Anti-discrimination Directive for the prevention of disadvantage, discrimination, sexual harassment and violence at the Hamburg University of Music and Drama

The Anti-Discrimination Directive for the prevention of disadvantage, discrimination, sexual harassment and violence, approved the 11th February 2015 by the University Council of the Hamburg University of Music and Drama, enters into force in the following version one day after its publication.

Preamble

The Hamburg University of Music and Drama (below: University) attaches importance to fair social interactions at the study place and the workplace in the scope of the Hamburg University of Music and Drama and within its legal tasks. Therefore, it shall promote the respectful cooperation of employees and students at all functional levels in study, education, art, research and services. Disadvantage, discrimination, sexual harassment and violence constitute a violation of the personal limits and of one’s rights and shall not be tolerated at the University.

The following Directive attends to prevent or eliminate direct and indirect discrimination and disadvantages based on sex, ethnic origin, religion or belief, disability, age, sexual orientation, sexual harassment and violence. The Directive implements the General Law on Equal Treatment of 14th August 2006. The integrated complaints procedure regulates the handling with complaints in case of an infringement of this Directive.

The characteristics of an art education with its large part of individual and small group lessons and the personal dependency of the teaching staff require these topics to be addressed carefully. Therefore, all the members and affiliated of the University are especially requested to take part in the arrangement of their study place and workplace, which shall be characterized by mutual attention and tolerance and in which there is no place for disadvantage, discrimination, sexual harassment and violence.

1. Scope

The Directive applies to all the members, affiliated and guest auditors of the University.

2. Definitions
2.1. Direct and indirect disadvantage

A direct disadvantage occurs when a person is treated less favorably than another person in a comparable situation on the grounds of sex, ethnic origin, religion or belief, disability, age or sexual orientation. Indirect disadvantages are apparently neutral behaviors, rules and regulations which apply for everyone. In practice the latter have however repercussions on specific groups’ disadvantages.

2.2. Discrimination

Discrimination is the reduction of the dignity, rights and liberties of people. It can be shown for instance in statements and acts with degrading content. Discriminations and disadvantages can overlap the reasons mentioned above and occur also for instance on grounds of the social origin and the appearance.

2.3. Sexual harassment and violence

Must be regarded as sexual harassment and sexual violence all the behaviors and conducts which are abasing in a sexual way and have for consequence that the person concerned is intimidated, threatened, humiliated and/or harassed. In principle, such behaviors and conducts which are perceived by the person concerned as degrading, offending or unwanted are also embraced by the term of sexual disadvantage or discrimination. They can appear in a verbal and/or a nonverbal form or through physical violence.

The entire field of sexual discrimination and violence is characterized by the following examples of behaviors and conducts:

Deliberated comments with a sexual content, particularly:

- A sexually degrading language use
- Degrading and depersonalizing comments about persons and/or their body that are made in a context with a sexual [also subtle] connotation
- Sexually degrading comments about the intimate private life and the body

Undesirable appearance and visible fitting of pornographic representations with intent to insult, in particular:

- Obscene and sexual degrading scribbles in public spaces
- The verbal, visual or electronic presentation of obscene, sexually degrading representations
- The copy, application and use of obscene, sexually degrading software and web pages from computer systems at the office or on the campus.

Unwanted sexual acts or requests to these ones, in particular:
• Sexually explicit physical contacts
• Requests of sexual or sexualized behavior
• Chase and coercion for sexual purposes
• Physical violence and rape

Gender discrimination and sexual violence by exploiting relationships of dependency at the apprenticeship training place or at the workplace and during study under threat of personal or professional disadvantages or by promising advantages are qualified as very serious.

3. Responsibilities and behaviors

All the University’s members and affiliated must not commit any kind of disadvantage, discrimination, sexual harassment and violence against staff members, students and any other third parties.

The University shall pursue any infringement of this Directive and punish at its due discretion. The University shall ensure here that no disadvantage occurs to the persons concerned when the latter mention legitimately the misconduct of a third person. In that respect, it shall discuss and agree on each step of the procedure with the person concerned wherever it is possible and ensure the anonymity of the person concerned to the fullest possible extent. A disclosure of the person concerned takes place only to the necessary extent, provided that it is mandatory on the basis of legal dispositions or significantly predominant common interests.

The presumption of innocence in favor of the accused person must be respected.

4. Representative groups and counselling services

Each University’s member and affiliated concerned can have recourse to various confidential counselling opportunities such as:

• The confidential council
• The gender adviser
• The disability adviser
• ASTA
• The staff committee
• The psychological advisory service of the University of Hamburg

5. Rights of appeal

Members and affiliated of the University which consider themselves as being disadvantaged, discriminated or sexually harassed by bodies, staff members and lecturers of the University, by superiors or students or have been victims of violence,
shall have the possibility and the right to initiate either a basic or a formal appeal procedure. It shall be guaranteed, that no personal or professional disadvantage can arise from the exercise of the right of appeal.

The women and men concerned shall have to be encouraged not to accept disadvantages, discrimination, sexual harassment and violence but to reveal unequivocally their refusal and face them actively.

All the persons with care and managerial responsibilities shall look into evidence of disadvantages, discrimination or sexual harassment or violence and take adequate measures for clarification, pursuit and prevention in case of a suspicion.

6. Appeal procedure

6.1. Simple appeal

The simple appeal can be reported by the superior of the person concerned and/or accused or by the representative groups (see paragraph 4).

After receipt of the complaint the body seized of the case, in cooperation with the person concerned, shall arrange a first consultation as soon as possible. It comprises information about rights, opportunity and possibilities for action and the official appeal procedure according to this Directive. Following the appeal, the body seized of the case in the framework of the simple appeal procedure can initiate measures according to paragraph 7 of this Directive. It recommends the initiating of a formal appeal procedure and leads the process of the University Executive Board to a decision about a further procedure, when this is an imperative against the background of this case, taking also into account the legitimate interests of the person concerned. This is especially the case when, after evaluation by the body seized of the case, the gravity of the infringement of this Directive urgently necessitates a sanction in the framework of the formal procedure or when such a procedure is indicated to prevent further – serious – violations of a legally protected right.

6.2. Formal appeal procedure

The University Executive Board shall conduct the formal appeal procedure. The formal complaint shall be sent to it, be written and include the following information:

- Description, location and date of the incident
- Persons involved
- Vouchers und proofs (if available)
- Information about the already initiated measures
- Informed Persons
A documentation form of a formal complaint according to §13 of the General Law on Equal Treatment is annexed to this Directive. (To be found also on the Internet at: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Factsheets/factsheet_Beschwerdestelle_Beschwerdeverfahren.pdf?__blob=publicationFile)

The University Executive Board or the body of the University administration responsible for the conducting of the procedure shall examine automatically the facts. The required information shall be gathered in this case and the essential procedural steps shall be documented.

On the basis of the examinations’ results, the University Executive Board shall decide whether to fix further measures and potentially sanctions in accordance with paragraph 7 of this regulation.

The University Executive Board, when necessary and besides the measures in accordance with paragraph 7 of this regulation, shall initiate and take measures which are needed – taking account of all the interests – in each step of the procedure in order to assure the protection required of the person concerned or the community.

7. Measures and sanctions

Measures and sanctions in case of infringements of this Directive depend on the legal nature of the position (labor law, public services law, university law) of the accused person. Depending on the conditions and the gravity of the particular case and while preserving the legitimate request of anonymity and the protection requirements of the persons concerned, the following informal measures can be considered:

- Personal conversation between the person concerned (and/or a person whom they trust) and the accused person
- Personal conversation between a superior (and/or with one of the mentioned contact persons) and the accused with reference to the prohibition of discrimination, disadvantage, sexual harassment and violence
- The inclusion of conflict advisors.

As official measure, the University Executive Board can consider the following steps in cooperation with the competent body depending on the legal nature of the position (labor law, public services law, university law) of the accused person:

- Conducting a formal service call
- Oral or written instruction
- Written warning
- Relocation
- Exclusion from a course
- Exclusion from the use of University facilities
• Ban on entering the house
• Removal from the register of students according to the conditions of § 42 section 3 number 3 HmbHG
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• Termination with due and proper notice or without notice
• Initiating disciplinary proceedings and taking disciplinary measures which can comprise reprimands, administrative penalties, pay cuts, relocation or the removal from post
• Filing a criminal complaint.

This list is not exhaustive. The conditions and procedure of the respective sanctions comply in detail with the corresponding legal provisions.

If the accusation is not confirmed, it shall be ensured that the person wrongly accused does not suffer any other prejudice.

8. Preventive measures

The University shall as employer take preventive measures according to the General Law on Equal Treatment, such as:

• Large written information to the staff members concerning the legal provisions, the problems of discrimination and the sanctions
• Conclusion of service agreements concerning the protection against discrimination
• Producing codes of conduct concerning the protection against discrimination that are for instance delivered to teachers
• Drafting of management guidelines
• Training courses on discrimination and the General Law on Equal Treatment
• Making available information and instructions on what individuals can do when they observe a discrimination or a discrimination is reported to them
• Spatial and other environmental conditions, which favor the sexual discrimination and/or violence are removed within the framework of the existing possibilities and are avoided by the planning and executing of new buildings.

9. Entry into force

The Directive is released on the University homepage and in the Internal Public Register of the University and all the members and affiliated of the University must be informed appropriately about the Directive. The latter enters into force on the first day following its publication.