

The following document is the English translation of the German *Antidiskriminierungsrichtlinie*.
The German version is legally binding.

Guidelines for the complaints procedure in cases of disadvantageous treatment, discrimination, harassment, and violence at the Technische Hochschule Nürnberg Georg Simon Ohm

Preamble

The Technische Hochschule Nürnberg Georg Simon Ohm (TH Nürnberg) values fairness between all who study and work at the university and fosters respectful collaboration between staff and students at every level – in teaching, learning, research and the provision of services.

The TH Nürnberg does not tolerate any form of harassment, violence or direct or indirect discrimination based on racist assumptions or ethnic origin, gender, religion or belief, disability, age or sexual identity (boundary violations) within its purview. Protecting every member of the university against discrimination, harassment, and violence is important to the TH Nürnberg. To this end, these Guidelines regulate how complaints relating to violations of these prohibitions are dealt with and provide guidance on the actions that can be taken by all involved.

Every member of the university is obliged to work actively towards ensuring that boundaries are respected and to report incidents that come to his or her attention of any forms of misconduct that violate boundaries to the competent authorities within the university. The TH Nürnberg will unwaveringly pursue all misconduct of the types outlined above that represents a breach of work or official duties or of other obligations regulated in higher education legislation.

1 Scope

These Guidelines apply to all members of the university as defined in Article 17 Paragraph 1 Sentence 1 of the Bavarian Higher Education Act (Bayerisches Hochschulgesetz, BayHSchG)¹.

The members of the university are:

- Professors
- Academic and/or research staff
- Lecturers (*LfBA*)
- Honorary professors
- Part-time (adjunct) teaching staff
- Other members of part-time academic staff
- Other public servants and employees
- Students

¹ in the version of 23/05/2006, last amended by Section 1 Number 212 Ordinance on Adapting State Law to the Current Assignment of Functions (VO zur Anpassung des LandesR an die geltende Geschäftsverteilung) of 22/7/2014 (Bavarian Law and Ordinance Gazette GVBl. p. 286)

- Honorary senators
- Retired professors

These guidelines are applicable to acts performed by members of the university either on the university premises, or at activities or events held outside of the university premises insofar as these are official university activities or events or events attended in the course of exercising a function related to the university.

2 Right to lodge complaints

Any member of the university who feels discriminated against through boundary violations or has been subjected to violence has the right to lodge a complaint and may not be subjected to discrimination or be in any way disadvantaged as a result of doing so. This also applies to members of the university who have witnessed any incidents of this nature.

3 Confidential support and assistance

People who are affected by or witness discrimination can approach people they trust and people tasked with representing their interests for support. Within the university, the following office holders can provide support and advice in confidence:

Affected persons	Designated contact persons within the university
<ul style="list-style-type: none"> • Students 	Faculty Women's Officers and/or Dean and/or Psychological Counseling Services for Students and/or Disability Officer for Students and/or General Students' Committee (AStA) and/or Central Educational Guidance Services
<ul style="list-style-type: none"> • Professors and lecturers • Academic staff in the faculties 	Faculty Women's Officers and/or Dean and/or a Disability Officer for Faculty & Staff
<ul style="list-style-type: none"> • Academic staff in institutions and centres independent of faculties 	University Women's Officer, Deputy University Women's Officer, institute heads, one of the Disability Officers for Faculty & Staff
<ul style="list-style-type: none"> • Non-academic staff 	Equal Opportunities Officer and/or Dean and/or head of department and/or a Disability Officer for Faculty & Staff and/or Staff Council

These designated contact persons can provide information in confidence on the protective and actionable options available – including the decision to lodge a complaint. The annexes to this document contain guidance on how the process should be approached.

4 Lodging complaints against members of the university who are not students

4.1 Complaints procedure

- (1) Complaints should be directed to the Legal Affairs Office at the university. They do not need to adhere to any specific form.
- (2) All complaints must describe the incident or incidents perceived as prejudicial or discriminatory. Witnesses should be named and allegations substantiated with evidence insofar as possible. Complaints should also state who has already been informed about the complaint in question, what measures have already been taken, and who has been involved in discussions of the matter.
- (3) The person lodging the complaint must be informed that submitting a complaint does not extend the period within which claims can be made on the basis of the German General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz, AGG)².
- (4) After a complaint has been received, the person lodging the complaint is informed in an initial discussion about his or her rights and obligations and about how the complaint can be taken forward. The person concerned will also be made aware of other external organisations (advice centres and bodies representing particular interest groups) who may be able to provide support.
- (5) The Legal Affairs Office may involve people with responsibilities in the area concerned, especially those with supervisory responsibilities, in the continuation of the procedure. This is particularly applicable in cases where immediate action is required to prevent discrimination or the use of violence and ensure that nobody is disadvantaged.
- (6) The Legal Affairs Office requests the person against whom allegations have been raised to make a written statement on the complaint within a set period of time. A face-to-face discussion based on this statement is then held between the Legal Affairs Office and the accused person without undue delay. The person's superior can be brought in to join this discussion. Invitations to these hearings are issued in writing.
- (7) The Legal Affairs Office shall question any available witnesses and examine any evidence it has been possible to glean. The Legal Affairs Office informs the employee's superior official (the President or Chancellor) of the results of its investigations and submits a proposal for the ongoing treatment of the matter.
- (8) The Legal Affairs Office informs both parties of the result of its discussions and investigations.
- (9) The relevant superior official (the President or the Chancellor) determines whether and which further measures should be taken and reaches a decision on possible consequences pursuant to Number 4.2 of these Guidelines.

4.2 Internal consequences of misconduct on the part of a person employed at the university who is not a student

² in the version of 14/08/2006 (Federal Law Gazette BGBl. I p. 1897), last amended by Article 8 of the Act of 03/04/2013 (Federal Law Gazette BGBl. I p. 610).

- (1) If a person working at the TH Nürnberg is discriminated against by office holders at the university or university bodies, he or she may make a claim against the university for damages and compensation pursuant to Section 15 Subsection 1 German General Act on Equal Treatment (AGG).
- (2) If an employee discriminates against other members of TH Nürnberg (see Number 1) or third parties (such as relatives, guests, or employees of third-party companies), the university may, depending on the severity of the breach of duties of the person in question,
 - (a) and dependent on the statements made by the involved parties and functional units, decide to initiate mediation proceedings or
 - (b) to take measures provided for in public service law or in labour law such as issuing an official warning, transferring the member of staff in question to a new role or a new place of work, dismissing him or her or initiating disciplinary proceedings. Severe cases may merit instant dismissal and/or the reporting of the matter to the police. Measures may also be taken in collaboration with the relevant functional unit to reorganize work processes.

If claims against the university result from discrimination or the use of violence, the university may seek recourse against the accused persons as permitted by statutory provisions for their breach of contractual or official obligations or of obligations which exist pursuant to higher education legislation.

5 Complaints against students

5.1 Complaints procedure

- (1) Complaints should be directed to the respective Dean or to the University Women's Officer. They do not need to adhere to any specific form.
- (2) The extent to which preliminary measures are necessary for the protection of the person concerned must be determined on a case-by-case basis. Appropriate measures must be taken to prevent the continuation or repetition of any discrimination, harassment, or use of violence that has been shown to have taken place.
- (3) If the affected person consents, the accused person is informed of the allegations that have been raised against him or her. This information should be communicated by two people (the Women's Officer and Dean) in a discussion. The accused person shall be referred to the prohibition of all forms of discrimination, harassment and violence (a record of this discussion should be produced and signed by all in attendance). The person against whom allegations have been raised is requested to make a statement within an appropriate set period. The Women's Officer and the Dean attempt to resolve the conflict.

- (4) Investigation whether Section 7 [Prohibition of discrimination] Subsection 1 German General Act on Equal Treatment (AGG) has been breached.

a) A breach of Section 7 Subsection 1 German General Act on Equal Treatment (AGG) is identified:

This may be the case if the person against whom allegations have been raised is also employed at the university (student assistant, tutor, etc.) or has engaged in conduct constituting discrimination vis-à-vis university staff members. If either of these situations applies, the Legal Affairs Office is informed of the result of the investigation and takes over the further investigation of the matter. If it is confirmed that Section 7 has been breached, this triggers an obligation for the University Management to intervene pursuant to Section 12 [Employer Action and Duties] Subsections 3 and 4 German General Act on Equal Treatment (AGG). At the same time, proposals for how the matter might be remedied should be prepared.

b) No breach against Section 7 Subsection 1 German General Act on Equal Treatment (AGG) is identified:

Investigation has nevertheless demonstrated that a conflict with a negative impact on the learning environment exists and cannot be resolved by the people designated in Number 5.1.(1) of these Guidelines (Women's Officer and Dean). In this case, the University Management should intervene. It is conceivable that mediation between the parties to the conflict could be organized. This could be moderated by the Legal Affairs Office as the unit handling the matter, or an external mediator could be brought in.

- (5) The outcome of the discussion and the investigation by the competent contact persons must be communicated to the person concerned in writing without undue delay. If allegations transpire to be unfounded, the person against whom they have been raised is entitled to have his or her reputation fully restored. The appropriate form this should take is determined by the University Management.

5.2 Consequences

Breaches of these Guidelines may, depending on the circumstances and the severity of individual cases and on the need to preserve entitlements to anonymity and to protect persons affected by discrimination, harassment or the use of violence, lead to the following **formal measures**:

- oral or written admonition
- notification of the matter in question to the police with the consent of the person concerned
- other sanctions on the basis of the Ordinance regulating Admissions, Enrolment, Re-Enrolment, Leave of Absence and Termination of Enrolment at Technische Hochschule Nürnberg Georg Simon Ohm.

This list is not intended to be exhaustive. The prerequisites for and procedures to be followed in implementing particular sanctions are regulated in the relevant legal provisions. It is, however, always the person who has lodged a complaint who decides whether formal proceedings should go ahead.

6 Preventative measures

The university is obliged to protect its members from discrimination, harassment and the use of violence in the workplace or learning environment and to take preventive measures in this context, particularly in relation to:

- Raising awareness of the issues surrounding discrimination, harassment and the use of violence in the workplace and learning environment;
- Providing information material at regular intervals that highlights how discrimination, harassment, and the use of violence can be dealt with;
- Providing training and implementing other measures to prevent discrimination, harassment and violence (including information on the legal background, the complaints procedure, and possible sanctions).

7 Entry into force and promulgation

These Guidelines take effect on _____ with their adoption by the University Management.

The published Guidelines will be made available to all current members of the university in an appropriate form. Members joining the university in the future will be made aware of the content of these Guidelines in an appropriate form as their employment commences, they take up office, or they begin their studies.

Nuremberg,

Prof. Dr. Michael Braun
President, Technische Hochschule Nürnberg Georg Simon Ohm

ANNEX 1

DEFINITIONS

Discrimination exists when a person is treated less favourably than another person would be treated in a comparable situation on grounds of his or her race³ or ethnic origins, gender, religion or belief, disability, age or sexual identity without any objective reason for this unequal treatment.

The German General Act on Equal Treatment (AGG)⁴ defines “direct discrimination”, “indirect discrimination”, “harassment” and “sexual harassment” in Section 3 Subsections 1–4 as follows:

“(1) **Direct discrimination** shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds referred to under Section 1 [AGG, author’s note]. Direct discrimination on grounds of sex shall also be taken to occur in relation to Section 2 Subsection 1 Numbers 1–4 [AGG, author’s note] in the event of the less favourable treatment of a woman on account of pregnancy or maternity.”

“(2) **Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on any of the grounds referred to under Section 1 [AGG, author’s note], unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

“(3) **Harassment** shall be deemed to be discrimination when an unwanted conduct in connection with any of the grounds referred to under Section 1 [AGG, author’s note], takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating or offensive environment.”

“(4) **Sexual harassment** shall be deemed to be discrimination in relation to Section 2 Subsection 1 Numbers 1–4, when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.

³ The concept of “race” – applied to describe human beings – is now perceived as obsolete and of no utility in both the natural sciences and the social sciences. Its continued use in legal texts is anachronistic. The intended purpose would be better served by making reference instead to “putative race”, “persons affected by racism,” or similar.

⁴ In the version of 14/08/2006 (Federal Law Gazette I p. 1897), last amended by Article 8 of the Act of 03/04/2013 (Federal Law Gazette I p. 610).

Sexualized discrimination and **violence** in the workplace or educational environment is defined as every form of verbal, non-verbal or physical conduct of a sexual nature that has the effect of violating the dignity of the staff or students concerned.

This includes:

- Sexual acts and conduct punishable under criminal law
- Other sexualized acts and behaviours, such as:
 - the use of sexually degrading language,
 - unwanted gestures and other non-verbal communication with sexual references,
 - the verbal, visual or electronic presentation of pornographic or sexist material,
 - unwanted sexual advances or requests to perform sexual acts,
 - unwanted physical contact and obtrusive behaviour,
 - unwanted and repeated pursuit (stalking) and coercion (not necessarily of a directly sexual nature),
 - inappropriate and unwanted physical contact,
 - sexualized physical assaults and sexually degrading touching.

The most important criterion used in defining what constitutes sexual harassment is the unwanted nature of the conduct from the perspective of the person it is directed towards. Advances that are not based on reciprocity and violate the dignity of the affected person constitute sexual harassment. The legal probing of whether an offence has been committed includes the additional objective test of whether the unwanted sexual behaviour is intended to violate or actually violates the dignity of the person concerned.

Sexual harassment is a particularly serious matter when it involves perpetrators taking advantage of dependent relationships in the workplace or in the context of education or training and possibly also threatening the persons affected by harassment with personal or professional disadvantages.

The TH Nürnberg is also not prepared to tolerate forms of **verbal abuse**, **mobbing (bullying)**, and **threats** which are unrelated to the categories (age, gender etc.) listed in these Guidelines. The competent points of contact to approach under these circumstances are:

- the violence prevention and threat management unit (to deal with threats), and
- the psychological counseling unit (to deal with insults or verbal abuse and mobbing/bullying).

ANNEX 2

MEASURES OPEN TO AFFECTED PERSONS

Nobody needs to tolerate the kind of boundary violations outlined above. Anyone who has been subjected to boundary violations is strongly encouraged to report the incident or incidents and to lodge a complaint.

Measures affected persons can take include:

- Documenting the date, time and location of all incidents along with the nature of the discrimination, harassment and/or violence encountered
- Informing the perpetrator that his or her conduct violates boundaries and is unwelcome, and drawing attention to its possible consequences
- Speaking to a person in a position of trust and/or to a designated contact person (see Number 3 of these Guidelines)
- Lodging a complaint with the perpetrator's superior. In cases relating to students who discriminate against others or engage in harassment or the use of violence, any such complaint should be directed to the Dean of the relevant Faculty.

The affected person is entitled to lodge a complaint with the competent departments within the TH Nürnberg. He or she may lodge such a complaint through a trusted third person in order to preserve his or her own anonymity.

The person who receives and records the complaint counsels the affected person and discusses whether and how to proceed further with her or him. All information provided is treated in confidence. A person who lodges a complaint is entitled to be kept informed of its current status.

- Reporting the matter to the police

ANNEX 3

PROCEDURAL RECOMMENDATIONS FOR DESIGNATED CONTACT PERSONS

If a designated contact person listed in Number 3 of the Guidelines receives information concerning suspected boundary violations, he or she is obliged to investigate all factual indications without undue delay and to take appropriate action to clarify and monitor the situation and prevent further incidents or to report the incident. The wishes of the affected parties should be considered in an appropriate fashion. It should be ensured that measures taken do not result in personal or professional disadvantages for the complainant or impact negatively on her or his education and training.

Recommended procedural steps and principles

Confidentiality is of the utmost importance – the person concerned and the person against whom allegations have been raised may not be named as a matter of principle unless the affected party

has released the contact person from their obligation to maintain confidentiality or statutory reporting obligations apply.

The contact person should ascertain the facts of the matter in a discussion with the person concerned and produce a written record of this discussion. Insofar as possible, a third person should also take part in this discussion. This person is also obliged to maintain confidentiality. The person concerned must be informed that the designated contact person is obliged to maintain confidentiality and to preserve his or her anonymity. The person concerned should be provided with information appropriate to the specific case about external advice centres and bodies engaged in advocacy for particular interest groups as well as about psychological support services. He or she should also be informed about formal and informal measures and sanctions that could possibly be taken. No action may be taken without the consent of the person concerned. If pursuing a matter further appears necessary or desirable, a release of confidentiality should be sought from the person concerned (see template below). Before the discussion is brought to a close, the next steps to be taken must be discussed with the affected person and included in the written record of the discussion. At the end of the meeting, the affected person should be given this record to read and sign.

Possible content meriting discussion:

- Clarification of basic framework (confidentiality obligation, provision of information on competent bodies providing advice and assistance, psychological counseling.)
- What exactly happened, and when? (The WH-questions: Who saw or did What? When, Where and How?) What exactly is the nature of the problem that the affected person is reporting? Is the person safe?
- It may be appropriate to suggest that the person sees a doctor (to secure evidence and/or if seems advisable that the victim should stay away from his or her workplace at least temporarily).
- Does any evidence exist (such as emails with discriminatory content or content that constitutes sexual harassment?) Are there any witnesses?
- Discussion of how the matter should be dealt with going forward (Where do we go from here? What can the affected person envisage? Does he or she wish to pursue further steps?)
- Reassurance that no steps will be taken without the express (written) agreement of the person seeking advice and that no disadvantages will result to him or her as a consequence of seeking out a contact person or as a result of any further actions taken.

Documentation of discussion:

- a record of the meeting is produced.
- This record is signed by all who were party to the discussion.
- These records are stored in a locked cabinet in a secure place (the key is to be stored securely in a different location.)

If any designated contact person receives information concerning suspected boundary violations on the part of a member of the university who is not a student, or if any suspicion of conduct violating boundaries arises, the designated contact person should recommend the direct transfer of the case to the Legal Office so that it may be further investigated by that office.

If the designated contact person considers it advisable to discuss the case with another person who has relevant specialist expertise in the area, this may only take place in anonymized form.

Family name _____ Given name _____

Street/Number _____ Date _____

Postcode _____ City _____

Release from obligation to maintain confidentiality (pursuant to Section 203 German Criminal Code (Strafgesetzbuch, StGB)⁵)

I hereby release:

Mr/Ms..... of the Technische Hochschule Nürnberg
Georg Simon Ohm vis-à-vis

☐ Mr/Ms..... of the Faculty/Department..... and
☐ Mr/Ms..... from the Psychological Counseling Services
from his/her/their obligation to preserve confidentiality.

This declaration serves the following purpose:

and relates specifically to the following documents or personal information:

I am aware that I may withdraw this declaration of my consent to the release of confidential information at any time effective prospectively.

Signature

Copies provided to: ☐ Signatory ☐ Person released from obligation

⁵ in the version promulgated on 13 November 1998 (Federal Law Gazette I p. 3322), last amended by Article 5 of the Act of 10 December 2015 (Federal Law Gazette I p. 2218).