

# Reasonable accommodation in an institution of higher education –Support to students with disabilities–

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Received: 25 January 2016

## Introduction

As part of the legislative preparation for the conclusion of the United Nations' "Convention on the Rights of Persons with Disabilities", the Persons with Disabilities Discrimination Elimination Act (hereinafter referred to as "the Act") was enacted in June 2013 and will take effect from April 2016. The aim of this law is to advance the elimination of discrimination due to disability so as to realize a society, in which all citizens mutually respect each other's personality and individuality and co-exist without being discriminated against because of disability. The definition of the disabled people covered by this law includes any person with "physical disability, intellectual disability, mental illness (including developmental disability) and any other disability to the function of the mind or body (hereinafter referred to generally as "disability") that is in a situation where their daily or social lives are greatly restricted continuously due to disability or social disability" (Cabinet Office, 2015).

## The outline of the Act

This Act is an independent act that embodies "the prohibition of infringement of rights by discrimination because of disability", "the prevention of infringement of rights caused by neglecting to eliminate social disabilities", and

"the diffusion of education and knowledge by the state" stipulated in Article 4 of the Basic Act for Disabled Persons. "Unfair discriminative treatment" and "prohibition of the lack of provision of reasonable accommodation" can be offered as examples of measures taken to eradicate discrimination. Additionally, "conflict resolution/consultation", "regional cooperation", "educational activities", and "information gathering etc." can be offered as examples of supporting measures taken to eradicate discrimination (Cabinet Office, 2015). Furthermore, the handling of "unfair discriminative treatment" and "prohibition of the lack of provision of reasonable accommodation" relative to the type of institution of higher education is as follows (Table 1).

## The scope of reasonable accommodation

Here we explain the approach to reasonable accommodation taken by institutions of higher education. Firstly, the range of students who are eligible for reasonable accommodation is defined as any person who wishes to enroll or enter an institution or university, or any student who is already enrolled in such an institution (including credited auditors, research students, and overseas students etc.). Furthermore, the range of students with disabilities is defined as any student who is in a situation where their daily or social lives are

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Table 1. Points regarding Institutions of Higher Education (Cabinet Office, 2015)

	Unfair discriminative treatment	Reasonable accommodation provided to disabled persons
National and Public Universities • Technical Colleges etc. (= National administrative body • Local public body etc.)	Prohibited	Legal duty
	Unfair discriminative treatment is prohibited	Must provide reasonable accommodation for disabled persons
Incorporated Educational Institution, Company set up school (= Private business persons※)	Prohibited	Obligation to make an effort
	Unfair discriminative treatment is prohibited	Must strive to provide reasonable accommodation for disabled persons

Note: The legal imposition on private business entities to offer reasonable accommodation is currently the subject of review in its third year after enactment.

greatly restricted continuously due to disability or social disability\*. Additionally, the scope of student activities is defined as all educational matters such as classes, extracurricular classes, and participation in school events etc.

Next, the details of the scope of Reasonable accommodation are as follows. Within the campus, “commuting support, on-campus assistance (meals, toilet etc.), moving around on campus, regular curriculum education (lectures, seminars, laboratory/practical classes), postgraduate research guidance, self study (preparation/review etc.), extracurricular education (student consultation, employment guidance, study guidance etc.), scholarship application, use of facilities (library, information processing room, student accommodation etc.), obtaining information, entrance exams, exams, course registration, school events (entrance ceremony, graduation ceremony, orientation) etc.” can be offered as examples. Off campus, activities such as “field work, teaching practice, internships, school events (entrance ceremony, graduation

ceremony, orientation, entrance exams) etc.” can be given as examples.

**Points to note regarding legal interpretation**

The following are important points regarding legal interpretation. First, unfair discriminative treatment and the prohibition of the lack of provision of reasonable accommodation do not cover individuals. This is because of the notion that legally restricting the ideas and speech or actions of an individual citizen who is not a business entity is inappropriate. Next, any discrimination between people with disabilities is not subject to this law. Unfair discriminative treatment is described as “to unfairly discriminate against someone due to disability and treat them differently from those without disability (article 7 and 8 of the Act)” and does not go as far as covering situations where the discrimination takes place between disabled persons. Finally, this law does not cover any indirect discrimination. As the primary subject of the act is the disabled person, for example, any actions directed at the parent of

\*: social disabilities refers to “any things (traffic, facilities and equipment that are difficult to use), institutions (which are difficult to utilize), customs (traditions and culture which may not take into account the existence of people with disabilities), ways of thinking (prejudice towards people with disabilities) and anything else within a society that can become an obstacle to leading a normal daily and social life for someone with a disability”. It is the notion that disability is not just an individual problem but that the issue also lies with society and the environment.

the disabled student is not considered discrimination. However, if the parent visits an event such as an open campus or job fair with the disabled student and receives unfair discriminatory treatment due to the disability of the aforementioned disabled student, then it is covered under this Act.

### **Example case study**

Although this is not an example involving a student with disabilities, it is an interesting reasonable accommodation case regarding physical disability.

This case is about June Kailes (61) who is a disability policy consultant at the Western University of Health Sciences in California. She has cerebral palsy and has been using a steering wheel type electric wheelchair for over 20 years. She came to Japan as part of a foreign researcher invitation project hosted by the Japanese Society for Rehabilitation of Persons with Disabilities. Before returning home, she and her husband wanted to do some sightseeing and booked two tickets on the Shinkansen from Tokyo station to Kyoto station at Japan Railways Shinjuku Station. However, as they went through the automatic ticket checker machines at Tokyo station, they were surrounded by 12 station staff and were stopped on the grounds that they could not allow steering wheel type wheelchairs as they could not cope with them in an emergency. Ms. Kailes explained that she would walk on and off the train by herself, and that the wheelchair could be taken apart and carried on as hand luggage but this was also rejected. The station staff conferred for an hour and suggested a compromise whereby they would lend Ms. Kailes a manual wheelchair and would keep her electric wheelchair at the station until her return. JR Central suggested this so the couple could “at least somehow travel”, but for Ms. Kailes, who also has a disability in her hands, manual wheelchairs are very hard to manage and, in the end, the couple gave up going to Kyoto

(“Steering wheel type wheelchair refused entry”, 2010). Ms. Kailes alluded to the guaranteed right of fair participation in society by saying what she found most difficult to understand was “why would you make such a big deal of this when all it would take to fix it would be a small change in the rules. It (the change) really isn’t a big problem, is it?” (“Steering wheel type wheelchair refused entry”, 2010).

### **Conclusion**

Finally, it would be fortunate if this could lead to more opportunities to think about the support given to students with disabilities by furthering understanding of “reasonable accommodation in an institution of higher education” as explained in this paper, taking into account the example given above. The enactment of this law will shift the support given to students with disabilities in institutions of higher education from “the goodwill of staff” to “strict observance of law as an obligation upon the institution as a business entity”. One sincerely hopes that the reinforcement of the educational system following this law change will lead to support that will allow students with disabilities to have fair opportunities.

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