



REASONABLE ACCOMMODATION

in Education

1 WHAT IS “REASONABLE ACCOMMODATION”?

Article 2 of the UN Convention on the Rights of Persons with Disabilities defines reasonable accommodation as “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.”

With respect to the right to education, reasonable accommodation means ensuring the specific support needs of learners with disabilities are provided for so that they are able to equitably participate in learning alongside their peers.

The UN CRPD General Comment 4 states that “**Reasonableness**” is understood as the result of an objective test that involves an analysis of the availability of resources, as well as the relevance of the accommodation, and the expected goal of countering discrimination.” What is reasonable is determined on a case-by-case basis by weighing up a number of considerations against the right to equitable education without discrimination.

Specific **accommodations** must cater to the needs of individual learners. There is no “one size fits all” formula to reasonable accommodation.

SOME EXAMPLES OF ACCOMMODATIONS FOR LEARNERS ARE:

- changing the location of a class,
- adaptations to the curriculum,
- adjusting LTSM, for example enlarging print, providing handouts in Braille etc.
- providing assistive devices,
- accommodations for assessment.

2 WHY DO WE NEED REASONABLE ACCOMMODATION?

Every child has an **equal right** to quality basic education as guaranteed in the South African Constitution. This means ALL children should be able to participate on an equal basis with their peers in order to reach their full learning potential. Some learners may require additional accommodations to participate equitably.

The right to education within an inclusive education system such as we have in South Africa, means that children with disabilities have the right to attend their local ordinary school and receive the necessary support to learn. Segregation of learners with disabilities into special schools should be seen as the exception and not the rule. Separating children in education promotes exclusion and is not conducive to the respect, acceptance and tolerance that broader societal inclusion brings.

3 WHAT ARE THE OBLIGATIONS OF ORDINARY SCHOOLS TO PROVIDE REASONABLE ACCOMMODATIONS?

Article 24 2 (c) of the UN CRPD places a direct obligation on state parties to ensure that “Reasonable accommodation of the individual’s requirements is provided.” Failure to provide reasonable accommodation amounts to discrimination. Section 5 (1) of the South African School Act, 1984 states, “A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.” There is therefore a clear obligation, established in the international and local legislative and policy framework, for the education system to comply with the requirement to provide reasonable accommodations.

What this means for ordinary public schools is that when a child with disabilities applies to your school, there is a duty to admit the learner, immediately assess their support needs and make the appropriate accommodations. The Screening, Identification, Assessment and Support Policy (SIAS) 2014, outlines the process for support provision.

4 WHAT IS MEANT BY “REASONABLY PRACTICABLE”?

Section 12 (4) of the South African Schools Act states, “The Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at **ordinary public schools** and provide relevant educational support services for such learners.”

The only limitation to this duty is contained in the phrase “**where reasonably practicable**”.

Where the support needs of the learner are not reasonably able to be met by the ordinary school, referral by the school – through the SIAS process – to a special school may be considered. This would be the case where the learner requires high level, intensive, daily specialist support and equipment and assistive devices that can only be provided by such a school.

Section 29 (1) (a) of the Constitution states that the right to basic education is unqualified, not subject to the availability of resources and therefore must be directly and immediately implemented. Therefore, financial constraints cannot be used as a justification under reasonable practicability. Despite this, there are limited resources in many ordinary schools which impact on their immediate availability to provide reasonable accommodations. However, many reasonable accommodations are in fact low cost and relatively simple to implement.

FOR MORE INFORMATION

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ACCESSIBILITY OF SCHOOL INFRASTRUCTURE

The fact that a school is not accessible cannot be used as a reason for declining admission. S 12 (5) of the South African Schools Act states, “The Member of the Executive Council must take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.”

The Equality Court in the Oortman Case (2010) ruled that the school had not taken all the reasonable steps to accommodate Oortman, and that the school had to remove all obstacles for the learner in order to enable her to have access to the classroom, washbasin and toilet allocated to the learner by using her wheelchair.

Note

Parents are often not given a choice as to where their child attends school. The South African Schools Act in S 5 (6) clarifies that, “In determining the placement of a learner with special education needs, the Head of Department and principal must take into account the rights and wishes of the parents of such learner.” Parents must be involved in a consultation process to determine the most appropriate placement.

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