opportunities for Persons with Disabilities (German Act on Equal Opportunities for Persons with Disabilities 2007). Typical kinds of disability for example are visual impairments such as blindness or walking impediment.

Recently, the German Federal Ministry of Education and Research initiated an investigation about handicapped students and the types of disability and chronic illness which have substantial effect on the study situation. The results show that 7 per cent of the German students are disabled or have a chronic illness which negatively affects their study performance (E. Middendorff et al. 2013). A large number of these students (42 per cent) suffer from psychical problems while only 6 per cent are handicapped with hearing or speaking impairments (E. Middendorff et al. 2013) (see figure 1).

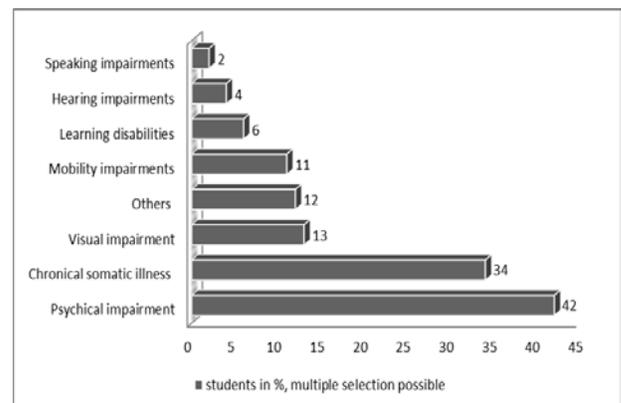


Figure 1: Types of German students' health impairment - on the data basis of (E. Middendorff et al. 2013)

Chronic illness

Chronic illness can be defined as non-temporary health problems or such impairments with episodic progression as for example chronic disease of the bowel or epilepsy (German Association of Student Services Organizations 2013).

A further detailed differentiation is not necessary because both students with disability and students with chronic illness have the same right on compensation of disadvantages in university examination procedures

Other personal disadvantages or restrictions

A question can be if other personal restrictions or disadvantages demand individual examination arrangements, for example a (foreign) student's poor language skills as well as examination nerves, non-pathological learning difficulties or motivations problems which are not qualified as chronic illness or disability.

Impairments which are not pathological or affect a student for less than six month are not to compensate by special examination arrangements. As mentioned above, students with temporary disadvantages can withdrawal from the examination up to the time it ends. All other individual student's poor constitutional performances characterize his or her personal ability to perform and are relevant for the examinees academic qualification which should be examined (Administrative Court

Dresden 2010a). Also, pregnancy cannot be defined as a disability. A pregnant student does not have a right for compensation of disadvantages because she is not disabled or chronic ill but only temporary unable to take an examination (Administrative Court Dresden 2010b). There is no special protection for pregnant women or mothers in German University Examination Law whereas at Norwegian Telemark University College pregnant women or nursing mothers can apply for compensation of disadvantages (Telemark University College 2015a).

Although there is no legal obligation to offer compensation measures to students with other disadvantages than disability and chronic illness, such examination regulations of universities can be found. Some universities offer compensation of language disadvantages for foreign students to support academic internationalization. Thus, e.g. the Swiss University of St. Gallen offers students whose language is foreign in the German-language Assessment Year an additional 15 minutes per examination hour in written central examinations, except in foreign language tests and mathematics (University of St. Gallen 2012). However, universities should show restraint in offering individual examination arrangements for students who are not disabled or chronic ill in order to ensure equal treatment of all students in examination procedures.

4. SPECIAL EXAMINATION ARRANGEMENTS

Depending on the type of impairment, students can apply for individual compensation arrangements. As many types of disability and chronic illness exist as many types of compensations universities must offer. Students and universities must know that equal opportunities in examination procedures are not a privilege but rather a legal right and a step towards integration and equality. Nevertheless, in Germany only one of three students applies for compensation of disadvantages (see figure 2) (German Association of Student Services Organizations 2012). As reasons for this low number were given by the asked disabled and chronic ill students that they had no information about compensation of damages (more than the half of the asked students) and that they don't want to make someone know about their handicap (one third of the asked students) (German Association of Student Services Organizations 2012).

It is important to mention that students do not have a right to a special compensation measure. They only can apply for appropriate compensation of their personal disadvantages. The United Nations defined that "reasonable accommodation means 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" (United Nations 2006).

The decision which kind of measure means an appropriate compensation of the individual examinee's disadvantages takes the examination management. Compensation measures must guarantee nothing more and nothing less than equal examination treatment among the examinees. An additional advantage for disabled or chronic ill students compared with not handicapped students must be avoided in any case.

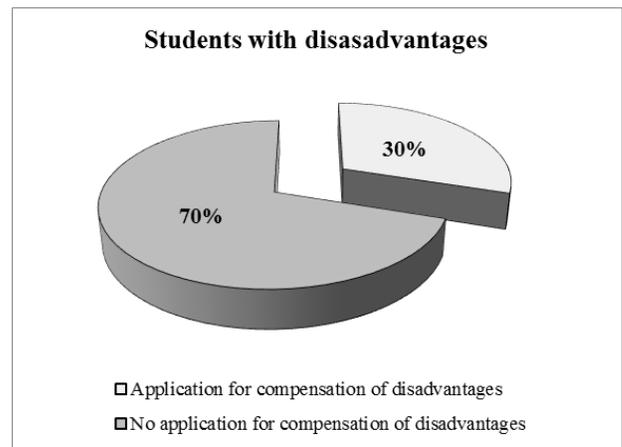


Figure 2: Percent of German students with handicap who applied for special study arrangements - on the data basis of (German Association of Student Services Organizations 2012)

Application and Procedure

Without an application at the examination committee students with particular challenges cannot hope for adapted study and examination conditions. The reason for this is that without information about the disability or chronic illness, universities cannot react on the special student's situation and organize compensation for disadvantages.

Students must apply for individual examination arrangements normally before starting the examination. After an examination has been taken, students cannot complain to examination management about not providing a compensation for disadvantages they have not applied for.

How long in advance of the examination the application for compensation must be submitted depends on the respective university's regulation. At University of Oxford, special examination arrangements should be re-requested after matriculation and no later than Friday of Week 4 of the term before the examination (Oxford University 2015). The Norwegian Telemark University College and the University of St. Gallen (for decentral examinations) set the application deadline four weeks prior to the examination unless the applicant proves that the basis for the application has occurred after the deadline has expired (Telemark University College 2015b; University of St. Gallen 2014). At University of St. Gallen, for central examinations the application for special arrangements must be submitted before expiry of the registration period (University of St. Gallen 2014). Nearly all investigated universities' examination regulations demand a submission of the application via a filled application form or in another written way. The application for compensations must be sent to the responsible body at the university, typically the examination committee. Furthermore, an evidence of the disability/chronic illness by a medical certificate etc. is necessary. In particular cases also a certificate of the public health officer needs to be requested.

Time extension

Time extension is one of the most often used special examination arrangement in higher education (German Association of Student Services Organizations 2012). It can compensate various kinds of disability and chronic illness.

42 per cent of all disabled and chronic ill students at German universities have problems with time limitation in examinations, a survey of the German Association of Student Services Organizations found (German Association of Student Services Organizations 2012). As a result, 23 per cent of handicapped students of all disciplines applied for time extension in examinations while the approval rate for that kind of compensation was 69 per cent (German Association of Student Services Organizations 2012).

Recommendations for time extension as a compensation for handicapped students can be found in all of the compared university regulations. An extended time for testing is suggested especially for students with visual impairments and specific learning disabilities, chronic illness and mental health issues (Texas A&M University 2015). Most of universities compensate disadvantages by 15 additional minutes per examination hour (University of St. Gallen 2012) or even up to 50 per cent of the regular examination duration (Ludwig-Maximilians-Universität Munich 2014). But, not in any case an extension of time may be justified. The Higher Administrative Court of North Rhine-Westphalia decided 2010 that thinking blockades resulting from an anxiety disorder in examination situations does not entitle the student to additional time in a written examination (Higher Administrative Court North Rhine-Westphalia 2010). It stated that written examinations are used to proof the examinee's knowledge and skills. Their results are based on the individual mental performance which must be able to express by students under equal conditions. This means that only impairments which limit the examinee to technically express his or her mental performance must be compensated, e.g. if the examinee has problems in the mechanical presentation of knowledge and skills (Higher Administrative Court North Rhine-Westphalia 2010) such as students with Muscular Dystrophy. In the mentioned court case the individual mental performance already has been limited by personally-based impairments.

Type of examination

Because of the type of their disability or chronic illness some students are not able to take an examination in the regular form. For example for students who cannot write because of physical disabilities or who have visual problems, the conversion of a written test into an oral examination may be an adequate compensation of disadvantages (Ludwig-Maximilians-Universität Munich 2014). Students with mental health issues sometimes have problems with examination in front of an auditorium or with proctored tests. Instead of the planned examination students may be offered homework or another adequate form of testing.

But compensation for disadvantages by changing the testing type is not legitimate in any case. Thus, a German Administrative Court decided that special examination arrangements such as replacement of proctored tests by homework are not necessary if, with this special kind of examination, the examinee's personally-based mental performance should be examined (Administrative Court Bremen 2015).

Nearly all investigated university regulations contain the compensation measure of replacement of one type of examination by another one, thus for example the guidelines for lecturers of the Ludwig-Maximilians-University Munich (Ludwig-Maximilians-Universität Munich 2014).

Personal or material aids

Often, disadvantages of students will be compensated by time extension or visual aids. But there are various other possibilities to compensate impairments of disabled or chronic ill students in examination procedures. Below, a list is provided with personal or material compensation measures most commonly offered by universities all over the world:

- Separate examination room
- Refreshable braille display
- Adjustment of examination papers (e.g. large letters, colored paper)
- Use of a word processor
- Use of a computer with a spell-checking program
- Written instructions for students with hearing impairments
- Ergonomic or other seating arrangements
- Permission to bring food and drink in an examination
- TV monitor connected to microscope to enlarge images for students with visual impairments
- Computers with enlarged screen images for students with visual impairments
- Visual aids, visual warning systems for students with visual impairments

Universities in other countries than in Germany are mostly very moderate in compensation of students' disadvantages. But, in German jurisprudence there are some concerns regarding too generous compensations e.g. using a laptop as a compensation measure for students with writing impairments. Using a laptop may cause a danger of overcompensation for disadvantages resulting from disability or chronic illness. In 2011, the Bavarian Higher Administrative Court argued that while typing on a laptop the writing speed could be higher compared to handwriting which might be an advantage in relation to other examinees. Furthermore, while writing on a laptop all advantages of word processing and spell-checking can be used. Also advantageous can be the better readability because of the electronic writing (Bavarian Higher Administrative Court 2011). That's why German Examination Law only allows a personal typist as a compensation measure in these cases. Writing on a laptop should only be a compensation measure if the disabled or chronic ill student, because of other handicaps, isn't able to dictate a text to the typist as well.

5. LEGAL REMEDIES

In which way the right to compensation of disadvantages in universities' examination procedures can be enforced will depend from the respective national law and the universities' regulations.

In Germany, an objection against the decision of the chairman of the responsible examination committee must be submitted within four weeks. See as an example Paragraph 17 of the Examination Regulations of the International Master's Degree Program Structural Engineering at HTWK Leipzig University of Applied Sciences (HTWK Leipzig University of Applied Sciences 2011). If the objection will be rejected by the examination committee, a rejection notice will be issued. Against that notice legal proceedings can be instituted by the student with the administrative court in charge.

In other countries, instruments of remedies depend on the respective national law. For example in the USA handicapped students have the possibility to

- File an internal grievance/appeal with the school
- File a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) or the U.S. Department of Justice (DOJ)
- Try to resolve things informally through private mediation; and/or
- File a lawsuit (California's Protection & Advocacy System 2013).

6. RECOMMENDATIONS

On the basis of the above mentioned, recommendations can be made as follows.

Compensation

A professional university's compensation policy starts with the first day disabled or chronic ill students arrive at university. Earliest information about handicaps of students facilitates the planning of special course and examination accommodations for the department and examination management. At start of each new term lecturers should ask students for handicaps and offer these student personal assistance during the lectures because some students do not inform the faculty about their disability or chronic illness by themselves.

Additionally, personal consultation for students with disadvantages should be offered by the examination management or the university's disability advisory service to advice students on applications for examination arrangements and to discuss the useful compensation for disadvantages arising from the particular student's situation in detail. This is essential because necessity and type of compensation measures can vary even for similar handicaps. The respective circumstances at the place of study, the specific requirements of the study program and the examination conditions play a major role in this situation. Compensations must always be individual, situation specific, necessary and suitable. Often it will be a package of compensation measures. That's why it is difficult to give binding recommendations for a compensation of disadvantages. In any case universities must avoid advantages of the handicapped students in comparison with the other students.

Moreover, compensation arrangements for disabled or chronic ill examinees should be made in writing in order to avoid misunderstandings. If there are any doubts regarding the disability or chronic illness status of a student, a medical certificate of the public health officer should be requested.

Examination procedure

Legal compliance of examination procedures is the basis for the satisfaction of universities and students. Regarding compensation of impairments, a careful formulation of the universities' examination regulations will be as helpful as the continuous training and instruction of the examination management. It is recommended to offer examination guidelines to the responsible staff. The guidelines should contain an organizational checklist and a preprinted form where the procedure and special occurrences during the examination can be noted. This practice can be useful as evidence in a lawsuit. Regarding disabled and chronic ill students the approval of individual examination arrangements and their correct realization while the examination must be documented.

7. CONCLUSIONS

Handicapped people are able to be great scientists and researchers. As an outstanding example, Stephen Hawkins as one of the brilliant brains of our time is able to explain us the world of physics and astrophysics. Thus, higher education of disabled people is not an end in itself but an important service for society. However, not everyone who is starting in a study program is good enough to graduate. This applies to both handicapped and not handicapped students. Disabled people do not want to be privileged. They only want to have equal opportunities.

Many universities' examination regulations world-wide are similar and care about students with handicaps. Of course, at universities there is still a lot to do in creating equal opportunities for handicapped students without disadvantage the other students. But higher education institutions in Europe and USA are on a good way to improve the access of disabled people to university education.

Universities all over the world should be open for students with disadvantages because they can positively influence the academic society. The future will show if universities' efforts in compensating disadvantages in examination procedures will help more handicapped students to graduate.

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