

Guidelines on Protection Against Discrimination and Harassment in Consideration of the General Equal Treatment Act (AGG) at the University of Bayreuth

dated 15 October 2020

Preamble

The University of Bayreuth sees itself as a fair and safe, non-discriminatory, and non-violent place to study, teach, and work. As a basis for this, the members of the university maintain a culture of appreciative cooperation as well as honest and respectful interaction with each other and with third parties. The University of Bayreuth does not tolerate discrimination or harassment by university members.

The University of Bayreuth encourages a culture of not looking away. University members are called upon to offer assistance to anyone affected by cases of discrimination or harassment that come to their attention and to support them in resolving conflicts.

The University of Bayreuth encourages handling situations with people affected by discriminatory or harassing behaviour such that they are able to address these instances while taking into account all legitimate interests.

The purpose of the present guidelines is to raise awareness of harassment and discrimination and to take measures for prevention and effective equality. Procedures for intervention are also provided.

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§ 1 Scope

- (1) The Guidelines apply to all members of the University of Bayreuth under the terms of § 19 para 1 Bayerisches Hochschulinnovationsgesetz (BayHIG). They also apply to anyone in a teaching or employment relationship (external lecturers, honorary professors, etc.) as well as to persons who are temporarily or visiting as guests at the University of Bayreuth. They also apply to all apprentices/ trainees and anyone else employed in the context of their training. The Guidelines apply to all functional areas of the University of Bayreuth.
- (2) The Guidelines also apply in the event of discrimination and harassment of third parties or against third parties in the area of the university if at least one person involved belongs to the group of persons referred to in para 1.

§ 2 Definition of Terms

- (1) The Guidelines cover direct and indirect forms of discrimination and harassment based on
 - a. racist reasons or ethnically-oriented ascriptions
 - b. gender and gender identity
 - c. sexual identity
 - d. religion or beliefs
 - e. impairments classified as disabilities
 - f. age.
- (2) An instruction to discriminate against a person on any of the grounds referred to in para 2 is considered to be discrimination.
- (3) Direct discrimination shall be taken to occur where one person is treated less favourably, in respect of one or more of the categories referred to in para 1, than another person is, has been, or would be treated in a comparable situation.
- (4) Indirect discrimination shall be taken to occur where apparently neutral provisions, criteria, or practices would put persons at a particular disadvantage compared with other persons because of one or more of the categories referred to in para 2.
- (5) There shall be no discrimination within the meaning of paragraphs 3 and 4 where the disadvantage is objectively justified by a legitimate aim and the means of achieving that aim are proportionate.
- (6) Harassment is deemed to exist where unwanted conduct related to one or more of the categories referred to in para 2 has the purpose or effect of violating the dignity of the person concerned. This is particularly the case if an environment characterized by intimidation, hostility, humiliation, or insults is created.
- (7) Sexual or racial harassment is any sexual or racially motivated conduct that violates the dignity of a person, in particular when it creates an intimidating, hostile, degrading, humiliating, or offensive environment. Sexual or racial harassment is any derogatory or

deprecative remarks, gestures, or depictions of sexual or racial content, any unwanted showing or visible posting of pornographic or racist images, or the copying, distribution, application, or use of obscene, sexually degrading or racist digital media content within or in connection with the IT infrastructure of the University that violates a person's dignity. Sexual or racial harassment and discrimination can be verbal, non-verbal, and/or physical. However, sexual and racial harassment is not present if the copying, distribution, application, or use of the content described in sentence 1 is carried out for illustration purposes within the framework of courses and for the purposes of scientific research.

- (8) The definitions found in the *Allgemeines Gleichbehandlungsgesetz* (AGG), including the case law based on it, shall apply *mutatis mutandis* for the purposes of the present guidelines.

§ 3 General Prohibition

- (1) Disadvantages that are not objectively justified and proportionate within the meaning of § 2 para 5 and harassment within the meaning of §2 para 6 and 7 sentence 1 are prohibited. They disrupt university operations and are investigated and penalized as violations of the employment contract, official duties, civil service, and higher education law.
- (2) All members and affiliates of the University, in particular those with training, qualification, or management duties in teaching, research, education, administration, or self-governance, shall be responsible within their own area of responsibility, by virtue of their duty of care, for ensuring that, in particular, sexual and racial harassment, discrimination, and violence are prevented or eliminated and legally reviewed.
- (3) Discrimination and harassment taking advantage of relationships of dependency at a place of training or work or during studies, especially if these take place under threat of personal or professional disadvantages, are considered particularly serious.

§ 4 Guiding Principles

- (1) Within the scope of its responsibilities, the University of Bayreuth will take appropriate and reasonable measures to ensure that the rights of its members to equal treatment and non-discrimination are respected and protected.
- (2) The University of Bayreuth will take the necessary measures to protect the groups of persons named in § 1 para 1 and 2 from discrimination and harassment. It will take the positive measures set out in § 5 and establish the procedures referred to in § 6.
- (3) Anyone who, as an affected, potentially affected, or uninvolved person, draws attention to discrimination, harassment, or conduct that violates someone's dignity may not be disadvantaged (ban on reprimanding).
- (4) Those affected are encouraged to exercise their rights and to report to the counselling and trust centres about experienced cases of harassment, discrimination, or violence, and to seek advice and make a complaint.

§ 5 Positive Measures

- (1) In particular, the following basic measures will be taken to raise awareness, prevent discrimination, and foster effective equality:
 - a. publication of the present guidelines in digital form and integration into the communication strategy of the University of Bayreuth
 - b. providing information on anti-discrimination counselling services, complaint possibilities, and ways of resolving conflicts for all members of the University in German and English
 - c. enabling participation in continuing education courses for the Complaints Office referred to in § 8, provided that these courses provide knowledge required for the work
 - d. providing training on equal treatment and anti-discrimination for people with managerial, leadership, and training roles, people with responsibility for personnel selection, jobs, and people with advisory functions
 - e. establishing a permanent anti-discrimination working group for exchanging ideas on equal treatment and anti-discrimination at the University of Bayreuth, which reports regularly to the Presidential Advisory Committee for Equal Opportunities and Diversity
 - f. incorporating diversity and anti-discrimination in personnel recruitment
- (2) The Presidential Advisory Committee for Equal Opportunities and Diversity is responsible in particular for the (further) development of the measures in para 1 and for
 - a. developing and proposing further measures to foster equal treatment and anti-discrimination in all areas of the university
 - b. annual evaluation of the awareness and prevention measures
 - c. evaluation of the anonymized consultation and complaint cases
 - d. the annual report to the University Governing Board, the Senate, and the Employees' Council on the effectiveness of the prevention strategy and measures.

§ 6 Procedures for Protection against Discrimination and Harassment

The University of Bayreuth has set up two procedures to protect against discrimination and harassment: In the counselling procedure, internal university bodies provide advice and support to those affected. They involve non-university bodies as required. Those affected also have the opportunity to lodge a complaint with the university Complaints Office as part of the complaints procedure. Official channels do not have to be observed.

§ 7 Counselling Procedure

- (1) The Diversity Service Centre at the University of Bayreuth provides information for those affected by discrimination or harassment about the complaint procedure, the possibilities of conflict resolution, and internal and external counselling and support services.
- (2) Counselling for those affected is provided by the advising centres of the University of Bayreuth and the *Studentenwerk Oberfranken*. The subject of specific advice provided in individual cases is counselling on possible courses of action and protection, including support for the initiation of complaint procedure. Counselling offices in this sense are:
 - a. Representative for integration management
 - b. Officer for Family-Friendly University
 - c. Representative for students with disabilities
 - d. EduCare coordinators of the various faculties
 - e. External conflict advisors at the University of Bayreuth
 - f. Women's Representative of the University
 - g. Women's Representatives of the various faculties
 - h. Equal Opportunities Officer for non-academic staff
 - i. Employer's Inclusion Representative
 - j. Research Associates' Council
 - k. Ombudspersons for early-career scholars
 - l. Employees' Council
 - m. Student Parliament spokesperson for culture, campus design and equal opportunities
 - n. Equal Opportunities Department
 - o. Student council representatives
 - p. Representative for severely disabled persons and those with an equivalent status
 - q. Student Advising Office
- (3) The counselling offices referred to in paragraph 2(a), (f), (g), (h), (i), (k), (l), (m) and (p) are also points of trust within the meaning of the present guidelines. If their area of responsibility is given, the points of trust can, if they so wish, support affected persons in conciliation and mediation talks and assist them in the complaint procedure. If a point of trust is concerned about a conflict of interest in the performance of its duties as a point of trust, it shall inform the Complaints Office. In this case, in the specific proceedings, it is excluded from serving the function of the point of trust.

§ 8 Complaint Procedure

- (1) The University of Bayreuth will set up a Complaints Office. It is responsible for complaints regarding violations of § 3 of the present guidelines. It is also a complaints office in the sense of § 13 para 1.
- (2) The Complaints Office will consist of at least two persons. They should belong to different genders and may not act or have acted as an advisory body within the meaning of § 7 para 2 or as a point of trust within the meaning of § 7 para 3 of the present guidelines in a specific case. When initiating the procedure, the complainant may indicate a preference as to which member of the Complaints Office he or she wishes to interact with.
- (3) The Complaints Office is obligated to be neutral.
- (4) The Complaints Office should be as easily accessible as possible.
- (5) The Complaints Office shall carry out the formal complaint process, unless specific responsibilities are stipulated.

§ 9 Initiation of the Complaint Process

- (1) The complaint process is initiated by submitting a complaint to the Complaints Office. All persons mentioned in § 1 are entitled to submit a complaint.
- (2) The complaint must describe the events that are perceived as disadvantageous and discriminatory. Witnesses and any other evidence should be included or described. The complaint should state which other persons have already been informed about the incidents and whether action has already been taken.
- (3) The complaint must be submitted in text form or orally for recording to the Complaints Office. The person lodging the complaint may be assisted in this by a counselling office under the terms of § 7 para 3 or another person of his/her choice. The complaint must include the identity of the person(s) concerned.
- (4) The Complaints Office shall inform the complainant of his or her rights, obligations and further procedure. It must be assessed on a case-by-case basis to what extent provisional measures should be implemented to protect the person concerned. It shall refer to existing sources of support in accordance with § 7 paras. 2 and 3.

§ 10 Determining the Facts

- (1) The Complaints Office uses the means at its disposal to clarify the facts of the case at its own discretion. To this end, the complainant must inform the respondent of the substance of the complaint and give him/her the opportunity to comment, and must question the complainant and witnesses.
- (2) The parties and witnesses should be interviewed separately. Upon request, the respondents can be accompanied by a trusted third party in accordance with § 7 para 3. The right to consult a legal adviser remains unaffected. All oral interviews, statements and discussions are recorded and signed by the participants.

- (3) The Complaints Office draws up a final report on the basis of its determination of the facts. It may also contain proposals for measures which are not rooted in labour or employment law. This includes, in particular, proposals for mediation and preventive training.
- (4) If the proper clarification and assessment of the facts requires special expertise or if it is requested in writing by a party to the complaint process, the Complaints Office will convene a complaints committee. On the basis of the final report of the Complaints Office, the latter [complaints committee] writes an explanation and comprehensive assessment of the facts of the case, which is included as an integral part of the final report.
- (5) The complaints committee consists of at least three persons who, due to their specific expertise, can contribute to the proper clarification and assessment of the facts of the case. The status groups of the parties must be represented. The following university members and representatives of the offices listed below may be members of the committee, unless the person concerned is already acting or has already acted in a counselling office within the meaning of § 7 para 2, or as a point of trust within the meaning of § 7 para 3 of the present guidelines, or in the Complaints Office within the meaning of § 8 para 2 of the present guidelines:
 - a. University members with academic or specific expertise in the subject matter of the complaint
 - b. Officer for Family-Friendly University
 - c. Representative for students with disabilities
 - d. Women's Representatives of the University and the faculties
 - e. Equal Opportunities Officer for non-academic staff
 - f. Research Associates' Council
 - g. Ombudspersons for early-career scholars
 - h. Employees' Council
 - i. Spokesperson of the student parliament for culture, campus design and equal opportunities
 - j. Equal Opportunities Department
 - k. Student Parliament
 - l. Representative for severely disabled persons and those with an equivalent status
 - m. Vice President for Internationalization, Equal Opportunities & Diversity
- (6) The final report is sent to the Human Resources Office for further processing if employees and trainees/apprentices are involved, and also to the Legal Department.

§ 11 Legal Examination, Notification of Results, Intervention

- (1) The office of the University Administration responsible for student affairs or human resources in accordance with the official division of responsibilities shall examine the final report from a legal point of view, prepare a statement on it, which shall also comment on the question of sanctions or propose such sanctions, and, depending on its responsibilities, shall forward the matter to the President or Provost for decision.
- (2) The President or Provost shall make the final decision on the complaint. The Complaints Office will inform the person lodging the complaint in writing. Reasons for the decision are to be provided.
- (3) In the event of conduct that is classified as discrimination or harassment, the President or the Provost shall decide on appropriate, necessary, and proportionate measures to take. These should include both measures under the duty to intervene against those whose behaviour is inappropriate and measures to remedy the disadvantage if it is possible, appropriate, and necessary. Furthermore, the duty of prevention should include measures, where possible, appropriate, and necessary, to prevent similar infringements in the future.
- (4) If there is a conflict that places a burden on the study, employment, or supervision relationship, the reasons for the decision under para 2 may be supplemented by a proposal for conflict resolution options.

§ 12 Penalties

Discrimination and disadvantage within the meaning of the present guidelines shall be subject to review under employment law, public service law, and regulatory law. In addition, such cases may also be criminal offences. In this case, it is examined whether the facts of the case should be handed over to the relevant criminal investigation authority.

§ 13 Confidentiality in Dealing with Personal Data

Pursuant to Article 4 No. 1 and Article 5 (1) f of the Basic Data Protection Regulation (DS-GVO), the members of the counselling and complaints offices maintain strict confidentiality with regard to the personal data to which they gain access or knowledge in the course of their work.

§ 14 Effective Date

The present guidelines shall take effect on October 16, 2020.

Annex:

Partial overview of possible consequences of discrimination and harassment

1. Consequences under employment law if the allegations are confirmed against an employee of the university:

- a) consequences under civil service law for civil servants: disciplinary proceedings resulting in disciplinary measures (cf. Article 7 ff. of the Bavarian Disciplinary Act, *BayDG*);
- b) in case of public employees, consequences under employment law (in particular, warning, dismissal, or termination of the contract).

2. Consequences under civil law:

- a) being banned from the premises (Article 31 para 12 BayHIG)
- b) Claims for damages in tort:
Violation of general personal rights, § 823 para 1 BGB, immoral, intentional damage, § 826 BGB, breach of official duties, § 839 BGB, compensation for pain and suffering, § 249 BGB
- c) Compensation and damage claims against the employer, § 15 AGG
- d) Elimination, injunction, and compensation claims against the disadvantaged parties, § 21 AGG.

3. Criminal consequences:

Sexual harassment, § 184 i StGB,
Insult, § 185 StGB,
Defamation, § 186,
Coercion § 240 StGB.

4. Administrative consequences:

Disciplinary measures according to § 17 of the University of Bayreuth's Enrolment Regulations (*Immatrikulationssatzung*) dated 10 August 2010.