

# **Policy of the University of Potsdam on Protection against Discrimination, (Cyber-)Bullying and (Cyber-)Stalking (Anti-Discrimination Guidelines)**

**September 21, 2022**

The Senate of the University of Potsdam, in accordance with Section 64 (2) No. 2 of the Brandenburg Higher Education Act of April 28, 2014 (GVBl. I No. 18), as most recently amended by the Act of September 23, 2020 (GVBl. I No. 26), has on September 21, 2022 issued the following directive:

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### **Attachment 1**

### **Preamble**

The University of Potsdam is committed to ensuring that no person is discriminated against within university life, particularly on the grounds of race or ethnic origin<sup>1</sup>, gender, gender identity, sexual orientation, disability, physical or mental impairment, chronic illness, social origin or status, age, religion or belief, language, nationality, marital status, reproductive or care work, or physical appearance. All employees, students and other members of the university are particularly called upon to participate in the creation of an appreciative and non-violent work and study environment in which the rights, freedoms and dignity of fellow human beings are respected. This policy serves to reduce and prevent discrimination, (cyber-)bullying and (cyber-)stalking with the aim of enforcing equal opportunities at the University of Potsdam (University Contract 2019 - 2023,

III.9 and especially III.10).

Discrimination is based on attributions or affiliations that are part of historically grown, socially relevant structures of inequality that systematically lead to disadvantages. Discrimination takes place both as an individual act and on a structural or institutional level, and it must accordingly be countered on all these levels.

## **§ 1 Goals**

These guidelines serve to reduce and prevent discrimination, (cyber-)bullying and (cyber-)stalking with the aim of enforcing equal opportunities at the University of Potsdam. It is intended to inform those affected about the possibilities of defending themselves against discrimination, while also informing employees, students, and other members of the University of Potsdam about their responsibilities in this context.

## **§ 2 Scope of application**

This policy applies to employees, students, and other members of the University of Potsdam in all areas.

## **§ 3 Definitions**

(1) *Discrimination* within the meaning of this directive denotes discrimination against persons or groups of persons on the grounds of racial or ethnic origin, gender, gender identity, sexual orientation, disability, physical or mental impairment, chronic illness, social origin or status, age, religion or belief, language, nationality, marital status, reproductive or care work or physical appearance.<sup>2</sup> This definition takes into account that people have multiple affiliations or experience different attributions and can therefore also be affected by multidimensional discrimination through the specific interaction of different dimensions (intersectionality).

- a) *Direct discrimination* shall be deemed to exist where, on the basis of at least one of the grounds referred to in subsection (1), a person is treated less favorably than another person is, has been or would be treated in a comparable situation. With regard to subsection (1), direct discrimination on the grounds of gender also exists in the case of less favorable treatment of a person due to pregnancy or parenthood.

<sup>1</sup> The wording "on grounds of race or ethnic origin" follows the General Equal Treatment Act (§ 1 AGG). However, it should be explicitly noted that human "races" do not exist and theories based on the existence of different "races" are rejected. In these anti-discrimination guidelines, the term is used to ensure that the scope of protection of the guideline, as set forth in the General Equal Treatment Act, is at least maintained.

<sup>2</sup> The University of Potsdam is committed to an expanded concept of discrimination and supplements the catalog of grounds for discrimination from the AGG (race or because of ethnic origin, gender, religion or belief, disability, age, or sexual identity) with additional characteristics to ensure comprehensive protection against discrimination for all students, employees, and other members of the university, and does justice to the different people at the university in an intersectional understanding.

b) *Indirect discrimination* shall be deemed to exist where an apparently neutral provision, criterion or procedure may put persons at a particular disadvantage compared with other persons on any of the grounds referred to in subsection (1).

(2) *Harassment* shall be deemed to be discrimination if unwanted conduct related to a ground referred to in subsection (1) has the purpose or effect of violating the dignity of the person concerned and of creating an environment characterized by intimidation, hostility, humiliation, degradation or insult.

(3) *Sexualized harassment and/or violence* are all behaviors and actions that have the effect of threatening or violating the dignity of the person concerned in a gender-related, sexualized or sexist manner. This is particularly the case through the creation of an environment characterized by intimidation, hostility, belittlement, humiliation or insult. The degree of a boundary violation can be perceived very differently from person to person. When assessing a behavior or a course of action as *sexualized harassment and/or violence*, the subjective perception of the person concerned must therefore be taken into account in addition to the respective situational context. Sexualized harassment and/or violence can be expressed in verbal, non-verbal and physical form or manifest itself in physical assaults. These include:

1. sexually derogatory language, insult and hostility,
2. gestures and comments with overt or even subtle sexual references,
3. verbal, pictorial or electronic presentation of obscene, pornographic or sexist depictions outside of teaching and research, the purpose of which is to violate the dignity of the person concerned,
4. the reproduction and use of obscene, sexually derogatory media outside of teaching and research in office and seminar rooms and on university property,
5. unwanted touching and intrusion,
6. unwanted advances and requests for sexual or sexualized actions and behaviors,
7. (sexualized) physical assault,
8. sexual acts and behavior, rape, stalking and coercion with (also indirect) sexual background, which are punishable under the provisions of criminal law.

A particularly serious form of sexualized harassment and/or violence exists if it is directed against students or other subordinate and/or dependent persons and/or is associated with direct or subtle references to a possible link between the (non-)fulfillment of

(sexual) demands and advancement or disadvantage in working and/or study life.

(4) According to these guidelines, (*cyber*) *bullying* is understood to be a continuous, successive or overlapping form of behavior at the (digital) workplace or place of study between employees, students and/or other members of the university that serves the purpose of hostility, harassment or discrimination, which, according to its nature and course, is usually conducive to an overriding objective not covered by the legal system and, in any case, in its entirety violates the general personal rights, dignity or health of the person concerned and/or excludes them from the study/work environment.

(5) (*Cyber*) *stalking* is the deliberate, intentional and repeated stalking, following and/or harassing of a specific person against their will.

(6) An instruction to discriminate against a person on at least one ground referred to in subsection (1) shall be deemed to be discrimination.

#### **§ 4 Prohibition of discrimination, (cyber)bullying and (cyber)stalking**

(1) Persons pursuant to § 2 may not be discriminated against on the grounds of one or more of the grounds or reasons referred to in § 3 subsection (1)<sup>3</sup>; this shall also apply if the person committing the discrimination merely assumes the existence of a ground or grounds referred to in § 3 subsection (1) when discriminating.

(2) Different treatment is permissible if the disadvantage is objectively justified by a legitimate aim and the means of achieving this aim are proportionate. This applies in particular if suitable and appropriate measures are to be taken to prevent or compensate for existing disadvantages due to a reason specified in § 3 (1).

(3) (*Cyber*) bullying and (*cyber*) stalking are prohibited.

#### **§ 5 Duties and conduct**

(1) It is the task of the University of Potsdam to protect all persons named in § 2 within its sphere of influence from discrimination, (*cyber*) bullying and (*cyber*) stalking.

(2) All employees, students and other members of

<sup>3</sup> The prohibition of discrimination does not mean that discrimination may not be a subject in teaching and research; on the contrary, discriminatory structures, actions, words and images can, for example, be addressed in teaching and research if they are contextualized and reflected upon in an adequate

manner that complies with scientific standards. This includes a power- and difference-sensitive approach that is characterized by an awareness of asymmetrical power relations (for example, between teachers and students) and the particular vulnerabilities that accompany them.

the university, in particular those with training, qualification and management duties in teaching, research, training, administration and self-administration, are responsible within their area on the basis of their duty of care for ensuring that discrimination, (cyber) bullying and (cyber) stalking do not occur or are eliminated or legally reviewed.

(3) The University of Potsdam is committed to taking measures to prevent or eliminate discrimination, (cyber) bullying, and (cyber) stalking. This protection includes preventive and positive measures. The University of Potsdam continuously develops the preventive and positive measures to prevent or eliminate discrimination with regard to its specific problem situations.

## § 6 Preventive and affirmative action<sup>4</sup>

Preventive measures include the following:

1. the announcement of these guidelines to all employees, students, and other members of the University of Potsdam, as well as their permanent, easy-to-find, and accessible publication, especially on the University of Potsdam's website,
2. regularly informing employees, students and other relatives about counseling and support services in the event of discrimination,
3. conducting regular surveys on discrimination, (cyber) bullying and (cyber) stalking among its employees, students and other associates as broadly as possible, with the results being published,
4. regular information offers and appropriate awareness-raising and qualification measures for all employees, students and other members of the university on the topic of discrimination, (cyber) bullying and (cyber) stalking,
5. the provision of information services to individuals with supervisory, managerial and training responsibilities, particularly in the form of training and continuing education opportunities,
6. the establishment or support of counseling services and formation of networks to strengthen persons and groups of persons affected by discrimination (empowerment),
7. public relations, e.g., university public (informational) events, campaigns, websites, posters, etc.,
8. consideration of discrimination risks in planning and development projects and infrastructural changes, e.g. construction measures, strategic processes, etc.,
9. encouraging those affected not to accept dis-

crimination, (cyber) bullying and (cyber) stalking.

## § 7 Advisory services

(1) Employees, students, and other members of the University of Potsdam have access to various offices at the university as well as confidential counseling services in the event of discrimination, (cyber) bullying, and (cyber) stalking. You have the right to seek counseling and may not experience any personal, professional, or study-related disadvantages because of exercising this right to counsel. The same applies to persons who support those affected in this regard. The following counseling centers, among others, can be used (order is irrelevant):

1. for students:
  - a) central and decentralized Equal Opportunity Officers of the University of Potsdam,
  - b) Ombudsperson according to Article 19 of the Basic Regulations of the University of Potsdam,
  - c) Central Student Advisory Service,
  - d) psychological counseling for students of the University of Potsdam,
  - e) representative for students of the University of Potsdam with health impairments/disabilities,
  - f) anti-discrimination counseling with the Equal Opportunity and Diversity Officer of the University of Potsdam,
  - g) Service for families at the University of Potsdam,
  - h) counseling services provided by the International Office for international students,
  - i) trustees of the University of Potsdam.
2. for employees and other dependents:
  - a) central and decentralized equal opportunity officers of the University of Potsdam,
  - b) Ombudsperson according to Article 19 of the Basic Regulations of the University of Potsdam,
  - c) staff representatives of the University of Potsdam,
  - d) disability representation for employees of the University of Potsdam,
  - e) psychological counseling for employees of the University of Potsdam,
  - f) anti-discrimination counseling with the Equal Opportunity and Diversity Officer of the University of Potsdam,
  - g) Division for Human Resources and Legal Affairs of the University of Potsdam,
  - h) Representative for employees of the University of Potsdam with health impairments/disabilities,

<sup>4</sup> See §5 AGG. According to this, different treatment is permissible if existing disadvantages are to be prevented or compensated for by appropriate and reasonable measures.

- i) counseling services of the Welcome Center at the International Office of the University of Potsdam,
- j) Service for Families at the University of Potsdam,
- k) Trustees of the University of Potsdam.

(2) The counseling centers support those affected in asserting their interests.

(3) In order to preserve their anonymity, the persons concerned can also make use of the counseling service without naming themselves or by involving a third person they trust or by using a pseudonym.

(4) All counseling sessions are to be treated confidentially, unless there are reportable facts or the parties involved mutually agree to pass on the content of the conversation or parts of it to third parties. The need to protect individuals must be observed.

(5) Affected persons have the right to be accompanied by a person they trust.

(6) The quality of the counseling is ensured through continuing education and training of the responsible offices. The University of Potsdam provides the full-time and part-time employees of the counseling centers with advanced training in anti-discrimination law as well as with regard to counseling work on anti-discrimination.

## § 8 Right of appeal

(1) Persons under § 2 who feel discriminated against or affected by (cyber) bullying or (cyber) stalking according to § 3 by employees, students, other relatives, regulations, criteria, procedures and/or courses of action of the University of Potsdam have the right to submit a complaint. This applies regardless of the use of counseling services according to § 7.

(2) The persons making the complaint may not be disadvantaged because they exercise their right to complain. The same applies to supporters and witnesses of the person making the complaint.

## § 9 Complaints Office

(1) The Complaints Office of the University of Potsdam is responsible for complaint procedures regarding violations of § 4 in conjunction with § 3 of this policy. At the same time, it is a complaints office in the sense of § 13 subsection (1) AGG.

(2) The Complaints Office consists of five members. In order to support low-threshold access for discriminated groups of persons, a diverse representation with regard to the characteristics mentioned in § 3 subsection (1) (from an intersectional perspective) is

strived for among the members of the Complaints Office. In addition, one person each from the Department of Student Affairs and the Department of Human Resources and Legal Affairs are advisory members of the Complaints Office. The members should belong to different status groups and areas/institutions of the university. At least one member should be fluent in English and at least one member should have legal expertise. The members of the Complaints Office are appointed by the Senate for a period of 3 years. Reappointments are possible.

(3) In the event of a complaint procedure, the Complaints Office shall be responsible for the proper conduct of the procedure and shall report to the Executive Board in accordance with Section 10 (3) No. 3.

(4) The person filing the complaint may indicate a preference as to which member of the Complaint Office he or she would like to contact when initiating the process.

(5) The members of the complaints office receive regular training.

## § 10 Complaint procedure

(1) The complainant shall address the complaint to the Complaints Office in writing or on record. The complaint shall include, in particular and to the extent available, the following information:

- Place and date of the incident,
- Description of the incident,
- Name of the respondent,
- Names of other persons involved,
- Names of witnesses,
- Evidence,
- (Immediate) measures already initiated,
- Names of persons already informed or (advisory) agencies.

(2) After receipt of the complaint, the person making the complaint must be informed about the complaint procedure and be made aware of support options offered by interest groups, internal and external counseling centers.

(3) The Complaints Office works up the facts of the case:

1. The Complaints Office may involve responsible persons from the respective work and study areas concerned in the procedure if this is requested by the person making the complaint. This applies in particular if immediate measures are required to protect the person making the complaint and/or third parties.
2. The Complaints Office shall request the respondent to comment on the complaint orally (which must be recorded) or in writing within

a period of two weeks. Shorter deadlines may result from labor or service regulations. After the deadline has expired, two members of the Complaints Office shall conduct a personal interview with the respondent within ten days. The supervisor or the (study) dean of the respective faculty may be called in for the discussion. At the request of the respondent, a person of his/her confidence may participate in the interview. The invitation to the interview shall be issued in writing. The content of the discussion shall be recorded. If no statement is made by the respondent and/or if the respondent is not willing to participate in an interview, this must not result in any disadvantages for the respondent.

3. The Complaints Office shall document the result of the examination, indicating the respective discrimination category or categories, and notify the Executive Board thereof.

(4) The Executive Board shall decide expeditiously on suitable, necessary and appropriate measures and/or sanctions. The result of the procedure and the measures and/or sanctions shall be communicated to the person lodging the complaint, the respondent and the Complaints Office.

(5) The person filing the complaint may withdraw the complaint or request a stay of the proceedings at any time, provided that the university management is not obligated to act.

(6) There is no entitlement to anonymous treatment of the complaint during the complaint procedure. The procedure shall be conducted as confidentially as possible. During the procedure, the person lodging the complaint and the respondent shall have the right to receive information on the status of the procedure upon request.

## **§ 11 Measures and sanctions<sup>5</sup>**

In the event of discrimination, (cyber) bullying or (cyber) stalking, the appropriate, necessary and reasonable measures and/or sanctions shall be taken by the competent bodies in the individual case. The circumstances of the individual case, including the protection needs of the persons concerned, shall be taken into account.

## **§ 12 Reporting and Evaluation**

(1) The number of cases as well as discrimination categories, in anonymous form and in compliance with all data protection regulations, are to be documented and are queried by the Coordination Office

for Equal Opportunity at the end of the year. The Coordination Office for Equal Opportunity shall report once a year to the Executive Board and the Senate on the documented cases of consultation and complaints in anonymized form and in compliance with data protection law.

(2) The Complaints Office, counseling centers and interest groups shall ensure a regular exchange, at least once a year. This exchange is intended to provide suggestions for the continuous further development of the procedure and cooperation with regard to counseling, complaints and preventive measures. It also serves to ensure the quality of the counseling and support services and to develop targeted prevention services. Information on cases of discrimination shall always be provided anonymously.

## **§ 13 Entry into force**

This policy enters into force on the day following its publication in the official announcements of the University of Potsdam.

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<sup>5</sup> For measures and sanctions, see Annex 1 to the Anti-Discrimination Directive.

## **Annex 1 to the Anti-Discrimination Directive**

### Measures in the event of discrimination, (cyber) bullying or (cyber) stalking

Without claiming to be exhaustive, the following measures in particular may be considered, depending on the particulars of the case:

1. Informal measures among employees, students, and other dependents:
  - a) Personal, if desired accompanied, conversation between the person concerned or a person of their confidence with the accused person,
  - b) Personal, if desired accompanied, conversation between the superior or the responsible (study) dean and the accused person with reference to the prohibition of discrimination, (cyber) bullying and (cyber) stalking.
2. Sanctions on students:
  - a) Disciplinary measures according to § 15 of the Brandenburg Higher Education Act (BbgHG) (threat of exmatriculation, exclusion from the use of university facilities, exclusion from participation in individual courses for up to one semester, exmatriculation) and the respective regulations of the University of Potsdam based thereon,
  - b) Measures based on domiciliary rights up to a (limited or temporary) ban from the premises,
  - c) A criminal complaint filed by the university.
3. Formal actions and sanctions on employees and other dependents:
  - a) Official meeting,
  - b) Oral or written instruction,
  - c) Admonition or warning,
  - d) Transfer or relocation (preferably of the accused person) to another job,
  - e) Participation in further training on the topic of anti-discrimination,
  - f) Termination of employment,
  - g) Initiation of disciplinary proceedings and/or imposition of disciplinary measures,
  - h) A criminal complaint filed by the university.

The informal or formal measures and/or sanctions against students are carried out on the proposal of the Department of Student Affairs, and against employees and other members on the proposal of the Department of Human Resources and Legal Affairs.