



Obligation to provide Reasonable Accommodation

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<http://edulaweu.eu>



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Reasonable accommodation

Definition of
reasonable accommodation

Requesting a Reasonable
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Scope of
reasonable accommodation



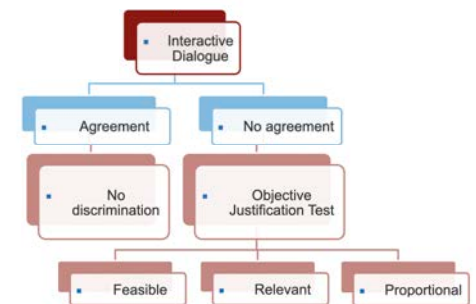
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Addressees of
reasonable accommodation



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Elements of
reasonable accommodation



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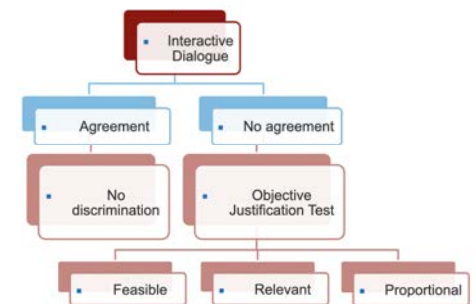
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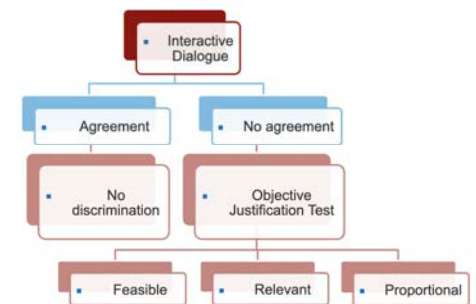
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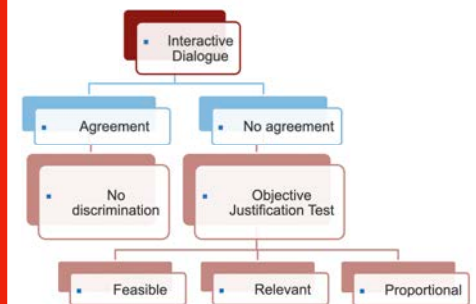
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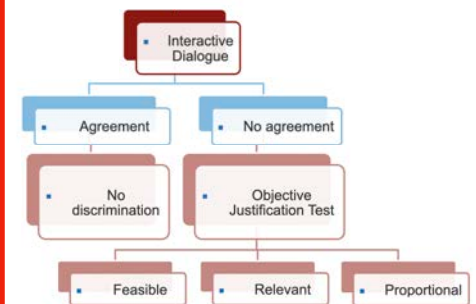
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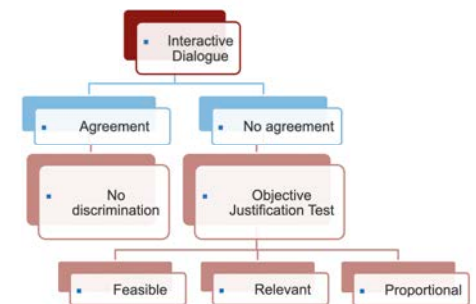
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Article 2: Definitions

For the purposes of the present Convention

Reasonable accommodation
=
necessary and appropriate **modification
and adjustments** not imposing a
disproportionate or undue burden, where
needed **in a particular case**, to ensure to
persons with disabilities the enjoyment or
exercise on an equal basis with others of
all human rights and fundamental freedoms

Reasonable Accommodation



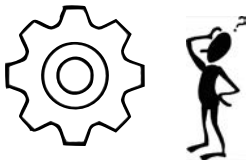
Article 24 CRPD reasonable accommodation and discrimination

Article 24 – Education



2. In realizing this right, States Parties shall ensure that:

c) Reasonable accommodation of the individual's requirements is provided;

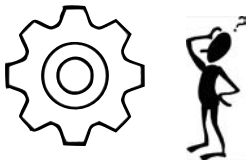


5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.



Article 24 CRPD reasonable accommodation and discrimination

Article 24 – Education



1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

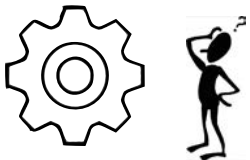
- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) Reasonable accommodation of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

Article 24 CRPD reasonable accommodation and discrimination

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Definition of reasonable accommodation

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Scope of reasonable accommodation



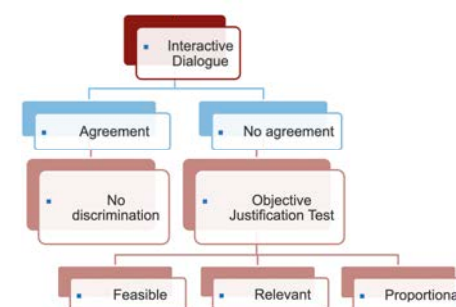
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Addressees of reasonable accommodation



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Elements of reasonable accommodation





Scope of reasonable accommodation

United Nations Convention on the Rights of Persons with Disabilities

Preamble

The States Parties to the present Convention,

Scope of reasonable accommodation



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Article 24: Education

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Scope of reasonable accommodation

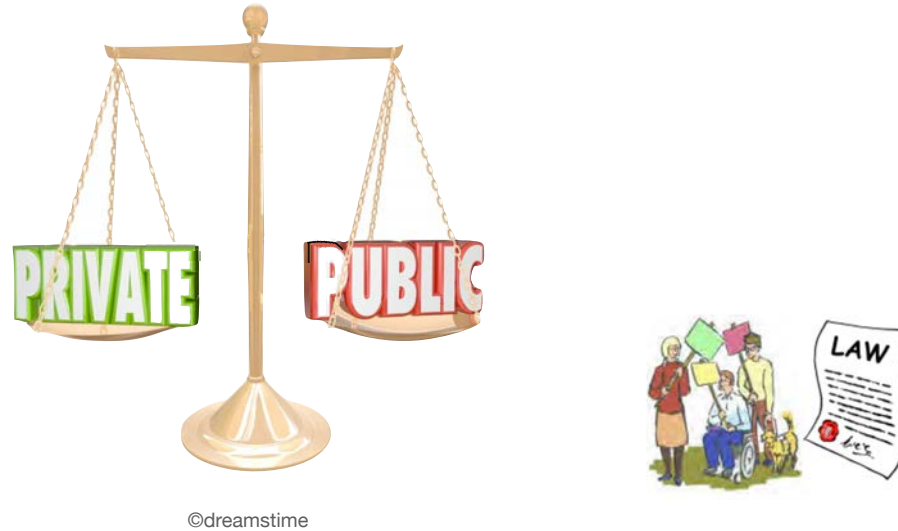


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Article 24: Education

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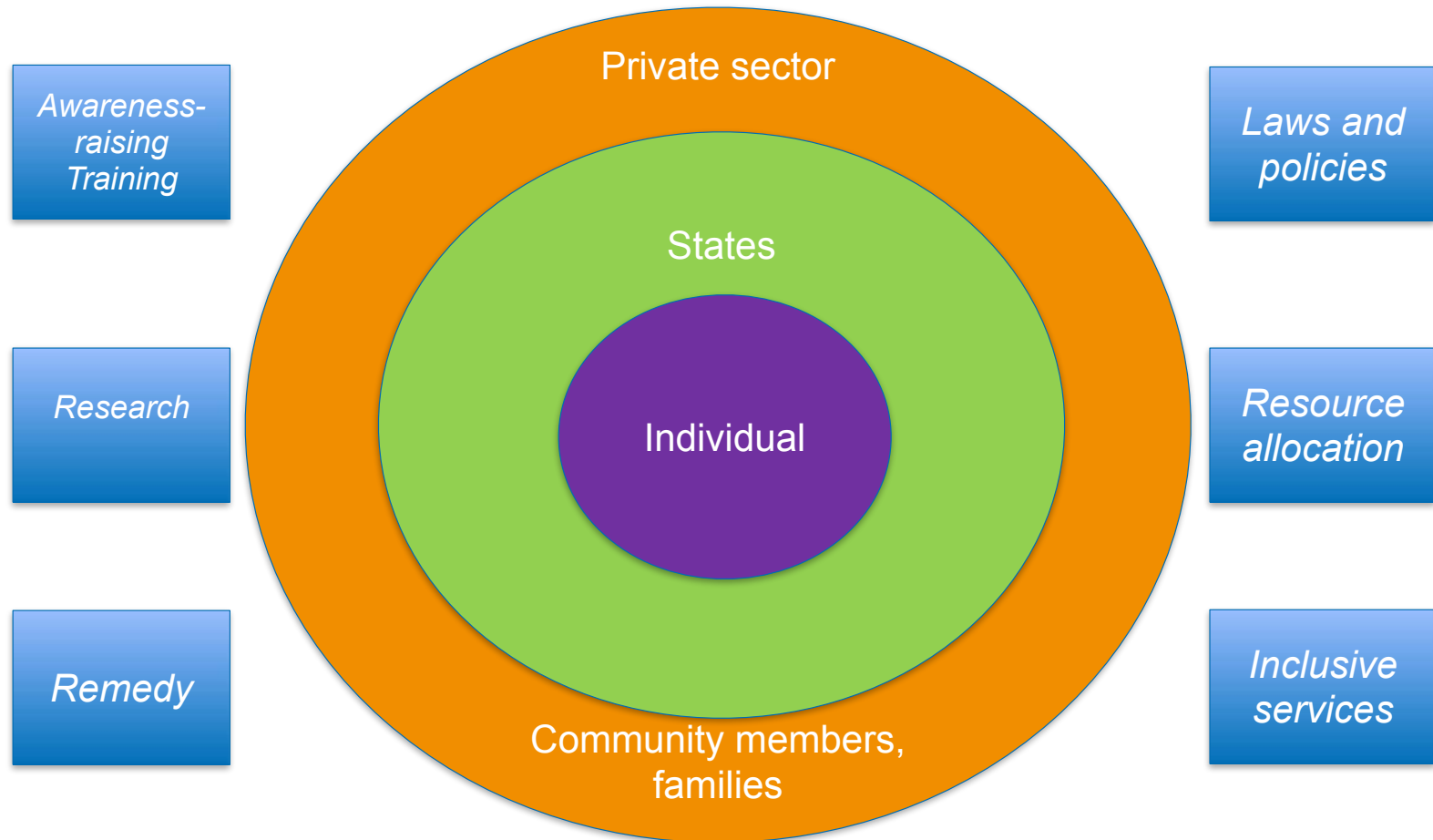
Scope of reasonable accommodation



Article 24: Education

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Reasonable accommodation - Who is responsible?



Definition of reasonable accommodation

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Scope of reasonable accommodation



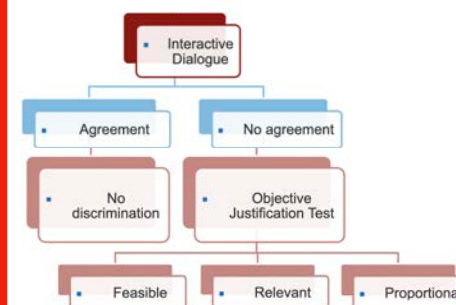
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Addressees of reasonable accommodation



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Elements of reasonable accommodation



Scope of reasonable accommodation in education - addressees

Article 24: Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Definition of reasonable accommodation

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Scope of reasonable accommodation



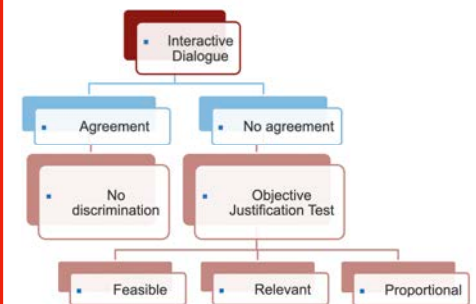
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Addressees of reasonable accommodation



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Elements of reasonable accommodation



Reasonable accommodation

Equality and non-discrimination (art. 5)



The Committee recommends that the State party:

(b) Take steps to ensure that reasonable accommodation provisions are enshrined in law as an immediately enforceable right in all areas of law and policy, with an explicit definition in the law in line with article 2 of the Convention, and that the denial of reasonable accommodation is recognized and punishable as a form of discrimination;

Reasonable accommodation - Two Constituent Parts



Reasonable accommodation - Two Constituent Parts

Individualised duty to
provide measures that
are necessary and
appropriate

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Reasonable accommodation - Two Constituent Parts

Individualised duty to provide measures that are necessary and appropriate

The duty should not impose a disproportionate or undue burden' on the duty-bearer

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Reasonable accommodation - Individualised Duty



- Applies in **individual** cases
- Applies **upon request of a person with disability**

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Article 24: Education

2. In realizing this right, States Parties shall ensure that:

(c) Reasonable accommodation of the individual's requirements is provided;

Reasonable accommodation - elements

General comment No. 4 (2016) on the right to inclusive education



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Reasonable accommodation - elements

General comment No. 4 (2016) on the right to inclusive education

30. The definition of what is proportionate will necessarily vary according to context. The availability of accommodations should be considered with respect to a larger pool of educational resources available in the education system and not limited to resources available at the academic institution in question; transfer of resources within the system should be possible. There is no “one size fits all” formula to reasonable accommodation, as different students with the same impairment may require different accommodations.

Requesting a Reasonable

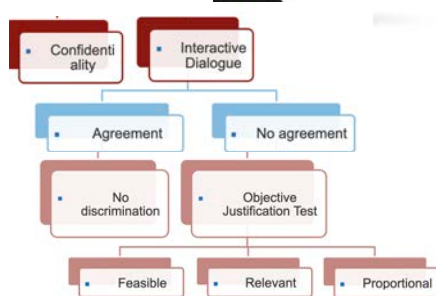
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Limits to the Duty - Objective Reasonableness Test

Elements

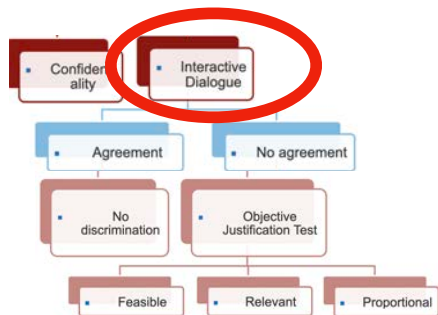
- Interactive dialogue
- Objective justification



Objective Reasonableness Test

Interactive Dialogue

- The duty bearer and the right holder should engage in an interactive dialogue in order to identify the necessary accommodation
- *If there is agreement* among them, the accommodation is provided and the process ends
- *If there is no agreement*, the duty bearer must prove the objective justification to avoid responsibility on the basis of discrimination



Objective Reasonableness Test - example of accessibility



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United Nations

**Convention on the Rights
of Persons with Disabilities**

CRPD/C/GC/2

Distr.: General
22 May 2014

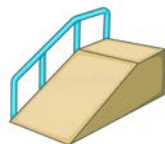
Original: English

Committee on the Rights of Persons with Disabilities
Eleventh session
31 March–11 April 2014

General comment No. 2 (2014)

Article 9: Accessibility

(short term)
Open days

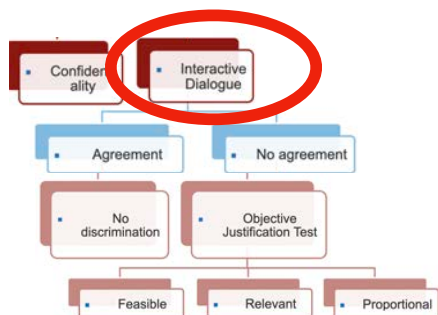


(long term)

Academic year



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Objective Reasonableness Test



Objective Justification

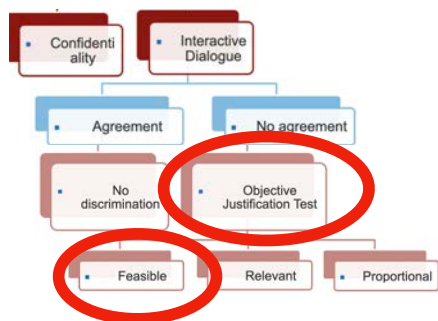
- The duty-bearer can deny a reasonable accommodation without incurring discrimination on the basis of disability by demonstrating that either it is not:
 - Feasible (legally or in practice)
 - Relevant (“necessary” and “appropriate”), or
 - Proportional (“disproportionate or undue burden”)
- The factors must be clear, objectively measureable and neither vague nor ambiguous
- This is to avoid arbitrariness and prevent discrimination



Objective Reasonableness Test

Feasible

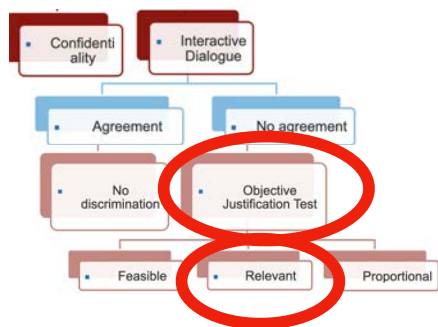
- Cannot breach the law
- A requested party can only provide accommodations that exist and are available



Objective Reasonableness Test

Relevant

- The accommodation must be relevant to its purpose
- The duty-bearer must prove that the accommodation requested was irrelevant for the effective realization of the right concerned
- Particular attention should be paid in inclusive education and employment accommodations



Objective Reasonableness Test



Proportional

- Assessment of the relationship between the:
 - *Means employed* – time, cost, duration and impact AND
 - *The aim* – which is the enjoyment of the right concerned
- Financial feasibility:
 - Focuses on the possible financial options for the requested party
- Economic feasibility:
 - Looks at the overall assets rather than the cash flow alone

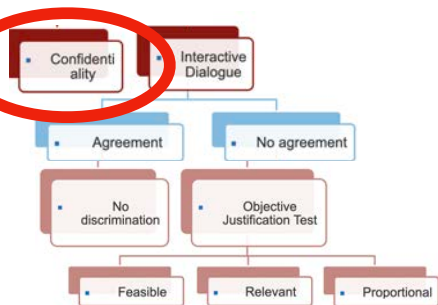


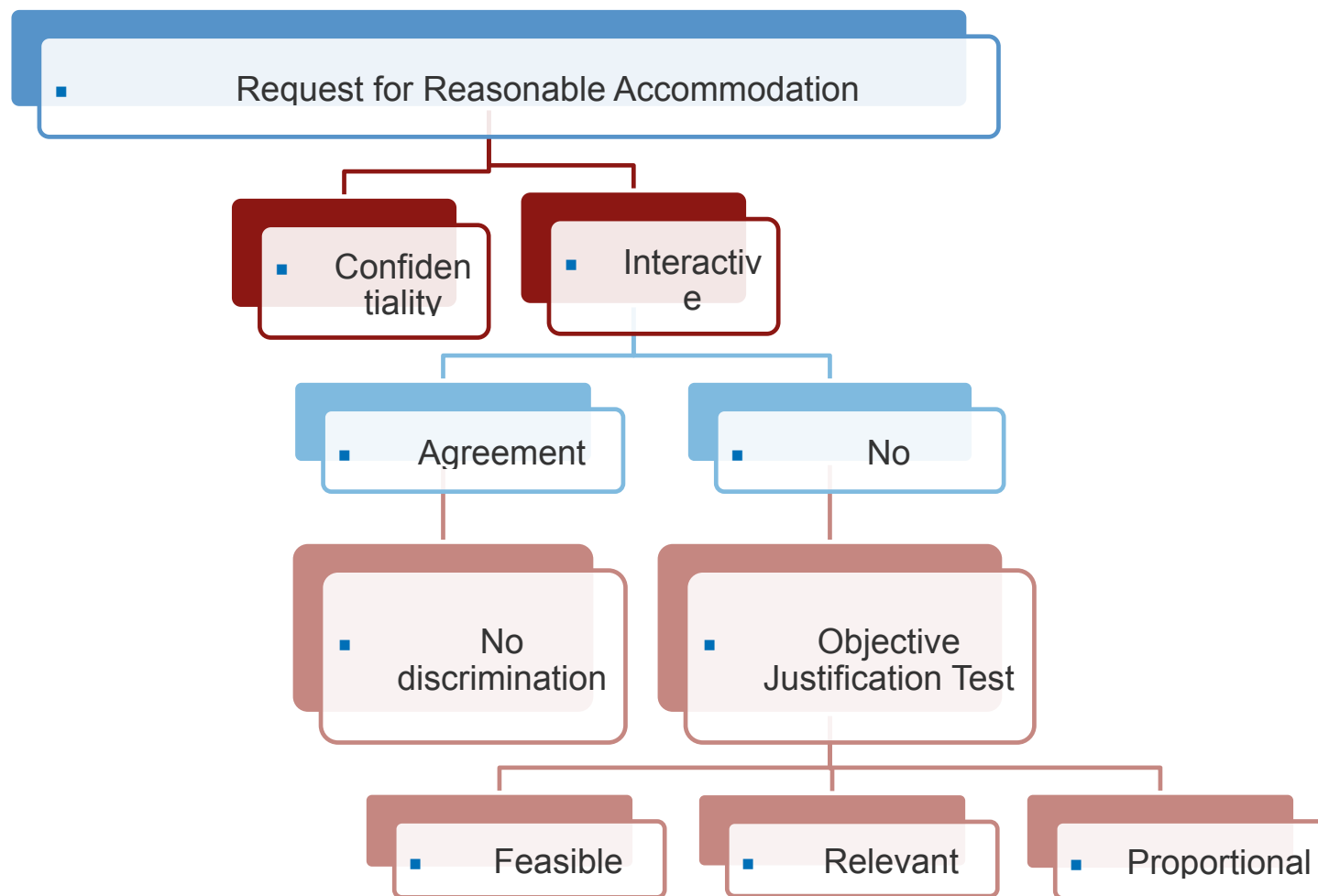
Objective Reasonableness Test



Confidentiality

- Confidentiality should be ensured throughout the process
- Disclosure of accommodation needs must be up to the individual concerned





Anti-discrimination legislation



Article 2 – Definitions

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

Reasonable accommodation

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Scope of
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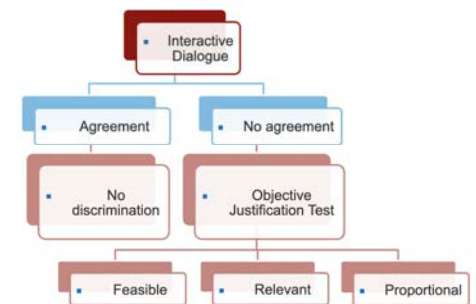
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Addressees of
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Elements of
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Reasonable accommodation - Resources

- Convention on the Rights of Persons with Disabilities
- Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities; Report of the Office of the United Nations High Commissioner for Human Rights (2016)
- Promoting diversity and inclusion through workplace adjustments: A practical guide; ILO (2016)
- Committee on the Rights of Persons with Disabilities, General Comment on article 5 on equality and non-discrimination (draft)
- Committee on the Rights of Persons with Disabilities, General Comment on article 6 on women and girls with disabilities
- General comments on non-discrimination issued by the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women