

# The Equal Status Act 2000 - A Brief Guide for Students with Disabilities.

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## **Given the title of the act, how can the Equal Status Act provide protection to students with disabilities studying in higher education institutions?**

The Equal Status Act prohibits discrimination at an 'educational establishment' at section 7 of the Act which defines an educational establishment as:

".. a pre-school service within the meaning of Part VII of the Child Care Act, 1991, a primary or post-primary school, an institution providing adult, continuing or further education, or a university or any other third-level or higher-level institution, whether or not supported by public funds."

The purpose of this definition is to ensure that all educational establishments, private and public, come within the definition of an 'educational establishment'.

## **How is disability defined within the Act?**

The legislation employs a very broad definition of disability which attempts to encompass all conditions that can amount to a disability. The definition is as follows:

"'disability' means -

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person's body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour".

This definition is likely to cover any disability experienced by a student at third level. The legislation also prohibits discrimination against a person with a history of a

disability, a possible propensity toward a disability or imputed with a disability. For example, a person with a history of psychiatric illness who no longer experiences any illness and who encounters discrimination because of their past medical history is now protected under the legislation.

Section 3(1)(a) states:

"For the purposes of this Act, discrimination shall be taken to occur where -

(a) on any of the grounds specified in subsection (2) (in this Act referred to as "the discriminatory grounds") which exists at present or previously existed but no longer exists or may exist in the future, or which is imputed to the person concerned, a person is treated less favourably than another person is, has been or would be treated".

Interestingly section 3(1)(b)(i) also prohibits direct discrimination by virtue of an association with a particular person. That is to say that a person who is associated with a particular person may not be treated less favourably by virtue of that association.

The Act also prohibits discrimination based gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community.

## **What does the act require of higher education institutions?**

All education institutions are covered by the Act, and the Act prohibits all educational establishments from discriminating on the basis of any of the discriminatory grounds in the legislation, including disability. Educational establishments are prohibited from directly and indirectly discriminating in relation to:

- admission,
- the terms or conditions of admission,
- access to any course,
- access to any facility or benefit provided,
- or any other term or condition of participation in the establishment,
- expulsion of a student or any other sanction against a student - section 7.

Direct discrimination for the purposes of the Act is defined as treating one person less favourably than another on one of the discriminatory grounds, including disability - section 3(1). Indirect discrimination is a provision that can be in the form of a requirement or practice that applies equally to all prospective or existing students but which operates to the disadvantage of one group such as students with disabilities, or can be complied with by a substantially smaller proportion of students with disabilities when compared with able-bodied students - section 3(1)(c).

It is important to note at this juncture that there are a number of derogations specific to disability within the Act.

Section 4(4) states:

"Where a person has a disability that, in the circumstances could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.

The difference in treatment in this instance is permitted, and that difference of treatment should only be that that is deemed reasonably necessary".

The second derogation relates specifically to educational establishments and is at section 7(4)(b). This section states that an educational establishment does not need to comply with the conditions laid down in the legislation:

"to the extent that compliance with any of its provisions in relation to a student with a disability would, by virtue of the disability, make impossible, or have a seriously detrimental effect on, the provision by an educational establishment of its services to other students".

This means that an educational establishment may discriminate against an individual student or potential student with a disability, where the institution can demonstrate that not to discriminate against that student, would 'make impossible' or have a 'seriously detrimental effect' on the education of other students.

It is important to note that an educational establishment can raise this defence only in relation to individual students. It cannot be used to exclude for example all students with a specific disability from a particular course of study.

### **Is a higher education institution obliged to provide reasonable accommodation to students with disabilities?**

The legislation states that an educational establishment will discriminate against a student with disability if they do not do all that is reasonable to accommodate that student. This accommodation can be by means of providing special treatment or facilities if, without such accommodation it would be impossible or unduly difficult for the person to avail of the service provided by the educational establishment - section 4. Section 4 goes on to state that the service provider (educational establishment) will not have to provide that accommodation if it gives rise to more than a 'nominal cost.' Equally the service provider need not accommodate a student with a disability where 'by virtue of another provision of this Act, a refusal or failure to provide the service in question to that person would not constitute discrimination' - Section 4(3). The legislation does not define what is meant by 'unduly difficult' or 'nominal cost' which will be defined through case law.

Where there is funding available to meet the costs of accommodations required, such as the Special Fund for Students with Disabilities at Third Level or HEA targeted funding,

then the educational institute is obliged to pursue them in addition to covering any other costs up to a 'nominal' level.

### **Does the responsibility to provide accommodation extend to other services available to students on campus such as sports facilities?**

In section 7(2) it states that an educational establishment shall not discriminate in relation to access to facilities, benefits or on the conditions of participation in the establishment by the student. This would suggest that the responsibility to provide accommodation does extend to other services. However, section 7(4)(a) states that section 7(2) does not apply in relation to different treatment of students with disabilities in:

"relation to the provision or organisation of sporting facilities or sporting events, to the extent that the differences are reasonably necessary having regard to the nature of the facilities or events".

This provision does suggest an ability by the educational institute to discriminate, however, it would appear that that discrimination is permitted to allow the under eighteen boys to compete against one another, or equally to allow a wheelchair race to be confined to wheelchair users. The discrimination is only permissible having regard to the nature of the facility or the event, so it is event or sport specific.

Section 7(4)(b) is relevant here also, and again the situation is that an educational establishment need not comply with the provisions of the legislation with regard to students with disabilities if such compliance would have a seriously detrimental effect on the provision of the establishment's services to other students.

### **Are individual lecturers obliged to provide accommodations?**

Yes, section 42 of the Act deals with vicarious liability. In the example of a lecturer, any action undertaken by a lecturer in the course of his or her employment can be deemed an action of the employer. This means that the college is responsible for such actions and if the lecturer refuses to provide a required accommodation then proceedings can be brought against the college. There is a defence open to the educational institute if they took such steps as were reasonably applicable to prevent the employee in question from doing the complained of act.

### **Is Positive Action permitted under the legislation?**

Section 14 states that nothing in this Act prohibits preferential treatment, or taking positive measures which are bona fide intended to promote equality of opportunity for disadvantaged people, or people who have been unable to avail of the same opportunities as others. Equally section 14 permits the catering for the special needs of persons, or a category of persons, who, may require facilities, arrangements, services or assistance.

Section 14 makes it clear that positive action will be permissible where it is intended to promote equality of opportunity for disadvantaged people.

### **What redress is available to students who feel they may have been discriminated against under the Act?**

A student seeking redress under the Act must notify the educational establishment, in writing, within two months of the alleged prohibited conduct occurring as to the nature of the allegations, and the student's intention, if not satisfied with the educational establishment's response to the allegation to seek redress by referring the case to the Director of Equality Investigations. A standard form for use by the complainant in submitting this notification in writing has been prepared by the Office of the Director of Equality Investigations and is available from the Office or from the Equality Authority. The student may also in that notification seek information by way of questions to the educational establishment; this information must be related to their claim to the Director - section 21.

While the educational establishment does not have to comply with this request for information, the Director is allowed to draw inference from a refusal to comply - section 26. The Director will proceed with the claim either when the educational institution has responded to the claim or when one month has elapsed from the date it was sent to the educational establishment. There is a provision for the Director to grant extensions however, they will only be granted in exceptional circumstances. On receiving a complaint of this type the Director has a number of courses of action open to her or him. The Director may investigate the complaint, refer it to mediation, or dismiss it, on conclusion of the complaint by whatever means the Director may order compensation or a course of action. In the case of the latter it remains to be seen what form of direction the Director is likely to make.

All decisions of the Director can be appealed to the Circuit Court. The person appealing the decision must do so within 42 days of the date of the decision by the Director.

#### Example I

A student who is a wheelchair user has difficulty negotiating the college and could be accommodated by making the campus accessible. The college is obliged to pursue any funding which may be available to make the campus accessible in addition to providing funding up a 'nominal' level. If that student could be accommodated by moving that particular student's classes into an accessible part of the campus then that accommodation is likely to be reasonable as this would attract only nominal costs in relation to administration.

### Example II

A student with dyslexia has difficulty with written material which could be minimised or accommodated by either the following facilities: permission to tape-record the lecture, or the provision of notes from the lecturer. Both these accommodations are unlikely to incur costs which exceed a 'nominal' level and could therefore be facilitated by the college.

### Example III

A student is deaf and lip-reads and also uses a radio aid to communicate. The student wishes to join the Debating Society but knows that the debates are always held in a lecture theatre which is poorly lit, has poor acoustics and no loop system, all of which would make communication for the student very difficult. The request from the student that the venue for the debates be changed to an alternative theatre would constitute a reasonable accommodation in facilitating access to a service (students' societies) available to students on campus.

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## Useful Addresses:

### Office of the Director of Equality Investigations.

3 Clonmel Street,  
Dublin 2.  
Tel: 01 417 3300.  
Lo Call No: 1890 34 44 24.  
Fax: 01 417 3399.  
Email: [info@odei.ie](mailto:info@odei.ie).  
Website: [www.odei.ie](http://www.odei.ie).

### The Equality Authority.

Clonmel Street,  
Dublin 2.  
Tel: 01 417 33333.  
Text Phone: 01 417 3385.  
Lo Call No: 1890 245545.  
Fax: 01 417 3366.  
Email: [info@equality.ie](mailto:info@equality.ie).  
Website: [www.equality.ie](http://www.equality.ie).

**AHEAD - Association for Higher Education Access and Disability.**

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This fact sheet was compiled by Shivaun Quinlivan, lecturer of law at NUI Galway, on behalf of AHEAD.

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