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Guideline for protection against discrimination and sexualized violence at the University of Kassel

Preamble

The University of Kassel sees itself as a gender-equal, family-friendly, open, inclusive, and inter-cultural university that understands the diversity of its members as a productive resource, prevents discrimination based on personal and social characteristics, and strives to create a conducive and motivating working climate for both employees and students. It stands for an image of humanity and society that combines diversity and equality.

It values cooperation based on trust and respectful and appreciative interaction. The University of Kassel is committed to ensuring that no person is discriminated against within university life, in particular on the basis of gender, ethnic or social origin, appearance, age, disability or illness, sexual orientation or gender identity, religion or belief, or marital status.

This guideline is intended to apply the prohibitions of discrimination of the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) to and for the benefit of all members and affiliates of the University of Kassel, in particular those who are not bound to the University of Kassel under employment or service law and are therefore not covered by the AGG - such as students. The directive opens up a right of complaint for affected persons. It obliges the University of Kassel to take preventive measures and enables sanctioning measures. The guideline integrates the "Guideline for Protection against Sexual Harassment, Sexual Discrimination and Sexual Violence at the University of Kassel", which has existed since 1998 and was revised in 2013.

§ 1 Objectives and scope

(1) The aim of the directive is to prevent or eliminate discrimination, in particular on the basis of gender, ethnic or social origin, appearance, age, disability or illness, sexual orientation or gender identity, religion or belief, or marital status.

(2) Discrimination, sexual harassment and violence are illegal. The policy aims to raise awareness and attention to such behaviors, to take preventive measures, and to provide assistance to members and affiliates of the University of Kassel in the event of assaults.

(3) The policy applies to all members and employees of the University of Kassel. It also applies to third parties in the performance of their duties.

§ 2 Principles

(1) All members and employees of the University are required to contribute through their own behavior and actions to a spirit of partnership in the workplace and in their studies in order to create a working and study environment free of harassment and violence.

(2) Discrimination, sexual harassment and physical or psychological violence create an intimidating, stressful and degrading working and learning environment, can cause health risks and represent a massive impairment of personal rights.

(3) Discrimination, sexual harassment and violence committed by staff members constitute a violation of their work or official duties and shall be prosecuted as such. If they take place by exploiting relationships of dependency at the place of work or training and during studies by threatening personal or professional disadvantages or by promising advantages, this shall be considered and assessed as particularly serious.

(4) The University shall sensitize its members to the problems of discrimination, sexual harassment and violence. Those affected shall be encouraged not to accept discrimination and violence, but to make their rejection unequivocally clear and to actively defend themselves against it.

§ 3 Definitions

(1) Direct discrimination occurs when a person receives less favorable treatment than another person experiences, has experienced, or would experience in a comparable situation because of one or more of the reasons listed in § 1. Direct discrimination shall also be deemed to exist in the event of less favorable treatment due to pregnancy or parenthood.

(2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is likely to put a person at a particular disadvantage compared with other persons on one or more of the grounds referred to in section 1, unless that provision, criterion or practice is objectively justified and required by a legitimate aim.

(3) Reasonable accommodations are measures that are appropriate and necessary in individual cases to ensure that all members and dependents can enjoy and exercise all rights on an equal basis with others, insofar as they do not place an unreasonable and unfair burden on the University of Kassel or individual members or dependents.

(4) Sexual harassment, discrimination and/or violence in the course of studies and in the workplace, which are related to one or more of the grounds mentioned in § 1 and have the purpose or effect of violating the dignity of the person concerned and creating an environment characterized by intimidation, hostility, humiliation, degradation or insult, are undesirable in the sense of this policy. This applies in particular to the following forms:

a) Stalking means the intentional and repeated following, stalking, harassing of a person so that the way of life is seriously affected or even his/her safety is threatened.

b) Bullying means systematic and repeated hostility, harassment, discrimination and exclusion, with the aim and consequence that the bullied person is made insecure and degraded and excluded from the study or work environment.

c) Sexual harassment and/or discrimination are sexually derogatory or derogatory remarks, gestures or depictions that are perceived by the person concerned as offensive, humiliating or harassing. This also includes remarks of a sexual nature, the unwanted display and visible placement of pornographic images, and the copying, application or use of obscene, sexually derogatory Internet sites on the University's computer systems.

(5) Sexual harassment, discrimination, or conduct that violates the dignity of individuals may be verbal or nonverbal; it may also occur on social networks or university communication platforms. This may include, for example, slander, insults and derogatory statements, hostility, threats and physical assaults that are related to one of the reasons listed in § 1.

(6) Sexual violence in the narrower sense includes all forms of unwanted sexual advances and physical contact, exhibitionist acts and coercion to engage in sexual practices up to and including rape. The behaviors covered by the term harassment and sexualized harassment include a fortiori (sexual) acts and behaviors that are punishable under criminal law.

(7) An instruction to discriminate against a person on one or more of the grounds referred to in Section 1 shall be deemed to be discrimination. Such an instruction shall be deemed to exist in particular if someone instructs a person to behave in a way that disadvantages or may disadvantage members and affiliates of the University for one or more of the reasons specified in § 1.

§ 4 Prohibition of Discrimination

(1) Persons within the meaning of § 1 (5) may not be discriminated against on the basis of one or more of the grounds specified in § 1. This shall also apply if the characteristics of a person specified in § 1 do not apply at all, but are merely assumed by the person placing him/her at a disadvantage.

(2) Provisions which violate the prohibition of discrimination under para. 1 shall be invalid. Discrimination under para. 1 by members and relatives of the university may constitute a violation of contractual, service, civil service or university law obligations.

(3) Deficiencies in accessibility must, as far as possible, be compensated for by reasonable precautions within the meaning of §3 para. 3.

§ 5 Prevention

(1) The University, its members and affiliates, especially those with educational, qualification or managerial responsibilities in research, teaching, administration and service, shall take preventive measures to create a harassment-free working environment and to prevent discrimination, sexualized harassment and violence in the workplace and during studies. Preventive measures specifically include:

- the promulgation of this policy by University management,
- the obligation of all members and employees of the university, especially those with a superior function, to familiarize themselves with its contents,
- information offers for persons with supervisor, management and training tasks on the subject of discrimination, sexual harassment and violence at the workplace and during studies, gender and discrimination-sensitive language as well as on appropriate behavior of the aforementioned group of persons,
- training opportunities open to all members and staff of the university,
- consideration of discrimination risks in planning and development projects and infrastructural changes, e.g. construction measures, digital information and communication technologies,
- offers of support for those affected,
- the consideration of discrimination risks in the curriculum and in the development of courses of study and in the framework conditions of courses, such as course schedules, the use of gender- and discrimination-sensitive language in the sense of the guideline "Gender fair in words and images",
- behavior of all members of the university that is characterized by partnership and respects the personal integrity and dignity of all.

(2) Different treatment is permissible if suitable and appropriate measures are taken to prevent or compensate for existing disadvantages or discrimination on any of the grounds listed in § 1 (compensation for disadvantages).

§ 6 Counseling Centers

(1) Affected persons shall be encouraged to actively defend themselves against sexual harassment, discrimination and violence. They have the right to turn to a competent office of the university for help if they feel discriminated against, harassed and/or have experienced violence as defined in § 3.

(2) It is the task of the contact persons called upon to offer those affected by discrimination, harassment or violence an opportunity for discussion and advice, to inform them of their rights and possible courses of action, and - if desired by the person concerned - to suggest suitable measures to protect the person concerned from further misconduct. The persons providing advice are subject to official secrecy, from which they can only be released by the person concerned.

(3) The following contact points and interest groups offer advice:

- Women's and Equal Opportunity Office,
- Women's and Equal Opportunity Officers,
- Staff Council,
- Representative for severely handicapped persons,
- Junior Staff Representative,
- International Office,
- AStA,
- Representative and Service Center for Studies and Disability,
- General student advisory service and student advisory service of the departments,
- Psychosocial counseling center of the Studentenwerk.

Other external contact points, e.g.:

- Kasseler Hilfe, Opfer- und Zeugenhilfe e.V.,
- Women inform women FiF e.V.,
- Women help women in the district of Kassel,
- Emergency call for women who have been raped - Frauen gegen Vergewaltigung e.V.,
- Police,
- Hesse Anti-Discrimination Agency,
- Federal Anti-Discrimination Agency.

(4) If the addressed office is not able to perform the task mentioned in § 6 (2), it shall inform about further contact points and may forward the incident to a responsible office in agreement with the affected person. Care shall be taken to ensure that the person concerned does not suffer any personal or professional disadvantages. All steps shall therefore be taken in agreement with the person concerned and the persons of trust appointed by them.

(5) Within the framework of a mere counseling interview, the person concerned has the right to anonymity and may also be represented by a person of his/her confidence or use a pseudonym.

(6) The counseling centers may, with the consent of the persons concerned, work towards an amicable settlement between the parties, unless this does not seem appropriate as a result of the individual case or is not indicated due to the seriousness of the accusation.

(7) The University of Kassel enables the employees of the counselling centers to receive further education and training in anti-discrimination law as well as with regard to counselling work on anti-discrimination including the equality of people with disabilities.

(8) In addition, members and relatives have the possibility to contact the university management, the management of the personnel department, deans and superiors. In this case, anonymity cannot be guaranteed.

§ 7 Right of Complaint

Members and relatives of the university as well as third parties according to § 1, who feel disadvantaged by other persons in the sense of § 1 because of a reason mentioned in § 1, have the right to complain. They may not be discriminated against for exercising this right of complaint. The same applies to supporters and witnesses of the person concerned.

§ 8 Complaints Office

AGG complaints office for employees: Department of Personnel and Organization, AGG Complaints Office for Employees, beschwerde-bediensstete@uni-kassel.de, www.uni-kassel.de/go/AGG

Complaints Office for Students: Department of Studies and Teaching, Complaints Office, beschwerde@uni-kassel.de, www.uni-kassel.de/go/beschwerdestelle

§ 9 Complaint Procedure

(1) Persons according to § 1 have the right to lodge a complaint with the Complaints Office and thus initiate the formal complaints procedure. The complaint shall be made in writing. If this is not possible for the person making the complaint, the complaint shall be made orally to the complaint office for recording. The transcript is presented to the person making the complaint at the end of the interview for review and subsequent signature. The accessibility of the procedure shall be observed.

(2) The complaint shall describe the events perceived as disadvantageous and discriminatory. Witnesses and, if applicable, evidence should be named, if available. The complaint should state which other persons have already been informed about the incidents and whether measures have already been initiated.

(3) After receipt of the complaint, the person making the complaint shall be informed in an initial interview by the complaints office about his or her rights, obligations and about the further procedure. He or she shall be advised of the support measures available from interest groups and the counseling centers pursuant to § 6.

(4) The complaints offices shall investigate the facts of the case.

(5) The complaints office may, in particular, request the person against whom the complaint is directed to comment on the complaint in writing. On this basis, the complaints body shall conduct a personal interview with the person against whom the complaint is directed in a timely manner, but no later than within one month. At the request of the person concerned, a person of his or her confidence may take part in the discussion.

(6) The complaints office may involve responsible persons from the respective affected areas. This shall apply in particular if immediate measures are required to prevent discrimination.

(7) The Complaints Office shall inform the President via the Chancellor of the result of its own examination and shall propose the further course of action.

(8) The Grievance Office shall document all hearings and the facts established and inform both parties of the outcome of the discussions and reviews.

(9) The President shall decide on further measures and possible consequences in accordance with § 10 of these regulations.

(10) The person filing the complaint may at any time withdraw the complaint or request a suspension of the proceedings.

(11) In the event of a complaint, the accused person shall be given the opportunity to comment on the allegations. As a rule, anonymity of the reporting or affected person vis-à-vis the accused person can then no longer be guaranteed. The counseling centers are required to point this out to the person concerned.

§ 10 Measures and Sanctions

In the event of discrimination pursuant to § 3, appropriate, necessary and reasonable measures shall be taken in individual cases to protect the person concerned. Measures and sanctions depend on the position of the respondent under service, employment or university law.

Depending on the severity of the particular incident, the University of Kassel may take the following measures:

1. Action taken by the University in cooperation with the person involved:

- Consultation between at least one person of a competent body and the person concerned
- Discussion between at least one person from a responsible office and the person concerned, and discussion between a supervisor and the accused person
- Personal conversation in the presence of at least one person from the responsible department between the person concerned and the person accused of misconduct
- Involve the University of Kassel's step-by-step model for conflict resolution <https://www.uni-kassel.de/intra-net/?id=38889>

2. Measures taken by the university in the event of an internal report

If, after hearing the accused person, the allegations of sexual harassment and/or discrimination and/or sexual violence directed against him/her are confirmed, appropriate measures will be taken according to the severity of the misconduct.

In particular, the following may be considered:

- service talk (Dienstgespräch),
- verbal or written warning,
- written warning (Abmahnung),
- transfer to another workplace within the university,
- termination of employment with or without notice,
- initiation of disciplinary proceedings,
- withdrawal of a teaching assignment,
- exclusion from a course,
- exclusion from the use of university facilities,
- ban from the premises,
- criminal charges by the university,
- exmatriculation according to § 59 para. 3 HHG.

If the accusations turn out to be unjustified, the accused person is entitled to appropriate rehabilitation.

Irrespective of the measures taken, it must be examined on a case-by-case basis which provisional measures are to be taken to protect the person concerned and against the continuation or repetition of the discrimination, harassment or use of violence.

§ 11 Criminal prosecution

A report of a criminal offense (e.g. sexual assault or rape) can be made to a local police department. In order to prepare for criminal prosecution, it may be important to have a medical examination carried out as soon as possible after the incident. It is also recommended to seek legal advice and psychological help. The University assures its support in finding persons suitable for this purpose. In criminal proceedings, interlocutors of affected persons have the right to remain silent only in certain special cases. The Code of Criminal Procedure provides for a right to silence for the following persons in particular: Lawyers, doctors and psychological psychotherapists.

§ 12 Reporting and Evaluation

The complaints offices shall report regularly to the Presidential Board on the fulfillment of their tasks and concrete cases of discrimination. Complaint offices, counseling centers and interest groups shall ensure a regular exchange of information, which shall take place at least once a year. This exchange is intended to provide pointers for the continuous further development of the procedure and cooperation with regard to counseling, complaints and preventive measures. The exchange shall always take place in anonymous form.

§ 13 Entry into force

The guideline enters into force on the day following its publication in the University of Kassel's official gazette. At the same time, the Guideline for Protection against Sexual Harassment, Sexual Discrimination and Sexual Violence at the University of Kassel from 2013 shall expire.

The guideline will be announced to all members and employees of the University of Kassel and handed out upon hiring as well as published in a suitable place on the intranet. In addition, the departments shall make the guideline known by posting it on a notice board.

Further action-oriented concepts, information and measures will be developed from this guideline by the appointed working group.