

Disability Law in Germany: An Overview of Employment, Education and Access Rights

By *Martin Kock**

A. Introduction

I. General Information

Under German law, people with disabilities are entitled to help and assistance in order to avert, eliminate or improve their disability. The general goal is to overcome, as much as possible, the disability's effects and to enable the disabled to participate in all areas of society, especially in the labor market and in community life. The Federal Government is obliged to a barrier-free design and construction of public buildings, streets, etc. and to provide barrier-free access to communication, especially in the field of administrative Internet sites, official forms and notifications. In the area of public transportation, all facilities and means of transportation (bus, train, aircraft) are also required to be barrier-free. The same applies to restaurants.

Severely disabled people enjoy special employment protection rights, additional allowances and benefits, such as tax relief, free public transport, and exemption from radio and television fees.

II. Legal Sources for Disabled Rights

The basic laws that provide rights and benefits for disabled people include:

- *Neuntes Buch des Sozialgesetzbuches - SGB IX* (Book 9 of the Social Code)¹
- *Behindertengleichstellungsgesetz - BGG* (Equal Opportunities for Disabled People Act)²

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¹ With effect from 1 July 2001.

² With effect from 1 May 2002.

Both laws implement the general principle, established by the German Constitution, that no person may be discriminated against because of his or her disability.³ Furthermore, these laws also have the goal of enabling all disabled people and their families to live a life that is as normal as possible, especially by promoting equal participation in all areas of life.⁴

1. *Neuntes Buch des Sozialgesetzbuches*

The *Neuntes Buch des Sozialgesetzbuches* provides that disabled people receive special benefits in order to live a self-determined life, to have equal participation opportunities in society and to avoid or counteract any discrimination. In addition, the special needs of disabled women and children are taken into account.⁵ The benefits particularly include:

- medical rehabilitation benefits;
- benefits aimed at participation in life at work; and
- benefits aimed at participation in community life.

2. *Behindertengleichstellungsgesetz*

The purpose of the *Behindertengleichstellungsgesetz* (and supplementary changes to other laws) is to implement equal rights for disabled people in public and private areas and enable them to live life with as little outside help as possible.⁶ The Act includes, *inter alia*, provisions regarding:

- a ban on the discrimination of disabled people by public authorities;
- provisions responding to the special needs of disabled women (“gender mainstreaming”);
- the obligation of the Federal Government to barrier-free buildings, administrative procedures and access to information technology;
- barrier-free environments as regards elections; and
- barrier-free access to restaurants and means of transportation.

³ Art. 3 para. 2 *Grundgesetz* (German Basic Code).

⁴ Cf. § 1 SGB IX; § 1 BGG.

⁵ § 1 SGB IX.

⁶ § 1 BGG.

III. Responsible Authorities

Two authorities exist that are responsible for protecting and promoting the interests of disabled people, including the enforcement of the rights secured by the *Neuntes Buch des Sozialgesetzbuches*.⁷ These agencies include:

- *Integrationsamt* (Integration Office); and
- *Bundesagentur für Arbeit* (Federal Employment Office).

1. *Integrationsamt*

The *Integrationsamt* is particularly responsible for workplace issues, including the collection and distribution of the quota compensation levy for the severely disabled, for the special protection against dismissal of severely disabled employees, and for distribution of supplementary benefits for severely disabled people's participation in employment.⁸

2. *Bundesagentur für Arbeit*

The *Bundesagentur für Arbeit* is especially responsible for career advice, placement measures for unemployed disabled people, recognition of disabled people who are equal to severely disabled people and supervision of the employer's obligation to employ severely disabled people.⁹

IV. Disabled people

1. Definition

Section 2 para. 1 SGB IX defines disabled people as persons whose physical functions, mental capabilities or psychological health are highly likely to deviate, for more than six months, from the condition which is typical for the respective age and whose participation in social life is therefore impaired.¹⁰

A deviation from the typical condition means the loss of or restrictions with regard to physical, mental or psychological structures that are normally present at the re-

⁷ § 101 para. 1 SGB IX.

⁸ § 102 SGB IX; for details *cf.* B.1

⁹ § 104 SGB IX.

¹⁰ *See also* § 3 BGG. The definition is based on proposals of the World Health Organization.

spective age. Such an impairing deviation is deemed to be a disability if the impairment leads to a particular restriction that has an effect on at least one area of life. The minimum six-month period excludes only temporary abnormalities.

Status as a disabled person automatically comes into existence if the definition's criteria are met. Recognition based on the formal process of the *Versorgungsamt* (Maintenance and Supply Office) does not constitute a formal finding as regards disability status, but only serves to recognize the status of being disabled.¹¹

2. Degree of Disability

A person's disability is stated in degrees from 20 to 100. The degree is recognized in a formal procedure by the competent *Versorgungsamt*. The administration has issued guidelines for the evaluation of disabilities and the recognition of disability degrees. These guidelines are binding for the *Versorgungsamt* in the evaluation and recognition procedure that aims to secure equal treatment for the disabled/among the disabled.¹² If the disabled person's status improves, the degree of disability will be adjusted or totally revoked.

3. Severely Disabled People

With a degree of 50 or higher, a person is considered severely disabled.¹³ In Germany, approximately 8% of the population qualifies for this status.¹⁴

4. Disabled People Equal to a Severely Disabled Person

If a disabled person has a degree of 30 or higher, he or she can obtain a special status - "*gleichgestellt behinderter Mensch*" (equal to a severely disabled person). This status will be granted if the disabled person is not able to find a suitable job or to remain employed due to his or her disability.¹⁵ A disabled but not "severely disabled" employee shall be protected in his or her competition with the non-disabled

¹¹ *Bundesarbeitsgericht* (Federal Labor Court) of 7 March 2003 - 2 AZR 612/00; *Bundesverwaltungsgericht* (Federal Administrative Court) of 21 October 1987 - 5 C 42/84.

¹² *Bundessozialgericht* (Federal Social Court) of 9 April 1997 - 9 RVs 4/95; *Bundessozialgericht* of 18 September 2003 - B 9 SB 3/02

¹³ § 2 para. 2 SGB IX.

¹⁴ Data survey from 2001 according to the *Bundesministerium für Gesundheit und Soziale Sicherheit* (Federal Ministry of Health and Social Security).

¹⁵ § 2 para. 3 SGB IX.

in the labor market against disadvantages arising from the disability.¹⁶ The *Arbeitsagenturen* (Employment Offices) grant this special status on request and decide upon the matter with dutiful discretion.

Disabled people with this special status receive, in general, the same additional benefits and special rights as severely disabled people. However, they are not entitled to additional vacation and do not enjoy free public transportation.

V. Definition of Discrimination

Section 7 para. 2 BGG states the definition of discrimination, as regards the disabled, in the following terms: Discrimination of disabled people takes place if disabled and non-disabled people are treated differently without a just cause and as an effect of the treatment the disabled person's equal participation in social life is directly or indirectly impaired.¹⁷

VI. Right of Action for Disabled Organizations

All organizations that represent disabled people on the state or federal level have the right to take legal action for a disabled person with the disabled person's consent if the disabled person's rights under the *Neuntes Buch des Sozialgesetzbuches* are violated.¹⁸

The same right applies to all organizations that represent disabled people on the federal level and that are recognized by the *Bundesministerium für Gesundheit und Soziale Sicherheit* (Federal Ministry of Health and Social Security), if violations of the *Behindertengleichstellungsgesetz* occur.¹⁹ In addition, the organizations have a right of action against violations of "general importance." This is especially the case if multiple, similar cases exist.²⁰

VII. Target Agreements

¹⁶ *Oberverwaltungsgericht* (Administrative High Court) of North-Rhine Westphalia of 30 July 1958 - VII A 1458/5a.

¹⁷ Explicitly for public authorities.

¹⁸ § 63 SGB IX. This right of action for organizations is not typical for the German legal culture and has its legal grounds in the EU-Directive 2000/78/EG.

¹⁹ § 12 BGG.

²⁰ § 13 BGG.

The implementation of a barrier-free environment in the private sector shall be achieved by target agreements (*Zielvereinbarungen*).²¹ In these target agreements organizations that represent disabled people and private companies, or advocacy organizations, shall conclude the necessary objectives and steps to be taken, e.g. a advocacy organization for disabled people and a department store chain agree on objectives about barrier-free access to the sale rooms, the width of aisles or tactile signs (Braille) on the shelves.

However, there is only an obligation for the companies or advocacy organizations to enter into negotiations, there is no mandate that they ultimately conclude target agreements.²²

B. Employment

I. General

Disabled people receive a wide range of benefits that aim at enabling disabled people to participate in a meaningful work life, and generating, sustaining and enhancing the working (*i.e.* earning) ability of disabled people.²³ In part, the disabled have a legal right to benefits. In other circumstances, the benefits are granted pursuant to dutiful discretion. The benefits, in particular, include:²⁴

- qualified careers advice;
- placement services and vocational training measures;
- mobility aids;²⁵ and
- training subsidies and integration allowances for employers.

In general, disabled and non-disabled people shall receive training in both private companies and public employment. However, if this is not possible due to the nature or severity of the disability, young disabled people receive training in *Berufsbildungswerken* and *Berufsförderungswerken* (special vocational training centers) that are equipped appropriately.²⁶ The *Rehabilitationsträger* (rehabilitation

²¹ § 5 BGG.

²² § 5 para. 1 BGG.

²³ § 33 SGB IX.

²⁴ § 33 para. 3 SGB IX.

²⁵ E.g. technical equipment for the workplace, aids for the acquisition of or special equipment for a motor vehicle - for details see *Kraftfahrzeughilfe-Verordnung* (Motor Vehicle Assistance Regulation).

²⁶ § 35 SGB IX.

funds) bear all the expenses for the training measures. In addition, the rehabilitation fund usually provides monetary benefits for disabled trainees (e.g. training allowance for initial training) and also pays the social security contributions.²⁷

II. Severely Disabled People

For severely disabled people, the *Neuntes Buch des Sozialgesetzbuches* provides additional special rights and protection to improve their employment opportunities and secure their employment.

1. Workforce Quota

All employers (public and private) with a workforce of 20 or more are required to fill 5 % of their jobs with severely disabled employees.²⁸ However, employers are not obliged to create additional jobs for severely disabled people or to replace a non-severely disabled employee with a severely disabled one. If an employer does not comply with the quota, he has to pay a monthly compensation penalty²⁹ for each unfilled compulsory place. The penalty is scaled as follows:

- EUR 105 for a quota of less than 5% but more than 3 %;
- EUR 180 for a quota of less than 3% and more than 2 %; and
- EUR 260 for a quota of up to 2 %.

The revenue from this compensation levy is used for employment benefits for disabled people and their employers. The compensation levy is necessary to improve the disabled employment opportunities because the unemployment rate of disabled workers is in higher-than-average in comparison with the general unemployment rate.³⁰

In fact, most employers do not comply with the workforce quota and have to pay the compensation levy. According to the *Bundesagentur für Arbeit*, in 2000 the average employment quota of severely disabled people was only 3.7%.

²⁷ § 44 para. 1 SGB IX.

²⁸ § 71 *et seq.* SGB IX.

²⁹ § 77 para. 2 SGB IX.

³⁰ *Bundesverfassungsgericht* (Federal Constitutional Court) of 1 October 2004 - 1 BvR 2221/03 with reference to the unemployment rate of disabled in comparison to non-disabled people (14,6% to 10,6% in April 2003).

2. Employer's Review, Consultation and Anti-Discrimination Obligation

All employers are obliged to review their vacant jobs to determine whether they are suitable for severely disabled people, especially for those severely disabled people that are registered with the *Arbeitsagenturen*.³¹ In addition, the employer must consult with the *Vertrauensmann* (for details cf. B.II.8.) for the severely disabled, if one exists, concerning any job application from a severely disabled person. However, severely disabled people do not have a right to be employed even if the vacant job is suitable for them. The employer remains generally free in his or her choice to employ a suitable candidate.³²

Furthermore, the employer is entitled to ask the job applicant if he or she is severely disabled. If the job applicant denies his or her status as severely disabled, the employer is entitled to void the employment contract.³³ It should, however, be noted that the Federal Labor Court decisions supportive of these limits on the promotion and protection of the interests of the disabled remain controversial³⁴ and it is uncertain whether this precedent will be upheld in future decisions under the *Neuntes Buch des Sozialgesetzbuches* that explicitly prohibits any discrimination against disabled people.

Nevertheless, the employer is bound by the general anti-discrimination obligation,³⁵ i.e. the employer cannot refrain from hiring the disabled applicant *because* of his or her disability. If the employer violates this obligation, the rejected disabled applicant has the right to sue for damages, but cannot claim employment.³⁶ However, the employer will not be found to have discriminated on the basis of a disability if he or she selects a candidate according to suitability and performance and the chosen non-disabled candidate is either more suitable or better performing.³⁷ If the

³¹ § 81 SGB IX. The *Betriebsrat* (works council) may object to hiring a new employee if the employer did not comply with his review obligation beforehand, cf. *Bundesarbeitsgericht* of 10 November 1992 - 1 ABR 21/92.

³² *Bundesarbeitsgericht* of 14 November 1989 - 1 ABR 88/88.

³³ *Bundesarbeitsgericht* of 5 October 1995 - 2 AZR 923/94). This also applies to questions about a disability if the disability affects the applicant's ability to fulfill his or her job responsibilities.

³⁴ Cf. the opinions of Schaub, *NEUE ZEITSCHRIFT FÜR ARBEITSRECHT* 299, 301 (2003); Messingschlager, *NEUE ZEITSCHRIFT FÜR ARBEITSRECHT* 301 (2003); Jousen, *NEUE JURISTISCHE WOCHENSCHRIFT* 2857 (2003); Brors, *DER BETRIEB* 1734 (2003).

³⁵ Cf. § 81 para. 2 SGB IX.

³⁶ § 81 para. 2 SGB IX.

two applicants are equal in suitability and performance, however, the employer may be obligated to select the disabled applicant.³⁸

3. Adequate Employment Conditions

Severely disabled employees must be employed in such a way that they can use and develop their knowledge and capabilities most effectively.³⁹ This means that the employer has the obligation to ensure that the severely disabled employee is neither too little nor too much challenged by the job. However, the severely disabled employee cannot demand placement at a certain work place in the company or to be employed solely according to his or her desires.⁴⁰

The employer is also obliged to furnish and equip the working environment (rooms, machines, tools, *etc.*) in such a way that he or she is able to employ the mandatory number of severely disabled employees; unless this imposes an unreasonable burden on the employer.⁴¹ If the employer is not able to comply with this obligation due to financial reasons, part or all of the expenses can be borne by the severely disabled compensation levy.

If the working capacity of the severely disabled employee declines, the employer is obliged to alter the working conditions of the severely disabled employee according to his or her needs. However, the employer is only obligated to make such an adjustment if this is possible and does not impose an unreasonable burden.⁴² In particular, this can be accomplished by assigning a part-time job to the severely disabled employee. The severely disabled employee may claim a part-time job if the reduced working time is necessary due to the kind or severity of the disability.⁴³ If this is not possible and the severely disabled employee can no longer fulfill his or her current work assignments due to his or her health condition, he or she is enti-

³⁷ *Bundesarbeitsgericht* of 28 May 1975 - 5 AZR 172/74. The Court explicitly remained undecided if this also applies in the event that the applicant's reduced performance is caused by the disability.

³⁸ *Id.*

³⁹ § 81 para. 4 SGB IX; *cf.* also *Bundesarbeitsgericht* of 3 December 2002 - 9 AZR 481/01.

⁴⁰ *Id.*; *Bundesarbeitsgericht* of 10 July 1991 - 5 AZR 383/90; *Bundesarbeitsgericht* of 23 January 1964 - 2 AZR 289/63.

⁴¹ § 81 para. 4 SGB IX.

⁴² *Bundesarbeitsgericht* of 10 June 1991 - 5 AZR 383/90.

⁴³ § 81 para. 5 SGB IX.

bled to the normal sick pay but cannot claim any additional continued payment from the employer on the basis of his or her status as a severely disabled person.⁴⁴

4. Special Protection against Dismissal

Severely disabled people enjoy special protection against dismissal from their employment.

a) Employer's Obligation to Offer Vacant Suitable Jobs

Prior to a dismissal, the employer has a general obligation to offer an employee whose job will be cut another suitable job, if any such is available and vacant in the company. Therefore, the employer is obliged to offer a vacant suitable job in the company to the severely disabled employee if he or she can no longer fulfill a job due to a health condition.⁴⁵ If no suitable job is vacant but the employer can rearrange the employees' jobs within his or her right to issue directives (*Weisungsrecht*), in order to find a suitable job for the severely disabled employee, the employer is obliged to do so instead of dismissing the employee.⁴⁶ However, the employer is not obligated to create a new (additional) job for the severely disabled employee who can no longer fulfill his or her current job responsibilities.⁴⁷ The severely disabled employee cannot assert employment priority over another employee who would have to be dismissed if the severely disabled employee also can no longer fulfill his current work.⁴⁸

b) Approval Requirement of the *Integrationsamt*

Severely disabled employees enjoy special protection against dismissal. The employer is obliged to obtain the approval of the *Integrationsamt* before giving notice of termination.⁴⁹ The *Integrationsamt* assesses the situation, examines ways of continued employment and weighs the interests of both sides regarding the termina-

⁴⁴ *Bundesarbeitsgericht* of 10 July 1991 - 5 AZR 383/90.

⁴⁵ *Bundesarbeitsgericht* of 28 April 1998 - 9 AZR 348/97; *Bundesverwaltungsgericht* of 28 February 1968 - V C 33.66.

⁴⁶ *Bundesarbeitsgericht* of 29 January 1997 - 2 AZR 9/96.

⁴⁷ Federal Labor Court of 28 April 1998 - 9 AZR 348/97.

⁴⁸ *Bundesarbeitsgericht* of 28 February 1968 - V C 33.66. The *Bundesarbeitsgericht*, however, ruled that this could be possible if the other employee is not a disabled person and in the event that the dismissal results in no social hardship for the dismissed employee.

⁴⁹ § 85 et seq. SGB IX.

tion or continuation of employment under special consideration of the goals of *Neuntes Buch des Sozialgesetzbuches*. If the termination grounds are related to the disability, higher standards are required for an approval by the *Integrationsamt*. The decision is, in general, made according to dutiful discretion. In some cases, however, the dutiful discretion of the *Integrationsamt* is limited:

- The dismissal shall be approved in cases of significant reduction of the workforce in the operation if the employer still complies with the severely disabled workforce quota or if the severely disabled employee can be employed at a different reasonable work place;⁵⁰
- The dismissal has to be approved in cases of complete closure of the operation and a continued payment of at least three months salary, starting with the notice of termination, is guaranteed;⁵¹ and
- In the event of a termination without notice, the *Integrationsamt* shall, in general, approve the planned dismissal if the dismissal's ground is not related to the disability.⁵²

However, this special approval requirement does not apply to employment relationships of less than six months tenure or the dismissal of severely disabled employees who are at least 58 years of age and who receive a compensation payment from a social plan (*Sozialplan*) and do not object to the dismissal.⁵³ Moreover, it also does not apply to a voluntary notice of termination given by the severely disabled employee or to an amicable termination agreement.

c) *Social Selection Criteria*

If the *Integrationsamt* approves the planned dismissal of a severely disabled employee due to operational reasons, he or she will be included in the social selection, if any. In the case that only some but not all comparable employees' positions become redundant and thus only some but not all comparable employees are to be terminated, the determination of who is to be made redundant will be made on the basis of this social selection process. In this selection process the "socially" strongest employees will be determined for redundancy. The employees will be rated according to four social criteria:

⁵⁰ § 89 para. 1 sent. 2 SGB IX.

⁵¹ § 89 para. 1 sent. 1 SGB IX.

⁵² § 89 para. 4 SGB IX.

⁵³ § 90 para. 1 SGB IX.

- age;
- tenure;
- alimony/support obligations; and
- severely disabled status.

All four criteria are considered to be of equal weight.⁵⁴ The severely disabled status has been newly included into the social criteria as of 1 January 2004⁵⁵ to improve the employment protection of the severely disabled.

5. *Special Rights*

Severely disabled employees are entitled to one additional week of paid vacation per year.⁵⁶ In addition, at their request, severely disabled employees are exempt from working overtime,⁵⁷ *i.e.* all working time exceeding eight hours daily. This limitation is meant to ensure that the severely disabled employee's working capability is not overstrained. In addition, the limitation grants the severely disabled person more free time to participate in other areas of life. It has been determined that people with a mobility, sight or mental disability especially require more time for participation in life than do non-disabled people.⁵⁸

6. *Special Benefits*

The *Integrationsamt* grants supplementary benefits to severely disabled people or their employer to facilitate their participation in employment,⁵⁹ *e.g.* special seats, and reading devices.

7. *Employer Integration Allowance*

Severely disabled people who have particular difficulties finding employment due to the severity of their disability, their age or other reasons,⁶⁰ receive additional employment assistance. Employers can receive salary subsidies for employing these

⁵⁴ § 1 para. 3 *Kündigungsschutzgesetz* (Protection against unfair Dismissal Act).

⁵⁵ See Ueber, *Gesetz zu Reformen am Arbeitsmarkt*, GERMAN L.J. Vol 05, No. 02, 135.

⁵⁶ § 125 para.1 SGB IX.

⁵⁷ *Id.*

⁵⁸ *Bundesarbeitsgericht* of 3 December 2002 - 9 AZR 462/01.

⁵⁹ Cf. *Schwerbehinderten-Ausgleichsabgabeverordnung* (Severely Disabled Compensation Levy Regulation).

⁶⁰ For details see § 72 para. 2 SGB IX.

people of up to 70 % of the salary for up to three years. For older severely disabled persons, subsidies can be awarded for up to eight years.⁶¹ However, the employer is only eligible for the allowance if he or she complies with the severely disabled workforce quota of 5 % or is not subject to the quota.

8. *Vertrauensmann*

If company operations employ five or more severely disabled employees, all severely disabled employees of the operation have the right to elect an ombudsman - called *Vertrauensmann* (or *Vertrauensfrau*) - as a representative, and at least one deputy for the operation.⁶² The person to be elected as representative or deputy may also be a non-disabled employee of the operation.⁶³ The representative mainly has the task of monitoring the company's compliance with the legislation concerning severely disabled employees. The *Vertrauensmann* also provides advice and assistance for the severely disabled employees.⁶⁴ In addition, the employer has to consult with the *Vertrauensmann* prior to any measure that is related to severely disabled employees, such as hiring, dismissal or relocation.⁶⁵ A breach of this duty may be sanctioned with a fine of up to EUR 10,000.⁶⁶ Furthermore, the *Vertrauensmann* has the right to participate in all works council and committee meetings. He or she enjoys special protection rights against unfair dismissal and relocation comparable to the status of a member of the works council.⁶⁷ In addition, the *Vertrauensmann* is released from duty with continued remuneration if this is necessary to fulfill his or her duties as *Vertrauensmann* for the operation.⁶⁸

9. *Law to promote Training and Employment of Severely Disabled People*

On 1 May 2004, a new law to promote training and employment of severely disabled people came into effect.⁶⁹ A main part of the law focuses on promotion of

⁶¹ § 219 SGB III.

⁶² § 94 para. 1 SGB IX.

⁶³ *Id.* at para.2.

⁶⁴ § 95 SGB IX.

⁶⁵ *Id.* at para. 2.

⁶⁶ § 156 para. 1 No. 9 SGB IX.

⁶⁷ § 96 SGB IX.

⁶⁸ *Bundesarbeitsgericht* of 30 April 1988 - 6 AZR 428/84.

⁶⁹ For details see <http://www.bmgs.bund.de/download/gesetze/behinderung/BGBI.pdf>

training for severely disabled people. At the beginning of the legislative process, it was intended that this aim would particularly be reached by requiring employers with more than 100 work places to fill 5% of their training slots with severely disabled people. However, this requirement was dropped in the process. Now, employers are only obliged to consult with the *Vertrauensmann* for the severely disabled regarding filling a reasonable part of the training slots with severely disabled people.⁷⁰ In addition, employers are granted allowances and bonuses for the training of severely disabled people. Furthermore, training programs in special workshops (*cf.* B.III.) shall more frequently be linked with training parts in private companies.

III. Special Workshops

For those disabled people who are not able to participate in the general labor market, *Behindertenwerkstätten* (workshops for disabled people) offer suitable vocational training and employment.⁷¹ The workshops are open to all disabled people who can perform a minimum amount of economically useful work. If they do not meet this requirement at the beginning, they have the right to participate in the vocational training department to develop their ability. The disabled trainees/employees receive in return a salary that reflects their performance. The average salary is currently EUR 160 per month.

C. Education

I. Co-education

In Germany, the education of disabled children is not a federal but a state responsibility. Therefore, only some states have adopted co-education of disabled and non-disabled children in school.

In Schleswig-Holstein, for instance, disabled and non-disabled children are co-educated. Therefore, a disabled child may not be assigned to a special school contrary to his or her request, unless the disabled child is not suited for a normal school due to personal reasons or due to the fact that the school is lacking the organizational, personnel or functional resources for co-education.⁷²

⁷⁰ § 72 para. 2 SGB IX.

⁷¹ § 136 SGB IX.

⁷² *Cf. Obergerverwaltungsgericht* of Schleswig-Holstein of 19 September 1996 - 3 M 81/96.

If a state has not adopted co-education, there is no legal entitlement for disabled children to receive assistance in ordinary schools.⁷³ However, a number of German states have implemented, at least in some schools, appropriate models for the co-education of disabled and non-disabled students. In these models, the principle “as much special assistance as necessary, as much shared learning with non-disabled classmates as possible” has been adopted. Therefore, the learning capability of disabled children will be promoted as much as possible in the light of their particular disability to ensure that they can achieve the educational goals of ordinary schools. If necessary, specific assistance and special teaching aids can be provided. Assistance for disabled children to promote co-education in regular schools aims to counter excessive protection and special conditions which can result in isolation of the disabled. Many disabled children can receive very effective assistance in regular schools and are able to reach the educational goals. However, this regularly requires additional special teaching by specially trained teachers and disability-suited facilities. Furthermore, it must be provided that no more than a certain number of disabled children attend a class.

Universities are required, in the most feasible way, to take the special needs of disabled students into consideration to avoid discrimination against disabled students and to enable them to participate in university activities without outside help.⁷⁴ The same applies to university exams,⁷⁵ e.g. especially prepared examination papers and especially equipped examination rooms may be required.

II. Special Schools

If disabled children cannot receive (sufficient) assistance in ordinary schools, special schools must help them to achieve the educational aims that are within their capabilities. If possible, the aim is to help the disabled child in obtaining a general school-leaving qualification. Germany has different special school-types for disability in the field of

- Hearing;
- Language;
- Physical and motor function development;
- Mental development;
- Emotional and social development; and

⁷³ Cf. *Verwaltungsgerichtshof* (Administrative High Court) of Baden-Württemberg of 3 September 1996 – 9 S 1971/96.

⁷⁴ § 2 para. 4 *Hochschulrahmengesetz - HRG* (Framework Act for Higher Education).

⁷⁵ § 16 HRG.

- General sickness.

The special schools are obligated to examine, at the end of each school year, whether or not attendance at the special school is still required in the future or whether the child is able to learn in an ordinary school.

III. Funding

The assistance for appropriate school education is provided by the social assistance fund and financial means are provided up to university education.⁷⁶

C. Access

I. General

A key area of the *Behindertengleichstellungsgesetz* (as well as supplementary changes to other laws) is “access” in all possible ways by creating a barrier-free environment. This aims at equal participation in community life for disabled people by eliminating obstacles to mobility in the areas of construction and transport as well as in the area of communication. It is intended to create an obstacle-free, safe environment for the disabled to enable them to live without outside help as much as possible.⁷⁷

People with hearing, sight and speech disabilities receive communication and mobility aids. They also receive concessions for postal and telecommunication services (e.g. reduced fees, special communication equipment). In addition, the administrative agencies as well as some private undertakings must comply with the barrier-free requirement.

II. Definition of Barrier-free Environment

Section 4 BGG characterizes the “barrier-free environment” in the following terms: Construction and other facilities, means of transportation, technical appliances and utilities, IT-systems, oral and visual information sources and communication devices as well as other created areas of life are barrier-free if disabled people are able

⁷⁶ § 40 *Bundessozialhilfegesetz* (Federal Social Assistance Act), § 12, 13 *Eingliederungshilfereordnung* (Integration Assistance Regulation); see also *Verwaltungsgerichtshof* (Administrative High Court) of Hesse of 1 March 1994 – 9 UE 1797/91

⁷⁷ Cf. § 1 BGG.

to access and use them in the general and usual way without specific difficulties and generally without outside help.

This definition of a barrier-free environment does not only refer to physical barriers for mobility-impaired people such as stairs, too-narrow walkways or “stumble-steps.” It also applies to barriers in the area of communication that are particularly challenging to sight-impaired people.

III. Construction

1. Public Construction

All new buildings as well as major modifications of or add-ons to existing governmental buildings must be designed and constructed barrier-free according to the general technical standards.⁷⁸ This especially includes the requirement for wheelchair ramps, extra-wide entrances, elevators and suitable restrooms as well as tactile signs. Projects with a capital expenditure of more than EUR 1 Mio. are deemed to be major modifications or add-ons. All other public construction, public ways, squares and streets have to be designed and built barrier-free as well.⁷⁹

2. Private Construction

The *Wohnraumförderungsgesetz* (Housing Allowance Act) contains special concessions for the construction of housing for severely disabled people.

In general, disabled tenants have the right to make necessary changes to the rented building or apartment according to their needs,⁸⁰ e.g. changes to the bathroom, doors, and ramps. The tenant bears the costs of the changes and has to rebuild the rented building or apartment at the end of the lease at his or her own cost.

3. Restaurants

Owners or tenants of restaurants receive the public permit to run a restaurant in all newly constructed buildings or in considerably modified buildings only if the restaurant rooms are accessible barrier-free, unless a barrier-free design and construc-

⁷⁸ § 8 para. 1 BGG.

⁷⁹ *Id.* at para. 2.

⁸⁰ § 554a *Bürgerliches Gesetzbuch* (Civil Code).

tion of the restaurant is not possible or would result in an unreasonable financial burden for the owner or tenant.⁸¹

IV. Transportation

All public transportation devices and means for public transportation (streets, bus, train, aircraft) have to be designed and constructed barrier-free.⁸²

Disabled people who are considerably limited in their walking mobility enjoy almost free transport in the public transportation system.⁸³ The disabled person only has to contribute an annual fee of EUR 60. Blind and incapacitated severely disabled people, as well as people with very limited financial resources, do not have to pay the annual fee.⁸⁴ These people can also receive a 50% relief on their motor vehicle tax as well as reductions on their motor vehicle insurance premiums. In addition, the *Integrationsamt* grants allowances and loans to disabled people for obtaining a driving license and for the acquisition and special equipment of motor vehicles.

Disabled people are considered considerably limited in their walking mobility if the disabled person is not able to cover distances in his or her area that usually are walked by foot without considerable difficulties or without causing danger for the person or others.⁸⁵ Distances that are usually walked by foot are distances of up to 2 km or 30 minutes walking time.⁸⁶ This does not apply to physical disabilities only but also to walking limitations caused by internal diseases, medical seizures or orientation dysfunctions.⁸⁷

Disabled people who are extraordinarily limited in their walking mobility (*e.g.* paraplegia, both thighs or lower legs are amputated, or comparable disabilities) receive, in addition to the above mentioned benefits, 100% relief on their motor

⁸¹ § 4 para. 2a *Gaststättenverordnung* (Restaurant Regulation).

⁸² § 8 para. 2 BGG.

⁸³ § 145 SGB IX.

⁸⁴ *Id.*

⁸⁵ § 146 para. 1 SGB IX.

⁸⁶ *Bundessozialgericht* of 10 December 1987 - 9 a RVs 11/87; *Bundessozialgericht* of 7 November 2001 - B 9 SB 3/01 R.

⁸⁷ § 146 para. 1 SGB IX.

vehicle tax, other tax relief, and they are entitled to use special parking spaces that are reserved for the handicapped.

Disabled people who are not able to use public transportation, their own car, or taxis because of their disability are increasingly offered special transportation services by local institutions.

V. Elections

Voting rooms have to be barrier-free and equipped in such a way that the participation for disabled people and people with limitations of mobility are alleviated.⁸⁸ People with sight disabilities have the right to use a voting stencil in the voting process.⁸⁹

VI. Communication

In official procedures with federal administrative agencies, all speech- and hearing-impaired people are entitled to hearing and speech aids at no cost, especially to a sign-language interpreter.⁹⁰ At the request of sight-impaired people all official forms and notifications have to be issued for free and in a manner that is suitable for them.⁹¹ A suitable manner is to send these documents *via* e-mail, on disc or CD-ROM if sight-impaired people have a computer equipped with a Braille toolbar or a special speech output. If disabled people do not have such equipment, it is also possible to send documents as recorded tape- or CD-editions.

All Internet sites of the federal administration shall be barrier-free for sight-impaired people,⁹² particularly by “underlying” text for graphic objects on the Internet site.

E. Outlook

The current government declared it one of its main goals to improve the situation of disabled people in Germany and to give them equal participation opportunities,

⁸⁸ § 46 para. 1 *Bundeswahlordnung - BWO* (Federal Election Regulation).

⁸⁹ § 57 para. 4 BWO.

⁹⁰ § 6, 9 para. 1 BGG; for details see *Kommunikationshilfenverordnung* (Communication Aids Regulation).

⁹¹ § 10 para. 1 BGG; for details see *Verordnung über barrierefreie Dokumente in der Bundesverwaltung* (Regulation on barrier-free Documents in the Federal Administration)

⁹² § 11 para. 1 BGG.

to fight discrimination and to help them live a self-determined life. Accordingly, the legislative body passed two of its main law initiatives in 2001 and 2002: The *Neuntes Buch des Sozialgesetzbuches* and the *Behindertengleichstellungsgesetz*.

The coming years will tell whether equal participation for disabled people will, indeed, be established in German society. The past experience rather hints that society only changes slowly and does not abruptly respond to the implementation of new laws. However, these two laws are very powerful and may speed up the process.