

Guidance for Subject Representatives and Faculty Representatives for Students with Disabilities on advising and deciding on compensation for disadvantages

If students experience disadvantages in their studies due to an impairment (disability and/or chronic illness), these disadvantages must be compensated through appropriate measures. Such accommodations take into account the difficulties that students with disabilities face in demonstrating their knowledge and skills under standardised conditions.

In principle, such compensatory measures can apply to all forms of study. The examination regulations generally stipulate that, taking into account the principle of equal opportunities, the student must be granted needs-based deviations from the form and duration of required coursework and degree-relevant examinations, as well as the use of aids or assistants, if the student can credibly demonstrate that they are unable to complete required coursework or degree-relevant examinations in whole or in part in the form intended due to a disability or chronic illness. The same applies to any requirements for participation in modules or for the completion of the required coursework and degree-relevant examinations of those modules as set out in the respective examination regulations.

However, the following conditions must be met for compensation for disadvantages to be granted:

- Equal opportunities for all students must be maintained, i.e. compensating for disadvantages may not lead to students with disabilities being placed at an advantage.
- The impairment must be long term, i.e. there may not be any certainty of cure or freedom from symptoms in the foreseeable future. § 2 (1) of Book IX of the German Social Code [SGB IX] currently assumes that a prolonged impairment will likely last longer than six months.

Important questions for guidance interviews before the student submits an application:

- What options are already available in the examination regulations for using alternative examination formats that are accessible to all students? (For example, the examination regulations provide for a choice between an oral and a written examination in the modules concerned.)
- What might be helpful conditions to enable the student to participate in degree-relevant examinations without disadvantage without compromising the principle of equal opportunities? (For example: clear communication about the possibility of withdrawal; atmospheric conditions such as a quiet examination room; access to drinks...)
- Is there a short-term alternative examination date that students can attend once they have recovered? (In this case, it is not necessary for the student to apply for compensation for disadvantages; instead, they may be able to withdraw from an examination for a valid reason.)
- Can the faculty, if necessary in cooperation with the Faculty Representative for Students with Disabilities and with the advice of Dept. 1.7 (Coordination of inclusion in the organisation of teaching and studies), create the organisational conditions so that students with disabilities can participate

in regular examinations or meet mandatory attendance requirements (in the sense of inclusion before compensation for disadvantages)?

If no solutions can be found, compensation for disadvantages may be considered.

Conditions provided for in the examination regulations:

Ideally, examination regulations should be designed to allow all students to choose between different examination formats. Therefore, it may also be the role of the Faculty Representatives for Students with Disabilities to ensure that examination formats are designed accordingly when examination regulations are drafted.

Where examination regulations provide for mandatory attendance, this is generally not eligible for compensation, because the constitutionally guaranteed freedom to practice an occupation means that mandatory attendance can only be imposed if the targeted competencies cannot be acquired by any other means than attendance.¹ It is therefore difficult to justify exceptions in this case. In the case of field trips and excursions, an example of a plausible exception to mandatory attendance as set out in the examination regulations could be that a student may complete the field trip course on individual days and at individual locations without overnight stays, rather than on a continuous trip lasting several days.

Possible aids to compensate for disadvantages:

The Faculty Representatives for Students with Disabilities are responsible for checking what types of aids can be provided by the faculty. In this process, they can seek the advice of Dept. 1.7 (Coordination of inclusion in the organisation of teaching and studies). Examples of possible aids include laptops suitable for students with functional impairments for handwritten assignments, and magnifying glasses and other aids for enlarging study documents. Some students with disabilities bring their own language software and study assistants.

Limits on the content and timing of compensation:

Compensation can only be granted for disadvantages that are not related to the core competencies to be assessed and that do not provide an advantage to students with disabilities by requiring them to demonstrate a lower level of the competencies to be assessed.

Prior to changing the type of examination, it should be checked whether the originally intended type of examination can be completed by the applicant with the help of inclusive measures (e.g. provision of an accessible laboratory bench) or with the help of less extensive compensation for disadvantages (e.g. extension of the writing time, a separate room, proximity of toilets etc.).

If the type of examination has to be changed, care must be taken to ensure that the examination is still of an equivalent standard.² Examples of degree-relevant examinations that test different competencies are term papers and written examinations.

If the competencies to be demonstrated require an in-person examination, the examination cannot be conducted digitally.

According to § 64 (2a) of the Higher Education Act of the Federal State of North Rhine-Westphalia [*Hochschulgesetz – HG NRW*], compensation for disadvantages for people with a disability or chronic illness should extend to all degree-relevant examinations to be completed during the programme, provided that the condition/status of the student's illness or disability is expected to remain unchanged.

In most cases, this is also what is stated in the examination regulations. Assuming that the student's condition remains unchanged, the decision on compensation for disadvantages "should" cover all similar examinations until the student completes their studies. However, since § 64 (2a) HG is a "should" stipulation that can be deviated from on reasonable grounds, it would also be possible to decide on a semester-by-semester basis, especially if, from a subject-related perspective, different types of compensation for disadvantages can be considered for individual examinations. It may be that one of the field trips can be replaced by a Learnweb video, but another absolutely cannot – in which case a "collective decision" would not make sense or would be complicated. If the medical certificate covers a limited period, compensation for disadvantages can only be granted for that period.

Key principles for deciding on compensation for disadvantages – legal criteria:

- Does the student have a disability or chronic illness, documented by a medical certificate issued by a medical specialist or psychotherapist?
- What competencies is the student to demonstrate in the examinations concerned, i.e. will the same competencies be tested as for all other students, despite the granting of compensation for disadvantages?
- Does the requested compensation for disadvantages only compensate for any disadvantage concerning the examination setting? In other words, does the compensation for disadvantages ensure that there is no compensation for disadvantages in the area of the core competencies to be assessed by the examination?
- Does the compensation for disadvantages not violate the principle of equal treatment is not violated, i.e. is it ensured that students with disabilities do not gain an advantage from the measure?

If these questions can be answered in the affirmative, compensation for disadvantages may be granted.

¹ Concerning this, see Baden-Württemberg Higher Administrative Court (Verwaltungsgerichtshof Baden-Württemberg), decision of 21 November 2017 – 9 S 1145/16 –, paragraphs 54-55, juris: "*[...] In particular, the question arises as to whether the interference with the fundamental right to occupational freedom inherent in the justification for mandatory attendance is necessary in order to achieve the academic or learning objective of the course in question. Unlike in the case of traditional examination requirements, such as an oral or written examination, this question cannot automatically be answered in the affirmative. Simply attending a course does not necessarily mean that a student has achieved the learning objective. Attendance should therefore not constitute a performance in itself within the meaning of examination law, but only in combination with another performance such as listening, watching, contributing, participating in a dialogue or a practical activity. At least in the case of courses that are primarily concerned with the transfer of knowledge, the learning objective can often be achieved in other ways that are less stressful for the student, in particular through self-study. This is especially true when one considers the possibilities now available to individuals through the internet and social media... However, in the case of other courses that are designed to enable students to acquire practical skills, for example, such as field trips or laboratory practical courses, the requirement can be answered in the affirmative.*"

² "In any case, the other ('substituting') examination must still be suitable for documenting the candidate's aptitude; if this is not the case, a change in the type of examination is precluded from the outset since such an examination would not be an equivalent degree-relevant examination taken in a different way and would therefore violate the principle of equal opportunities," Fischer/Jeremias/Dieterich, Prüfungsrecht, 8th edition, paragraph 301h.