



The law and disabled students – in HE

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- **1.5 Unlawful under the [Equality Act 2010] Act**
- FE/HE institutions must not **discriminate** against students, **harass** or **victimise** students.
- Your FE/HE institution:
 - **must not:** treat students worse than someone else because of their protected characteristic = **direct** discrimination.
 - **must not:** Make a decision, or apply a rule, or way of doing things that has a worse impact on students than on others without the protected characteristic.
 - **must not:** disadvantage students. A disadvantage might include denial of an opportunity or choice, rejection or exclusion.

(Equality and Human Rights Commission, 2014)

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Cont.

But they need an e.g.
Inclusive Learning Plan

- If your student is **disabled**, your FE/HE institution:
 - must not treat students unfavourably because of something connected to their disability where the university cannot show that what they are doing is objectively justified.
 - An organisation does not have to **know** that a person meets the legal definition of 'a disabled person', *just that he or she has an impairment which is likely to meet the definition.*
 - **must make reasonable adjustments** to ensure that students can use the education and other benefits, facilities and services provided as far as is reasonable to the same standard as non-disabled students.

(Equality and Human Rights Commission, 2014)

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- **Harassment** - unwanted behaviour related to a protected characteristic, or which is of a sexual nature, that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for you.
- **Victimisation** - A further or higher education institution must not treat you badly because you have done a 'protected act' (or because the institution believes that you have or are going to do a protected act).
- A 'protected act' is:
 - making a claim or complaint of discrimination (under the Equality Act)
 - helping someone else to make a claim by giving evidence or information
 - making an allegation that the further or higher education institution or someone else has breached the Act
 - doing anything else in connection with the Act

(Equality and Human Rights Commission, 2014)

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- 2.1.3 Discrimination arising from disability
- If you are a disabled student, it will be discrimination arising from disability if a further or higher education institution treats you unfavourably because of something connected with (arising in consequence of) your disability and the treatment cannot be justified. **There is no need for you to compare your treatment to that of anyone else and you do not need to show that any other disabled students have been treated unfavourably.**

(Equality and Human Rights Commission, 2014)

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What do reasonable adjustments look like?

2.1.4 The duty to make reasonable adjustments:

FE/HE institutions are required to take reasonable steps to **avoid substantial disadvantage in comparison with non-disabled students**:

- **where a provision, criterion or practice puts you at a substantial disadvantage**
- **where a physical feature of the building/premises puts you at a substantial disadvantage**
- **provide an auxiliary aid where, without one, you would be put at a substantial disadvantage.**

Where the reasonable **adjustment you need concerns the provision of information, the steps it is reasonable to take include ensuring the information is provided in an accessible format.**

An institution cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue is whether or not the adjustment is 'reasonable'.

(Equality and Human Rights Commission, 2014)

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What is a substantial disadvantage?

- The Act defines a ‘substantial disadvantage’ as one that is more than minor or trivial. **The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if you did not have a disability.**
- FE/HE institutions will need to take into account factors when considering what a substantial disadvantage might be, such as:
 - the time and effort that you might need to expend
 - the inconvenience, indignity or discomfort you might suffer
 - the loss of opportunity or the diminished progress you might make in comparison with your peers who are not disabled.

(Equality and Human Rights Commission, 2014)

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- Where a provision, criterion or practice places you at a substantial disadvantage in accessing education and any benefit, facility or service, **the institution must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect.**



(Equality and Human Rights Commission, 2014)

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HE assessments & the law

- **Disabled students and assessments**
- FE/HE institutions are required to make reasonable adjustments to its assessment methods
- Cannot lower academic standards to measure competence/ability
- But, reasonable adjustments might include:
 - providing readers
 - Interpreters
- rest breaks
- extra time
- Assistants
- flexible deadlines/extensions
- or alternative assessment methods.

Make these things the norm, and reassure students they are not failures for needing these reasonable accommodations

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Examinations/presenting – accommodations/adjustments example

“**Examinations/presenting** questions posed in ways which require understanding the subject matter from an examiner’s perspective [create] considerable disadvantage” – p.4.

- “Differences/difficulties understanding:
 - abstract concepts
 - planning
 - focusing
 - sustaining and shifting attention,
 - shifting focus
 - working memory” p.4.
- Murray (2018)



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Resources

- Farahar, University Reasonable Adjustments document
<https://aucademy885263551.files.wordpress.com/2020/09/guidance-for-viva-examination-of-autistic-phd-students-by-chloe-farahar.pdf>
- Farahar, Common environmental challenges & potential solutions downloadable table
<https://aucademy885263551.files.wordpress.com/2021/03/common-environmental-challenges-potential-solutions-downloadable-table.pdf>
- Farahar, working with neurodiversity in mind: What can we learn from lockdown?
<https://youtu.be/F1GIXuJL6Zs?list=TLGGH0TnywMeMmUyMTAzMjAyMQ>

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- Videoed interview with Farahar and Foster on being Autistic in an ableist academia
<https://aucademy.co.uk/2021/07/03/ableism-in-academia-dr-chloe-farahar-annette-foster/>
- Murray, F. (2018, November 30). *Me and Monotropism: A unified theory of autism*. Retrieved from The Psychologist: https://thepsychologist.bps.org.uk/me-and-monotropism-unified-theory-autism?fbclid=IwAR3vr83FiTLNQRiRYQPSdlhbCZMMQhivA_OFJ8YCcd_XilPv4cMf8Nr8ABg

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