

## **Hochschule für bildende Künste Hamburg: Anti-Discrimination Policy – Safeguarding Against Discrimination, Bullying, Harassment and Violence**

### **PREAMBLE**

The Hochschule für bildende Künste Hamburg (HFBK) is proud of its international, diverse character. It is a place where everyone should feel heard. It is a key principle at the HFBK that staff and students at all levels, in teaching, learning and research, work together cooperatively and respectfully.

Certain teaching and learning opportunities represent important building blocks in training as an artist. One-to-one and group discussions support students on their artistic journey, and create especially close relationships between students, teaching staff and other members of the university. Such relationships entail a particular responsibility, something of which all university members are very much aware. Accordingly, the HFBK places particular value on interpersonal relationships that are free from discrimination and violence; on promoting equality and trust in how members of the university work together, with each individual valued for their contribution; and on a working and learning environment characterised by respect and mutual acceptance.

Discrimination, bullying, harassment and violence violate personal boundaries and the rights of the individual. They can result in (serious) physical and psychological harm. They are not tolerated at the HFBK. Individuals who perpetrate discrimination, bullying, harassment and/or violence are in breach of their obligations under public sector employment law, their contractual obligations and their duties as members of the university. They cause immense disruption to the work of the university. Accordingly, they will be made responsible for their actions. The HFBK recognises that discrimination is a structural problem that affects the whole of society. Discrimination can take various forms, depending on changing historical and social structures, and the actions to be taken and instruments to be used in preventing discrimination must therefore be regularly reviewed.

All members of the university have the right to seek out advice (anonymously if desired) and to submit a formal complaint if they are affected by discrimination, bullying, harassment and/or violence. Advice and counselling, and the complaints procedure, are subject to strict confidentiality. This policy informs the members of the university of how and where help can be sought, and sets out the complaints procedure in the case of any infringement of the principles set out in this policy. The policy serves to meet the

university's statutory obligations arising out of Section 3.4 Hamburg Higher Education Act (HmbHG) and to provide a detailed explanation of how the university is implementing the General Act on Equal Treatment (AGG).

## 1. AIMS AND SCOPE OF THE POLICY

(1) Discrimination, bullying, harassment and violence are illegal. The aim of this anti-discrimination policy is therefore to prevent or eliminate all of these actions, in particularly where they take place in relation to sex, physical or mental disability, age, sexual orientation or gender identity, appearance, marital status, social status, ethnic or social origin, religion or belief (for example, on the basis of racism or anti-Semitism).

(2) This policy is intended to heighten awareness and sensibility, helping to alert members of the university to any behaviours that discriminate and/or could function in a discriminatory fashion. It is intended to promote mutual respect and acceptance, to define preventive measures and to offer practical help to any members of the university affected by such behaviours, and support them in resolving conflicts.

(3) The policy applies to all members and affiliates of the HFBK, that is, to students, teaching staff and employees. It also applies to external individuals and organisations that have a legal affiliation with the HFBK or are guests of the university.

## 2. DEFINITIONS

(1) Discrimination is defined as the unequal, exclusionary treatment of individuals or groups on the basis of actual or attributed characteristics. Under this policy, discrimination is defined as taking place when individuals experience unequal or exclusionary treatment, especially on the basis of their sex, physical or mental disability, age, sexual orientation or gender identity, appearance, marital status, social status, ethnic or social origin, religion or belief (for example, on the basis of racism or anti-Semitism).

- Direct discrimination occurs where a person experiences less advantageous treatment than another person in a comparable situation experiences, has experienced or would experience on the basis of any of the criteria named at (1) above.

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- Indirect discrimination occurs where a person or a group of persons is, for no objective reason, disadvantaged in comparison to other individuals or groups as a result of apparently neutral rules, criteria or processes.

(2) Sexualised discrimination, harassment and violence are defined as all behaviours and actions that threaten or violate the dignity of the affected person in a sexual or sexist way. This is especially the case where an environment is created that is characterised by intimidation or hostility, or by degrading, humiliating or offensive treatment. The extent of a violation of boundaries can be very much subject to the perceptions of each individual. In defining a behaviour as sexual harassment and a violation of personal boundaries, not only the respective situational context, but also and especially the subjective feelings of the affected person must be taken into account.

- ➔ See the HFBK's Guideline Against Sex-Related Discrimination and Sexual Violence of 15. April 2021.

(3) Intersectionality is defined as a situation where a person experiences discrimination as a result of multiple (protected) characteristics at once.

(4) Bullying is defined as systematic, repeated hostile treatment, victimisation, discrimination and exclusionary behaviour that has the aim and effect that the bullied person feels insecure and humiliated and/or becomes unable to participate in the study or work environment.

(5) Discrimination, bullying, harassment and violence are treated as particularly serious when the perpetrator directs such behaviours towards a person for whom they have management or supervisory responsibility or a person who is otherwise dependent upon them in some way, and/or where the perpetrator directly or indirectly implies that the victim's fulfilment or non-fulfilment of a (sexual) demand will have consequences for their progress in their work or studies.

(6) Instructing another person to discriminate against an individual for one of the reasons named in (1) to (5) above is discrimination. An instruction to discriminate is especially present where a person asks another person to behave in such a way that discriminates or can discriminate against a third party.

(7) The definitions set out above also cover all digital forms of discrimination, violence and bullying, for example those that occur via social media channels or online learning platforms.

(8) Affirmative measures compensating for structural discrimination are evidence-based and as such, permissible. They may include, for example, programmes to support women in the academic field that exclude men, measures to compensate for other disadvantages or supporting students with a migration background.

### 3. OBLIGATIONS AND BEHAVIOURS

(1) The HFBK aims to prevent all forms of discrimination within its sphere of influence and to protect persons named at Section 1.3 above from discrimination, bullying, harassment and violence.

(2) All members of the HFBK have a duty to avoid any form of discrimination, bullying, harassment and violence towards students, employees and other third parties. Every member of the university is required to contribute towards creating a workplace and study environment that recognises the value of the individual and is free from violence. The threat or use of violence, bullying, harassment and/or discrimination infringes obligations under public sector employment law, contractual obligations and duties as members of the university. As such, all such behaviours will be subject to sanctions.

(3) Individuals whose positions require them to carry out tasks related to education, qualifications and leadership have a duty to follow up any information or claims in relation to discriminatory behaviour, the violation of personal boundaries and/or violence, and to take appropriate action to find out what has happened, respond accordingly and prevent any further such behaviour. Confidentiality must be maintained towards all those affected, with both the affected person and the alleged perpetrator deemed to be acting in good faith during initial investigations.

(4) Any infringement of this policy will be pursued by the HFBK and subject to sanctions. The university will do its utmost to ensure that no person should suffer a disadvantage as a result of reporting an infringement of this policy where such a report is made in good faith. This also applies to obligations in relation to degree programmes and examinations. Where possible, any measures taken as a result of such a report will be made in agreement with the individuals affected. Their confidentiality must be ensured.

#### 4. PREVENTIVE MEASURES

(1) The HFBK offers its members training in safeguarding against discrimination in the form of workshops and taught courses. Those entrusted with educational, qualification-related and leadership tasks recognise their especial duty to take preventive measures, to encourage an awareness of this topic within the university and to contribute to an environment free from discrimination in which everyone feels valued.

(2) Preventive measures could be, for example:

- Providing information on discrimination, bullying and violence (for example informing about advice and counselling services and how to raise complaints), e.g., on the HFBK website
- Bringing in an external awareness team to be present at HFBK events
- Awareness training and continuing professional development (CPD) on the topic of discrimination and violence, especially for managers and teaching staff
- Empowerment training
- Avoiding the creation of environments that are likely to facilitate sexualised discrimination and violence
- Discussion forums, currently offered by the Steering Group for Diversity on equal treatment, anti-discrimination and diversity
- Events, workshops and similar
- The inclusion of this topic as a regular agenda item at committee meetings of the HFBK University Senate and Executive Committee to ensure a shared understanding and coordinated approach to this topic.

#### 5. ADVICE AND COUNSELLING SERVICES

(1) At the HFBK, all persons named at Section 1.3 above who are affected by discrimination, bullying, harassment and/or violence can contact the following advice and counselling centres:

- Steering Group for Diversity/ Complaints Office
- Diversity Officer
- Psychosocial Counselling Service
- External awareness team (at the annual exhibition and graduate show)

Students can, in addition, contact:

- Delegate for equality for the HFBK's teaching staff and her deputy
- Persons of trust

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- Representative for students with disabilities
- AStA Critical Diversity group
- Workshop Committee of Trust
- International Office
- Ombudspersons (Complaints Office for complaints in relation to examinations)

Teaching staff and employees can approach the following individuals/committees:

- For academic staff: Delegate for equality for the HFBK's teaching staff and her deputy
- For technical and administrative staff: the "TVP" Delegate for equality for administrative staff
- Staff Council
- AGG Complaints Officer for technical and administrative staff and the TV-L application procedure

An overview of all contacts, advice and counselling centres, along with the named individuals for each status group, is provided as an attachment to this policy and on the HFBK website.

Members of the university can also turn to external counselling and advisory services, such as for example

- The University of Hamburg Psychological Counselling Service
- *empower* - Consultation centre for those affected by right-wing, racist and anti-Semitic violence.
- *read* - Advice and information service promoting the right to live in freedom from discrimination, for all genders and sexual orientations
- *Themis Vertrauensstelle* - Confidential advisory service against sexual harassment and violence (registered charity) for the German culture and media sector
- *Biff* - Women's Advice and Information Centres Hamburg
- Social and International Advice Centre (BeSI) - Hamburg Student Union advice and counselling centre.

The following committees work at a structural (as well as practical) level, incorporating ethical guidelines, to prevent discrimination, bullying, harassment and violence.

- The Steering Group for Diversity should be contacted if you wish to raise awareness of any discriminatory structures at the university, or want to suggest structural changes in workflows and organisational procedures.

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- The Joint Committee on Women's Studies, Women and Gender Research, Gender and Queer Studies (GK) is the cross-university group of the Hamburg Centre for Gender & Diversity. It promotes equality and diversity in teaching, learning, research and transfer at Hamburg's universities and colleges.
- The Conference of Equal Opportunities Officers at universities and academic institutions (LaKoG) offers advice on university structures and on recruitment-related decisions where there are concerns about discrimination on the basis of sex, sexism, sexualised discrimination or violence.
- The Federal Conference of Women's and Gender Equality Officers at Universities (*bukof*) is the voice of gender politics in research and universities. *bukof* unites all those working towards structural and cultural gender equality in Germany's universities.

(2) The HFBK encourages anyone affected by discrimination, bullying, harassment and/or violence to reach out to these services, and to the designated persons of trust at the university, for advice and help. They support affected individuals in identifying their concerns and options, and if desired, can also provide guidance and support should they wish to submit a formal complaint (see Section 8 below). When accessing offering advice and support, all affected individuals, as well as those accused of infringing this policy, will be deemed to be acting in good faith.

In agreement with the affected individual or their chosen representative, such support may include the following steps:

- Accompanying the individual to further informal discussions
- Recommending professional mediation with a neutral third party
- Signposting to the HFBK's Psychosocial Counselling Service
- Initiating a formal complaints procedure (see Section 8 below for further details).

(3) All advice and counselling discussions must be kept confidential, unless participants agree that the outcome of the discussion, or specific aspects of it, can be shared with third parties. Please note that if, in the course of such discussions, a serious criminal offence is brought to the attention of an advice or counselling service, the services concerned reserve the right to notify the Executive Committee. The person affected has the right to remain anonymous in the case of such notification and must be informed in advance.

(4) Individuals working for advice and counselling services do not have the right to refuse to testify in criminal proceedings, and under certain circumstances may be required to give evidence in such proceedings.

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(5) When seeking advice, affected persons have the right to be accompanied by a trusted individual of their choice.

(6) Should the affected person only require preliminary advice, they have the right to remain anonymous. They can be represented by a trusted individual of their choice or use a pseudonym.

(7) It is also possible to report incidents anonymously via the Complaints Office pigeon-hole at the porters' lodge (located at the HFBK main entrance at Lerchenfeld 2).

Communications should be addressed to the Diversity Officer. Any such communication will be recorded, stored, checked (as far as possible) and notified to the Complaints Office. The notification does not initiate a formal complaint and is for information only.

(8) A quality assurance process for the advice and counselling services and the complaints procedure is in place, ensuring that staff take part in regular training and CPD. The Vice President for International+Diversity is responsible for overseeing the quality assurance concept.

## 6. COMPLAINTS OFFICE

(1) The HFBK Complaints Office is responsible for complaints procedures that are subject to the provisions of the Equalities Act (AGG) and this anti-discrimination policy.

(2) The role of the Complaints Office is carried out by the HFBK Steering Group for Diversity. This group is comprised of six members. It has four permanent members: Delegate for equality for the HFBK's teaching staff and her deputy, the Diversity Officer and the Vice President for International+Diversity. The other two members must be a member of the Staff Council and a student representative. At least one half of the members must be women.

(3) The meetings of the Complaints Office may not be attended by anyone who can be deemed to have a conflict of interest in regard to the person who has brought the complaint (the complainant) or alleged perpetrator. This stipulation also applies to members of the Complaints Committee.



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## 7. RIGHT TO COMPLAIN

(1) All persons listed at Section 1 above who believe that they have been discriminated against in an area that comes under the influence of the HFBK, or who are affected by bullying, harassment and/or violence, may submit a formal complaint under Section 13 AGG. No personal, professional or study-related disadvantage may ensue to anyone who exercises the right to complain.

(2) Individuals should be encouraged not to tolerate discrimination, bullying, harassment and/or violence. Rather, they should be supported to take action against such behaviours and to exercise their right to complain.

(3) All members of the university whose role involves managing or supervising others have a fundamental obligation to follow up any information about or claim of discrimination, bullying, harassment and/or violence, to find out what has happened and, if necessary, to take appropriate action to safeguard those affected.

(4) The Delegate for equality must be involved in any formal complaints procedure in areas that fall within their area of responsibility as defined under Section 87.3 HmbHG in conjunction with Section 3.5 HmbHG.

## 8. COMPLAINTS PROCEDURE

(1) Formal complaints should be submitted to the HFBK Complaints Office as soon as possible after the incident has occurred. Where damages or compensation are sought, the complaint must be submitted within two months as stipulated in Section 15 AGG. The complaint must be made in writing. The following information must be provided:

- Description of the incident and place and date that it took place
- The people involved
- Any witnesses and/or evidence (if available)
- Any (emergency) measures already taken
- If applicable, the name of anyone else who has been informed of the incident.

(2) The complaints procedure is subject to strict confidentiality. If maintaining strict confidentiality threatens to result in a significant violation of the rights of the complainant and/or third parties, the complainant must be notified without delay. The principle of the presumption of innocence must be upheld in relation to the alleged perpetrator.

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(3) Upon receipt of a complaint, the Complaints Office will take the necessary steps to clarify what has happened, documenting each step of the procedure.

(4) The Complaints Office will submit its report to the Executive Committee. On the basis of the report, the Executive Committee is responsible for determining and initiating the measures and, where applicable, sanctions to be applied (see Section 9 below). Should the complaint be directed at one or more members of the Executive Committee, the decision will be taken by the latter's supervising authority. The rights of the Staff Council and the Equalities Officer will be observed where applicable. The Executive Committee can initiate measures at any time during the procedure, including measures extending beyond those named at Section 9 below and taking into consideration the interests of all those involved, if such measures are deemed necessary to protect the complainant or third parties.

(5) The Complaints Office will inform all persons involved of the outcome of the complaints procedure. The right of the individual to take legal action independently of the outcome remains unaffected, as do the rights of the Delegate for equality and the Staff Councils.

(6) The Complaints Office may seek expert advice from the relevant representative bodies and officers of the HFBK and/or from external organisations.

## 9. MEASURES AND SANCTIONS

(1) The HFBK will take all necessary and appropriate measures to prohibit infringements of this anti-discrimination policy.

(2) The type and extent of sanctions to be applied to any infringement will depend on the severity of the incident and on the regulations governing the relationship of the alleged perpetrator with the HFBK (for example, their contract of employment; whether or not their work is governed by the public sector collective agreement; their position at the university). For example, depending on the individual case, the following measures and sanctions could be considered:

### (a) Informal measures

- A personal conversation between the complainant or a trusted individual of their choice with alleged perpetrator, with a third person present if desired;
- A personal conversation between the alleged perpetrator and their line manager to ensure that the former is aware of their obligations under this policy, with a third person present if desired

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- Initiation of a mediation procedure.

(b) Formal measures

- Formal disciplinary meeting
- Oral or written reprimand and/or warning
- Written warning
- Transfer (where possible of the alleged perpetrator) to a different department or different role (for staff), and/or to a different seminar (for students)
- Mandatory training, CPD, awareness training.

(c) Sanctions

- Exclusion from seminars, lectures and/or workshops
- Prohibition from using university facilities
- Removal of teaching agreement
- (Restricted or temporary) exclusion from university premises
- Removal from the register of students under Section 42.3.(3) HmbHG
- Termination of employment, immediately or with the statutory notice period
- Initiation of a disciplinary procedure and/or implementation of disciplinary measures
- Initiation of criminal charges.

## 10. CONFIDENTIALITY

Anonymity and confidentiality must be extended at all times to all persons involved in any discussions or procedures set out in this policy, with the exception of situations where the procedure itself requires anonymity to be waived. The number of persons to be involved must be kept to an absolute minimum.

➔ The provisions of the GDPR apply.

## 11. REPORTING AND MONITORING

In its function as Complaints Office, the Steering Group for Diversity is responsible for organising a regular review of this policy with all relevant parties, which should take place at least once a year. This is intended to ensure that policy remains responsive to developments and changes, and to support those involved in coordinating advice and counselling services, the complaints procedure and preventive measures to work together.

## 12. ENTRY INTO FORCE

Hamburg, 22 June 2023