



‘Reasonable accommodation’ in the education of children and youth with disabilities as based on the Convention on the Rights of Persons with Disabilities

Part 1

ABSTRACT: Adam Mikrut, *‘Reasonable accommodation’ in the education of children and youth with disabilities as based on the Convention on the Rights of Persons with Disabilities*. Interdisciplinary Contexts of Special Pedagogy, No. 16, Poznań 2017. Pp. 73-92. Adam Mickiewicz University Press. ISSN 2300-391X

The authorities of the Republic of Poland, by ratifying the Convention on the Rights of Persons with Disabilities, have undertaken the responsibility to implement such changes in the national legal order and in social policies that aim at ensuring full and equal enjoyment of all rights and freedoms by people with disabilities and preventing their discrimination in different aspects of life. One of the ways to fulfil this commitment is the ‘reasonable accommodation’. According to Article 2 of the Convention the term means ‘(...) necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden’ and its purpose is to reduce physical, technical or social barriers hindering or restricting the various roles and tasks of those affected by disorders in the structure or functions of the body.

The author of this article explored manifestations of such activities in the field of education law and its practical applications. He determined that in the analysed area, many solutions are in line with the spirit of the ‘reasonable accommodation’.

KEY WORDS: Convention on the Rights of Persons with Disabilities, reasonable accommodation, right to education

Foreword

On 13 December 2006, the United Nations General Assembly unanimously adopted the Convention on the Rights of Persons with Disabilities (Resolution 61/106). The Polish President ratified it on 6 September 2012, and had it published on 25 October of the same year in the Journal of Laws of the Republic of Poland.¹ Pursuant to Article 1, the purpose of the Convention is to

“(...) promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”²

The equality is manifested – pursuant to Article 5 of the Convention – in that the State Parties recognise that “(...) all persons are equal before and under the law and are entitled (...) to the equal protection and equal benefit of the law.”³ The authors of the Convention also observe that persons with long-term impairments in various areas of functioning (physical, intellectual or sensory) continue to face social and physical barriers in their participation as equal members of society⁴ in the form of “unfriendly” organisation of physical space and/or unwelcoming attitude of individuals and institutions to their social participation.⁵ Accordingly, they oblige the authorities of the States that formally undertake to observe the provisions of the Convention to make such changes in their national

¹ *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169.

² *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169, Art. 1.

³ *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169, Art. 5.

⁴ *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169, Preamble, item (e) and Art. 1.

⁵ *onwencja o prawach osób niepełnosprawnych. Poradnik RPO*, p. 5, [http://www.rpo.gov.pl/sites/default/files/BIULETYN_RPO - Materiały No. 82 KPON.pdf](http://www.rpo.gov.pl/sites/default/files/BIULETYN_RPO_-_Materiały_No_82_KPON.pdf) [accessed on: 3.01.2017].

legal order and social policies that will remove or significantly alleviate the effect and impact of those barriers and, consequently, will help abolish all discrimination of persons with disabilities by individuals, organisations, institutions or businesses. This obligation is associated with the fact that the Convention is essentially an international agreement. The Human Rights Ombudsman explains that the contract was ratified with the required consent of the Sejm and Senate, which means that it forms, alongside the Constitution, Acts and Regulations, part of the national legal order and may be applied directly (with the exception of certain provisions the application of which requires a separate act of law). Moreover, because of the consent of the Sejm and Senate, its provisions take precedence in the case of conflict with national legal regulations.⁶

According to Article 5.3 of the Convention, one of the ways for a State Party to promote equality and prevent discrimination of persons with disabilities is to ensure that reasonable accommodation is provided.⁷ According to Barbara Gąciarz, defining the concept of reasonable accommodation is a major achievement of the Convention, as it forms the basis to implement various measures and solutions that help remove any physical, technical or social barriers⁸. Reasonable accommodation, pursuant to Article 2 of the Convention,

“(...) 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

⁶ *Konwencja o prawach osób niepełnosprawnych. Poradnik RPO*, p. 10, [http://www.rpo.gov.pl/sites/default/files/BIULETYN_RPO - Materiały No. 82 KPON.pdf](http://www.rpo.gov.pl/sites/default/files/BIULETYN_RPO_-_Materiały_No._82_KPON.pdf) [accessed on: 3.01.2017].

⁷ *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169, Art. 5.3.

⁸ B. Gąciarz, *Model społeczny niepełnosprawności jako podstawa zmian w polityce społecznej*, [in:] *Polscy niepełnosprawni. Od kompleksowej diagnozy do nowego modelu polityki społecznej*, ed. B. Gąciarz, S. Rudnicki, Wydawnictwo AGH, Kraków 2014, p. 32.

on an equal basis with others of all human rights and fundamental freedoms.”⁹

The Human Rights Ombudsman, commenting on the definition, referred to examples from e.g. the area of education. In this particular case, the reasonable accommodation may involve teaching the core curriculum in such a way and using such methods that respond to the needs of students with disabilities (for example, using special technologies, means and devices stimulating cognitive processes or offering extra classes), while at the same time making sure that such accommodations do not excessively limit the possibility (e.g. in terms of organisation or finances) of implementing other tasks considered in a given community to be important, reasonable and necessary in view of the existing life standard¹⁰. This explains the idea of a “disproportionate or undue burden” referred to in the abovementioned article of the Convention. This provision – according to Barbara Gąciarz – enables public authorities to negotiate with the individuals, institutions or organisations involved what the scope of measures aimed at removing various social and physical barriers should be, taking into account the existing social and cultural context, and the financial possibilities. “This means – the author claims – that there are no objective limits to the possible accommodations.”¹¹ They are determined on the basis of the existing resources, taking into account various factors, the main goal being to create such conditions that would, in the best way possible in the given situation, enable persons with disabilities to exercise on

⁹ *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169, Art. 2.

¹⁰ See also: B. Gąciarz, *Model społeczny niepełnosprawności jako podstawa zmian w polityce społecznej*, [in:] *Polscy niepełnosprawni. Od kompleksowej diagnozy do nowego modelu polityki społecznej*, ed. B. Gąciarz, S. Rudnicki, Wydawnictwo AGH, Kraków 2014, p. 33.

¹¹ B. Gąciarz, *Model społeczny niepełnosprawności jako podstawa zmian w polityce społecznej*, [in:] *Polscy niepełnosprawni. Od kompleksowej diagnozy do nowego modelu polityki społecznej*, ed. B. Gąciarz, S. Rudnicki, Wydawnictwo AGH, Kraków 2014, p. 33.

an equal basis with others all human rights and fundamental freedoms. To this end, according to Article 4.2 of the Convention, States Parties should "take measures to the maximum of their available resources". However, as the author quoted above rightly observes, this provision may result in major disproportions in these "reasonable accommodations" between respective States, and even regions within a State, due to different availability of resources (not only physical but also social and cultural, such as, for example, the attitude to disability and persons with disabilities and a consent to the related necessary burdens).

On the right to education in the light of the provisions of the Convention on the Rights of Persons with Disabilities

The right of persons with disabilities to education is provided for in Article 24 of the Convention. It says that States Parties, without discrimination and on the basis of equal opportunity shall ensure for these persons "(...) an inclusive education system at all levels and lifelong learning" (Article 24.1) directed to: 1) 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; 2) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; 3) enabling persons with disabilities to participate effectively in a free society. Such inclusive quality education, in the communities, where persons with disabilities live, should be provided for free and on equal basis with others. Accordingly, in realising this right, States Parties may not exclude persons with disabilities from the mainstream education system on the basis of disability and, consequently, children with disabilities may not be deprived of access to free and compulsory primary education, or secondary education and adults – of access, without discrimination and on equal basis

with others to “(...) mainstream tertiary education, vocational training, adult education and lifelong learning” (Article 24.5), which in many cases requires reasonable accommodations due to their disabilities. It should be noted that the provisions of the discussed Article of the Convention strongly honour the linguistic identity of various groups of persons with disabilities and recognise their sub-culture as equal with the dominant culture. They oblige States Parties to take appropriate measures to employ in the education of persons with disabilities, especially blind, deaf or deafblind children, such languages and modes and means of communication that are the most appropriate for their needs (e.g. the Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills) and the ensure that the process takes place in an environment that maximises their academic and social development. In order to make it possible, specialists should be employed, also teachers with disabilities, who, thanks to their knowledge and skills (e.g. knowledge of sign language or Braille), will meet the needs and expectations of this category of persons and will also train staff who work at all levels of education.¹²

It should be noted that the authors of the Convention emphasise the fact that persons with disabilities have the right to inclusive education¹³ at all levels of learning, also lifelong learning. Thus, it seems necessary to determine the scope of the terms “inclusive education”, the more so that Polish literature uses a similar, chronologically older, term: “integrative education”. As far as we know, the latter is the only term used in Polish education law that corresponds to the issues discussed herein. It was the same in the past,

¹² The above fragment of the paper “O prawie do edukacji...” is quoted *in extenso* after another text by the author of this article: A. Mikrut, *O promowaniu godności człowieka w ramach Konwencji o Prawach Osób Niepełnosprawnych*, „Rocznik Komisji Nauk Pedagogicznych – Polska Akademia Nauk – Oddział w Krakowie”, 2016, vol. LXIX, in press.

¹³ <http://www.un.org/esa/socdev/enable/rights/ahcfinalrepe.htm> [accessed on: 20 III 2016].

even though many ministerial documents stated and still state that educating students with disabilities in mainstream schools is one of the possible solutions, but we know that in practice this option is defined as inclusive education. Another possible form of teaching the category of children and students that interests us is education in integrative preschools or schools, or institutions, which is called – to distinguish it from the above system – integrative education. Formally, it was introduced by the Regulation of the Minister of National Education of 4 October 1993 on the Terms and Conditions of Arranging Care for Disabled Students, their Education in Mainstream and Integrative Public Preschools, Schools and Institutions and Arranging Special Education¹⁴ and currently it is governed by the Regulation of the Minister of National Education of 24 July 2015 on the Terms and Conditions of Arranging Education, Raising and Care for Children and Youth with Disabilities, Socially Maladjusted or Threatened by Social Maladjustment.¹⁵ Although in the “jargon of educational practice”, a distinction between the two terms seems clear and straightforward, it is not so in theoretical deliberations and polemics. Judging by the literature of the period when integrative education was formally introduced, it may be assumed that at that time, this type of education was understood in a similar way as the abovementioned inclusive education. A representative example of such understanding of integrative education at that time is the opinion of the precursor of the idea of social integration of persons with disabilities, Aleksander Hulk. According to him:

“An integrative system of special education involves teaching and raising children, youth and adults with deviations from norms in normal

¹⁴ Zarządzenie Ministra Edukacji Narodowej z dnia 4 października 1993 roku w sprawie zasad organizowania opieki nad uczniami niepełnosprawnymi, ich kształcenia w ogólnodostępnych i integracyjnych publicznych przedszkolach, szkołach i placówkach oraz organizacji kształcenia specjalnego, Dz. Urz. MEN No. 9, item 36.

¹⁵ Rozporządzenie Ministra Edukacji Narodowej z dnia 24 lipca 2015 roku w sprawie warunków organizowania kształcenia, wychowania i opieki dla dzieci i młodzieży niepełnosprawnych, niedostosowanych społecznie i zagrożonych niedostosowaniem społecznym, Dz. U. (Journal of Laws) 2015, item 1113.

schools and other educational institutions, taking into account their individual needs and ensuring additional measures, services and facilities to meet those needs.”¹⁶

The above definition suggests that integrative education, understood in this way, consists in enrolling children and students with some kind of disabilities in bodily functions and/or structures in mainstream preschools and schools. This fact to some extent justifies the synonymous use of the respective terms: “integrative education” and “inclusive education” in the literature. Another argument proving that this indeed is the case is given by Grzegorz Szumski. According to him, the two terms are used interchangeably because of translation. In the “Salamanca Statements” and “Framework for Action on Special Needs Education” published in 1994, the English terms: “inclusive schools”, “inclusive education” or “inclusive provision” were translated to Polish as “integrative”.¹⁷ We believe it is worth noting here that also the first translation to Polish of Convention discussed herein in 2007 had the terms “inclusive education system” and “inclusive education” translated as “integrative education system” and “integrative education”, respectively.¹⁸

An attempt to solve the dilemma concerning the meanings of the two terms was undertaken, among others, by Grzegorz Szumski. He claims, arguing with A. Sander¹⁹, that inclusive education

¹⁶ A. Hulek, *Kształcenie specjalne w systemie integracyjnym*, [in:] *Encyklopedia Pedagogiczna*, ed. W. Pomykało, Warszawa, Fundacja Innowacja, Warszawa 1997, p. 329.

¹⁷ G. Szumski, assistants A. Firkowska-Mankiewicz, *Wokół edukacji włączającej. Efekty kształcenia uczniów z niepełnosprawnością intelektualną w stopniu lekkim w klasach specjalnych, integracyjnych i ogólnodostępnych*. Wydawnictwo APS, Warszawa 2010, p. 14-15.

¹⁸ *Konwencja Praw Osób Niepełnosprawnych Organizacji Narodów Zjednoczonych*. Stowarzyszenie Przyjaciół Integracji, Warszawa 2007, Art. 24.1, 24.2b.

¹⁹ The author mentions three ways of understanding the term “inclusive education”, namely: as a synonym of integrative education, as an improved form of integrative education and as an improved and extended form of integrative education, after: Szumski G., assistants Firkowska-Mankiewicz A., *Wokół edukacji włączającej. Efekty kształcenia uczniów z niepełnosprawnością intelektualną w stopniu lekkim w klasach*

should be regarded as a synonym of integrative education or as a type of integrative educational system. According to the author, inclusive education is a version of school integration, first of all, as a certain type of integrative education and secondly – as its extended form. Differences between integrative education and inclusive education as a version of the former may be noted in the relationship between the needs and possibilities of a student with disabilities and the conditions that the school receiving him creates for him. Of course, in both cases the education is non-segregational. However, in the first system, the student is treated – as Anna Zamkowska writes – like a guest who is expected to adapt to the existing environment and, consequently, be ready to learn in the conditions the school offers. The main feature of integrative education understood in this way is only physical enrollment of a student with disabilities in a non-segregational school. The school does not take any special measures to support the needs and possibilities of a student, so the situation does not differ much from what was before. This, however, does not mean that particular schools and school communities do not offer a positive atmosphere and friendly acceptance of a student with disabilities.²⁰ Inclusive education as an extended form of integrative education is different. It requires – as Grzegorz Szumski observes – thorough reorganisation of the entire school system in order to make the teaching processes of the two student populations, i.e. able and disabled students similar and common. So this is not about some special kind of a mainstream school that has the additional task of educating students with special educational needs, provided they can meet its requirements and accept its conditions. In inclusive education, students are supposed to go to the school they would normally go to, if they did not suffer from developmental disorders. In that school, they are supposed to be in nor-

specjalnych, integracyjnych i ogólnodostępnych. Wydawnictwo APS, Warszawa 2010, p. 11 and subsequent.

²⁰ A. Zamkowska, *Wsparcie edukacyjne uczniów z upośledzeniem umysłowym w stopniu lekkim w różnych formach kształcenia na I etapie edukacji*, Wydawnictwo Politechniki Radomskiej, Radom 2009, p. 41.

mal classes, i.e. learn the same curriculum as all the other students, although tailored to their individual needs. The form teacher is responsible for the education of all students, including those with special educational needs. Both the teacher and the students with special educational needs receive adequate specialist support. The support is provided for not on class level, but on school level.²¹ If such inclusive education covers all the students, regardless of the type and extent of their educational and developmental needs, then it constitutes an extended form of integrative education. It may be special education or mainstream education. The first is when a local mainstream school receives all students with disabilities with no exceptions, that is even students with deep intellectual disability or with multiple disabilities. If such a school meets all the educational and developmental needs of students, i.e. not only their special needs but also their other deficits and developmental disorders, then it is a mainstream inclusive school, like the one discussed above.²² Anna Zamkowska, it seems, limits inclusive education only to such situation. So, in her opinion, to be inclusive, a school must provide for all the differences between students, not only those caused by disability (e.g. socio-cultural, ethnic or family-based) and treat them as its natural background. Thus, the school assumes the responsibility of arranging the educational process in such a way that every student, regardless of his educational and developmental needs, can fully benefit from it. In order to achieve this goal – Anna Zamkowska claims – not only an individual school, but also the entire educational system must change.²³

²¹ G. Szumski, assistants A. Firkowska-Mankiewicz, *Wokół edukacji włączającej. Efekty kształcenia uczniów z niepełnosprawnością intelektualną w stopniu lekkim w klasach specjalnych, integracyjnych i ogólnodostępnych*. Wydawnictwo APS, Warszawa 2010, p. 19.

²² G. Szumski, assistants A. Firkowska-Mankiewicz, *Wokół edukacji włączającej. Efekty kształcenia uczniów z niepełnosprawnością intelektualną w stopniu lekkim w klasach specjalnych, integracyjnych i ogólnodostępnych*. Wydawnictwo APS, Warszawa 2010, p. 24-27.

²³ A. Zamkowska, *Wsparcie edukacyjne uczniów z upośledzeniem umysłowym w stopniu lekkim w różnych formach kształcenia na I etapie edukacji*, Wydawnictwo Politechniki Radomskiej, Radom 2009, p. 42-43.

Elements of “reasonable accommodation” in Polish educational jurisdiction²⁴

Speaking of Polish educational law, it should be noted that this text was written after the Polish President had signed the Education Act of 14 December 2016²⁵, which, according to Article 1. of the Act on the Provisions Implementing the Education Act of 14 December 2016²⁶ – will enter into force, with a few exceptions (Article 18 and Article 47, and Chapter 6) on 1 September 2017. The Act on the Provisions Implementing the Education Act amends many other Polish legal regulations, including the Act on the Education System of 7 September 1991.²⁷ Some of those amendments will enter into force before 1 September 2017.²⁸ Because of that, we will be looking for “manifestations” of “reasonable accommodation” mainly in the provisions of the current version of the Act on the Education System

²⁴ The author of this text would like to draw the reader’s attention to the fact that the presented analyses of the provisions of the educational law concern mainly the situation of children and students with disabilities (that is, according to §1.1 of the Regulation of the Polish Minister of National Education of 24 July 2015, Dz. U. (Journal of Laws) 2015, item 1113 – children and youth who are deaf, hard of hearing, blind, visually impaired, have motor disabilities, including aphasia, mild, moderate or severe intellectual disabilities, autism, Asperger syndrome or multiple disabilities who attend mainstream preschools or schools, i.e. those who exercise their right to inclusive education guaranteed by Poland’s ratification of the Convention on the Rights of Persons with Disabilities. On the other hand, it should be noted that most of the regulations quoted herein apply to the same extent to children and students with disabilities who attend special and integrative preschools, schools and institutions.

²⁵ *Ustawa Prawo oświatowe z dnia 14 grudnia 2016*, Dz. U. (Journal of Laws) 2017, item 59.

²⁶ *Ustawa Przepisy wprowadzające ustawę – Prawo oświatowe z dnia 14 grudnia 2016*, Dz. U. (Journal of Laws) 2017, item 60.

²⁷ *Ustawa Przepisy wprowadzające ustawę – Prawo oświatowe z dnia 14 grudnia 2016*, Dz. U. (Journal of Laws) 2017, item 60, Art. 15.

²⁸ *Ustawa Przepisy wprowadzające ustawę – Prawo oświatowe z dnia 14 grudnia 2016*, Dz. U. (Journal of Laws) 2017, item 60, Art. 369.2, 369.3 and 369.4.

and the ministerial regulations associated with this Act.²⁹ According to Article 71b.1 of the abovementioned Act, children and youth who, because of disability, require special teaching arrangements and methods, are covered by special education. It can be provided in mainstream preschools or schools, or integrative preschools, schools or institutions as well as in special preschools, schools or institutions, or through other forms of preschool education or institutions referred to in Article 2.2. According to the abovementioned provision – in general – Polish education law enables persons with disabilities to exercise their right to education in an inclusive education system, as referred to in Article 24 of the of the Convention on the Rights of Persons with Disabilities. This seems true even if we interpret the inclusive education strictly in line with the spirit of the Convention, which says that “(...) Persons with disabilities shall not be excluded from the mainstream education system on the basis of disability”.³⁰ It is confirmed by Article 71b.1 of the Act, which determines that mainstream preschools and schools are possible places to teach the discussed category of children and youth. A closer analysis of the applicable regulations – the results of which the author of this paper presents in another publication³¹ – makes it possible to assume that the solutions concerning special education in mainstream preschools and schools, governed in detail by the abovementioned Regulation of the Minister of National Education of 24 July 2015³², may be, with some minor reservations, considered

²⁹ *Ustawa o systemie oświaty z dnia 7 września 1991 roku*, Dz. U. (Journal of Laws), 2016, item 1943, 1954, 1985 and 2169 and of 2017 item 60, legal status as on 2 III 2017; www.prawo.vulcan.edu.pl [accessed on: 2 III 2017].

³⁰ *Konwencja o Prawach Osób Niepełnosprawnych*, Dz. U. (Journal of Laws) 2012, item 1169, Article 24.2.a.

³¹ A. Mikrut, *Edukacja integracyjna czy włączająca? O prawie do edukacji w kontekście polskich tłumaczeń konwencji o prawach osób niepełnosprawnych*. Conference speech, *O nauki zaangażowane – w praktykę edukacji, rehabilitacji i socjalizacji osób z niepełnosprawnością*, Ustroń 2016, April.

³² *Rozporządzenia Ministra Edukacji Narodowej z dn. 24 lipca 2015 roku w sprawie warunków organizowania kształcenia, wychowania i opieki dla dzieci i młodzieży niepełno-*

to be inclusive education as a version of integrative education in the meaning proposed by Grzegorz Szumski. These reservations are associated with the fact that, according to § 7.2 of the Regulation, in this form of educating children and students with autism, also the Asperger syndrome, or with multiple disabilities, a special educator is employed to assist in the teaching – learning process which, on the one hand, certainly helps satisfy the special educational and developmental needs of these children and students, but, on the other hand, makes the process of their education similar to that of a special or integrative school and, most importantly, does not fulfil the abovementioned objectives of inclusive education according to which – let us remind it once again – the form teacher is responsible for the education of all the students, including those with various disabilities, and the required specialist support is provided to him not on the class level, but on the school level.³³ Moreover, an analysis of the above Regulation does not substantiate the conclusion that the Polish arrangements of education, raising and care for children and students with disabilities are indeed an extended variant of integrative education, neither in terms of special education nor mainstream education.³⁴

Let us then have a look at those elements of Polish inclusive education as a version of integrated education which prove that reasonable accommodations have indeed been introduced. First of all, it should be noted that, according to Article 24.2.c of the Con-

sprawnych, niedostosowanych społecznie i zagrożonych niedostosowaniem społecznym, Dz. U. (Journal of Laws) 2015, item 1113.

³³ See: G. Szumski, współpraca A. Firkowska-Mankiewicz, *Wokół edukacji włączającej. Efekty kształcenia uczniów z niepełnosprawnością intelektualną w stopniu lekkim w klasach specjalnych, integracyjnych i ogólnodostępnych*. Wydawnictwo APS, Warszawa 2010, p. 19.

³⁴ The author presents arguments supporting such interpretation in another publication: A. Mikrut, *Edukacja integracyjna czy włączająca? O prawie do edukacji w kontekście polskich tłumaczeń konwencji o prawach osób niepełnosprawnych*. Conference speech, *O nauki zaangażowane – w praktykę edukacji, rehabilitacji i socjalizacji osób z niepełnosprawnością*, Ustroń 2016, April.

vention on the Rights of Persons with Disabilities, these accommodations should be provided according to individual requirements. This provision is reflected in the Act on the Education System. Article 1 of the Act determines that the education system ensures:

“– Adapting of the content, methods and organisation of teaching to the psychophysical possibilities of students as well as access to psychological and pedagogical assistance and specialist forms of teaching (...);
– Care for students with disabilities through an individual teaching process, individual forms and programmes of teaching, and remedial classes.”³⁵

The issue of individual approach to a child and student depending on his developmental and educational needs, and psychophysical possibilities is directly addressed by Article 71b.1b of the Act, according to which a student covered by special education (which – as we already know – is also provided in mainstream preschools and schools, if there are students with a relevant certificate – note by A. B.) has a tailored preschool or school curriculum in the form of an individual educational and therapeutic programme. That programme should provide for the recommendations in the special needs certificate and the method of developing it is explained in detail in the already quoted ministerial Regulation of 24 July 2015 “on the Terms and Conditions of Arranging Education, Raising and Care for Children and Youth with Disabilities, Socially Maladjusted or Threatened by Social Maladjustment.”³⁶ According to § 6.3 of that Regulation, an individual educational and therapeutic programme is developed by a team of teachers and specialists coordinated by, §6.6 the form teacher or a specialist working with the child or student, appointed by the principal of the preschool or

³⁵ *Ustawa z dnia 7 września 1991 roku o systemie oświaty*, Dz. U. (Journal of Laws), 2016, item 1943, 1954, 1985 and 2169 and of 2017 item 60, Article 1.4, 1.5a, legal status as on 2 III 2017; www.prawo.vulcan.edu.pl [accessed on: 2 III 2017].

³⁶ *Rozporządzenie Ministra Edukacji Narodowej z dn. 24 lipca 2015 roku w sprawie warunków organizowania kształcenia, wychowania i opieki dla dzieci i młodzieży niepełnosprawnych, niedostosowanych społecznie i zagrożonych niedostosowaniem społecznym*, Dz. U. (Journal of Laws) 2015, item 1113, § 6.

school (institution), as the case may be. This programme contains such elements as, for example:

- The method and scope of adapting the preschool programme, in the case of a child, and educational requirements for interim and yearly classification of a student for the courses he attends as part as his teaching programme;
- Description of integrated remedial measures, in particular – according to § 6.2 of the Regulation – taking into account teaching spatial orientation and mobility, teaching Braille language or another alternative communication in the case of a blind child or student, teaching sign language or another alternative communication in the case of a deaf or aphasic child or student, or teaching social skills, including communication, in the case of a child or student with autism, including the Asperger syndrome;
- The forms of psychological and pedagogical assistance provided to a child or student, its duration and number of hours;
- Description of assistance provided to the parents of a child or student and the scope of cooperation with various, as the need may be, institutions and NGOs that provide assistance to families, children and youth;
- Description of other activities reflecting the individual educational and developmental needs and psychophysical possibilities of a child or student, including educational and vocational counselling in the case of older students;

Description of cooperation of teachers and specialist with the parents of a child or student, covering the various measures referred to in § 5.1 of the Regulation, including the recommendations listed in a special needs certificate, ensuring adequate conditions to learn and specialist devices and teaching aids, ensuring an atmosphere facilitating a child's or student's integration with his peers and preparing a child or student to function independently in life, as far as he is able to.³⁷

³⁷ The components of an individual educational and therapeutic programme are listed on the basis of § 6.1 of the Regulation and other provisions referred to therein.

The abovementioned adaptation of educational requirements is the obligation of the teacher referred to in Article 44c.2 of the Act on the Education System and, according to the Article 44d thereof, the school principal may exempt a student with disabilities from certain mandatory classes. This issue is discussed in detail in the Regulation of the Minister of National Education of 10 June 2015³⁸, issued on the basis of Article 44zb of the Act. According to § 7.2 of the Regulation, a student with a special needs certificate due to hearing defects, aphasia, multiple disability or autism, including the Asperger syndrome, is exempt from the obligation to learn the second modern language until the end of a given stage of education. Moreover, according to § 5.1 and § 5.2, the school principal may also exempt a student from certain physical exercises in physical education classes, or from physical education, computer or IT classes, based on a relevant medical certificate. This provision may also apply – as it seems – to students with motor disabilities, blind or visually impaired.

Educational requirements mean that a student needs to be controlled and evaluated, and given specific grades. According to Article 44e.1 of the Act, a student receives interim grades and end-of-term classification (mid-year, yearly or, in a post-secondary school, mid-term and final). In the case of a student with a special needs certificate who attends a mainstream school, mid-year, yearly (or term) grades in respective courses are given, according to Article 44h.4 of the Act, by the course teacher and, if a school employs a special teacher to assist the education of students with disabilities, the subject teacher asks his opinion. In the case of students with a special needs certificate due to moderate or severe intellectual disability, interim and classification grades in school courses and behaviour are descriptive – according to Article 44i.7.1 of the Act. At the end of the deliberations on the legal aspects of evaluating

³⁸ *Rozporządzenie Ministra Edukacji Narodowej z dnia 10 czerwca 2015 roku w sprawie szczegółowych warunków i sposobu oceniania, klasyfikowania i promowania uczniów i słuchaczy w szkołach publicznych*, Dz. U. (Journal of Laws), 2015, item 843.

and grading students with disabilities, it should be noted that here, the legislator devotes much attention to students with significant (moderate or severe) intellectual disability. This category of students is specifically addressed in three articles of Chapter 3a of the Act, entitled: "Grading, classifying and promoting students in public schools", namely Article 44f.7, Article 44o.5 and Article 44q.2. According to these provisions, mid-year and yearly classification, promoting to a higher class and certifying school graduation for students with such disabilities is done on the basis of their individual educational and therapeutic programmes. It should also be noted that, according to Article 44zr of the Act, the provisions of the abovementioned Chapter 3a do not apply to children and youth with deep intellectual disabilities.

Instead of a conclusion

Due to limited space of the first part of the article, examples of reasonable accommodation will be discussed in its next part to be published in the subsequent issue of the *Interdyscyplinarne Konteksty Pedagogiki Specjalnej* periodical.

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