

General information on adjustments for students with disabilities (*Nachteilsausgleich*) at the KU

Contents

General Information on adjustments for students with disabilities (<i>Nachteilsausgleich</i>) at the KU.....	1
1. Legal classification of the term ‘adjustment to compensate for disabilities’ (<i>Nachteilsausgleich</i>)	1
2. Adjustment procedure at the KU to compensate for disabilities	2
3. Possible measures for adjustment to compensate for disabilities	4
4. Further information (in German)	4

1. Legal classification of the term ‘adjustment to compensate for disabilities’ (*Nachteilsausgleich*)

If a student is unable to participate in an assessment for health reasons or any other reasons beyond the student’s control, they shall have the possibility to **withdraw from the assessment** (*Prüfungsrücktritt*). In this situation, students are affected by a temporary impairment of their physical and/or mental condition which directly affects the relevant ability to be tested in the assessment. Withdrawal is possible until the start of the assessment. After the start of the assessment, it is only possible to withdraw retroactively under very strict conditions.

A clear **distinction** must be made between the above situation and cases in which students are unable to present their skills in an assessment due to a significant permanent disability, in other words if it is impossible for them to show their existing knowledge in an adequate way. If there are supporting means to adequately compensate for such disability during the assessment and also in the student’s desired future profession, this circumstance must be taken into account in form of an **adjustment to compensate for disabilities (*Nachteilsausgleich*)**. This will compensate for any inequality of opportunity in line with the prohibition of discrimination in Article 3 para. 3 sentence 2 German Basic Law. If the inability to complete the assigned task within the stipulated period of time or under regular assessment conditions is not based on the mental (in)capacity of the assessed candidate but on physical reasons, the assessed candidate shall generally be entitled to compensation for this disadvantage.¹ The University shall be responsible for ensuring that the assessed candidate is able to complete the assessment under appropriate external conditions and with equal opportunity as his/her fellow students. The candidate’s performance during the assessment itself shall be in his/her own responsibility. The candidate’s achievement in the assessment must not be altered by the adjustment to compensate for disability. This means that the reference point for the adjustment is only the candidate’s ability to

¹ Administrative Court of Munich, order dated 12/03/1997.

show his/her best achievement but not the quality of the candidate's achievement as such. This means that no adjustment to compensate for disability may be provided if the way in which an assessment candidate presents his/her achievement will be taken into account when grading the assessment.² There shall be no overcompensation, as this would violate the principle of equal opportunity in accordance with examination law. In order to qualify for adjustments to compensate for a disability, the condition preventing the student from taking the assessment in the prescribed form must be a **prolonged or permanent disability or equivalent impairment**. In German law, the term "disability" is defined as follows³: "People with disabilities are people who have physical, psychological, mental or sensory impairments which can, in interaction with attitudinal or environmental barriers, prevent them from equal participation in society for a period of time which is likely to last more than six months. An impairment within the meaning of sentence 1 above shall be deemed to exist if the state of the body and health deviates from the state which is typical of the respective age." Typical cases eligible for adjustments to compensate for disabilities are, for example, visual impairments, bone fractures or paralyse and/or malformations of the limbs. Exam stress and exam anxiety are mainly rooted in specific strain situations caused by examinations and assessments. Every assessed candidate experiences such a condition in a more or less pronounced way depending on their mental state. Therefore, these generally fall into the category of acceptable risks which assessed candidates are subject to.⁴ Also concentration disorders which are typically based on tension and strain connected to examination situations must generally be dealt with.⁵

2. Adjustment procedure at the KU to compensate for disabilities

The regulations governing the adjustments to compensate for disabilities are stipulated in **Section 24 of the General Examination Regulations (APO)** (<https://www.ku.de/en/university/management-and-administration/administration/legal-affairs/legal-regulations/studies-and-teaching/>).

Students and boards of examiners can contact the **officer for students with disabilities** if they have any questions or need advice and support. This position, which is provided for in Section 29 of the KU Basic Rules, is held by Akad. Dir. Dr. Renate Hackel-de Latour. In case of a specific application for adjustment to compensate for a disability, the chairperson of the board of examiners may consult the officer subject to the student's approval; informal preliminary discussions are possible at any time.

The adjustment procedure to compensate for disabilities at the KU is completed in **writing** because it involves processing of highly sensitive personal data. Applications or decisions cannot be communicated by e-mail.

² cf. Morgenroth, Hochschulstudienrecht und Hochschulprüfungsrecht, 1st edition, marginal no. 406 et seqq.

³ Section 2 para. 1 German Social Code (*Sozialgesetzbuch*) IX.

⁴ Higher Administrative Court of Münster, verdict dated 06/05/2003.

⁵ Niehues/Fischer/Jeremias, Prüfungsrecht, 6th edition, marginal no. 256 et seqq.

In every case, the student will have to complete a **written application** form including all necessary corresponding evidence and submit the documents to the chairperson of the board of examiners so that he/she can decide on an adjustment to compensate for a disability. The KU will not take action *ex officio* (on its own initiative).⁶ The applicant can choose between different application forms: At the KU, it is either possible to submit an application for a specific assessment or assessments held within a limited period of time (for students with a temporary impairment) or for all assessments within a degree program, if the student has a permanent disability.

Applicants must attach a suitable **medical certificate**, generally a doctor's certificate or, if applicable, a certificate issued by a psychologist. Only in cases where there is no doubt about the existence of an obvious disability, no medical certificate is required. The chairperson of the relevant board of examiners shall decide on the matter. The medical certificate must include information on the type and extent of the adjustment to compensate for disabilities which is necessary from a medical point of view. In this case, a decision is not dependent on the diagnosis, but on the comprehensibility of the impairment: The medical certificate must provide a detailed outline of the causality of the impairment and its effect for individual assessments and provide sufficient rationale.

With regard to the *Fachhochschule* degree programs, the following decision of the board of examiners dated November 20, 2018, shall apply in accordance with Section 5 para. 3 sentence 2 General Examination Regulations for *Fachhochschulen* (RaPO) dated October 17, 2001, as amended from time to time:

The medical certificate must include the following:

1. A confirmation by the issuing doctor that the medical certificate is based on a medical examination of the student carried out by the issuing doctor personally,
2. The date and time of the medical examination,
3. The physical, mental and/or psychological impairment from a medical point of view as relevant for the assessment, described in a clear and comprehensible way so that the university can draw conclusions as to the extent and type of adjustment; and
4. The date of occurrence of the disability and probable duration.

In any case, the application must be submitted **in due time** to enable an informed decision by the chairperson of the board of examiners and to ensure that the organizational requirements, such as corresponding reservation of the examination room or similar, can be met. At the very latest, the application must be submitted together with the registration for the assessment.

On the basis of this application, the chairperson of the responsible board of examiners shall decide on the **needs-oriented organization of assessment conditions**. There is no legal requirement for involving the entire board of examiners. The chairperson of the board of examiners shall not be bound by the requested type of adjustment to compensate for disabilities, as the relevant determination shall not be made in accordance with general symptoms of certain disorders but in each case be evaluated by individual consideration of the specific case.⁷

⁶ cf. Higher Administrative Court of Münster, order dated 03/17/2015.

⁷ Niehues/Fischer/Jeremias, Prüfungsrecht, 6th edition, marginal no. 259 et seqq.

The student must be notified of the decision. The student's application and the attached supporting application documents shall be sent to the Examinations Office together with a copy of the decision to be filed in the student's examination file.

It is the student's responsibility to inform every examiner of the adjustment by presenting the decision of the chairperson of the board of examiners in due time and as early as possible.

Every examiner shall be obliged to implement the adjustment to compensate for disabilities in the approved form. In this case as well, the officer for students with disabilities is available to answer questions regarding the implementation of the approved measures.

3. Possible measures for adjustment to compensate for disabilities

Generally, all useful assistance and aids can be possible measures for adjustment to compensate for disabilities, provided that these do not result in an unfair advantage for students with disabilities compared to their fellow students and that they do not infringe equal opportunity for all assessed candidates.

Measures for adjustment are grouped in the following subcategories: on the one hand, students can be **granted extra time** (e.g. additional time to complete the assessment) and **permission of supporting materials** (e.g. reading aids) and other **assistance** on the other hand. It can also be required to provide **recuperation breaks** during the assessment or allow the student to complete the assessment in a **separate room**.

Provision of a laptop for completing a written examination must be assessed critically, as the means offered by a laptop generally surpass the appropriate extent of adjustment measures to be provided.⁸

Before changing the type of examination or assessment, it shall be assessed whether there is a measure which has a less interfering impact on the characteristics of the examination or assessment, such as, for example, provision of extra time for completing the assessment.

An adjustment to compensate for disabilities does not allow for any retake examination which is not provided for in the examination regulations.⁹

4. Further information (in German)

- <https://www.studentenwerke.de/de/content/nachteilsausgleich-antragsverfahren-und-nachweise>

⁸ Bavarian Administrative Court, order dated 3/1/2011.

⁹Administrative Court of Magdeburg, verdict dated 2/19/2013.