

Humboldt-Universität zu Berlin
Berlin School of Mind and Brain

**Anlage und nichtverbindliche englische Übersetzung zum Amtlichen
Mitteilungsblatt Nr. 117/2014, 23. Jahrgang/24. September 2014**

Richtlinie des Präsidenten sowie Dienstvereinbarung zwischen dem Präsidenten und dem Gesamtpersonalrat für ein respektvolles Miteinander an der Humboldt-Universität zu Berlin

**Annex to and nonbinding translation of Amtliches Mitteilungsblatt
Nr. 117/2014, 23. Jahrgang/24. September 2014:**

President's Directive and Establishment Agreement between the President and the General Staff Council for respectful co-operation at the Humboldt-Universität zu Berlin

President's Directive and Establishment Agreement

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In a bid to ensure the best possible conditions for working and studying at the Humboldt-Universität zu Berlin, and as a result of their confident partnership, the Presidency and General Staff Council are taking the wholly unprecedented step of jointly, simultaneously and uniformly adopting a President's directive and an establishment agreement between the President and the General Staff Council of the HU with the entry into force of this agreement. This is to ensure that the validity of the agreements made herein for respectful cooperation at the Humboldt-Universität zu Berlin extends to all members of the HU, thereby contributing to establishing a trusting working atmosphere that is as conducive as possible to the wellbeing and need for respect, recognition and safety of all members of the Humboldt-Universität zu Berlin, no matter which group of members they belong to. Only then can they fully develop their performance ability and find fulfillment in their work.

The following regulations are therefore based on the demand for fair, cultivated and respectful cooperation between all university members. This demand excludes discrimination, bullying, stalking, and sexual harassment and violence – as well as toleration thereof. If such tendencies are not decisively counteracted, they compromise the personal development, sense of self-worth and freedom of action and decision of persons concerned. Incidents of this kind shall on no account be accepted, and shall entail disciplinary or labor-law-related proceedings.

§ 1 Scope

The directive/establishment agreement applies to all members and part-time employees of the HU.

Protocol declaration regarding § 1:

According to the BerIHG, members of the HU are:

1. HU salaried employees
2. civil servants (Beamte/Beamtinnen)
3. registered students

4. university teachers (professors and junior professors)
5. honorary professors, unscheduled professors and senior lecturers
6. people paid by third parties
7. doctoral students
8. occasional teachers, instructors, and guest lecturers

§ 2 Aim

The aim of the directive/establishment agreement is the promotion and realization of

- trusting, constructive and appreciative cooperation
- mutual respect for the personhood of the other
- each individual's personal responsibility for a positive internal working environment.

§ 3 Basic principles

(1) The HU shall protect all its full-time and part-time employees, students and guests from

- discrimination
- bullying
- stalking
- sexual harassment and violence.

It shall penalize violations of this basic principle.

(2) University members who are affected by discrimination, bullying, stalking, or sexual harassment and violence, should be encouraged and called upon not to accept such assaults, but to defend themselves or involve third parties in order to obtain quick and effective support. This requires trust in the institution's position and in the resolute course of action to be taken by senior management. Both should be reinforced by this directive/establishment agreement.

(3) At the same time people who are not directly involved should be encouraged not to look away in the case of incidents they observe or learn of, but to directly offer assistance to those concerned and to support them in resolving any problems encountered.

All members of the university should be reassured that they will not suffer any negative consequences from addressing and pointing out these kinds of problems.

(4) It is the duty of those in senior positions at all levels of the university to actively contribute to appropriately resolving conflicts as part of their managerial functions. They are obliged to ensure the upkeep of standards described herein, to emphasize the rights of persons concerned in developing cases of discrimination, bullying, stalking, and sexual harassment and violence, and to properly deal with or punish the misconduct in question.

§ 4 Definitions

Definitions of the terms discrimination, bullying, stalking, and sexual harassment and violence are given in Annex 1. An evaluation of the overall circumstances is an essential part of assessing whether the elements of an offense exist in any specific individual case.

Annex 1 is a binding component of this directive/establishment agreement.

§ 5 Prevention

(1) The HU shall use personnel and organizational development as a necessary tool in implementing the aims of this directive/essential agreement. This includes:

- training in awareness raising and compulsory advanced training for those responsible for human resources
- offers of further and advanced vocational training, as necessary also individually or in smaller groups
- taking social skills into account when hiring new senior management or employees
- creation of spatial and technical conditions that avoid stressful or dangerous situations
- creation of conditions that enable barrier-free study and work at the HU

(2) The Humboldt-Universität shall establish a Commission for Conflict Prevention.

(3) The Commission for Conflict Prevention has the following duties:

- to instigate, propose and draw together preventative measures pursuant to Paragraph 1
- to prepare prevention strategies and programs
- to carry out public relations work in cooperation with the relevant staff unit of the President's Office
- to draw together internal and external offers of assistance
- to cooperate with internal offices, in particular conflict advisors, protection of labor and health specialists, the health promotion working group, equal opportunities officers and the Barrier-free University Commission
- at the request of persons concerned, members of the commission shall provide conflict advisors with the necessary contacts
- to submit an annual report to the President and staff councils on the effectiveness of prevention strategies and measures.

(4) The commission shall include:

- a university management representative
- the company medical officer
- the central women's representative
- the disabled employees' representative
- a member of the General Staff Council
- an official representative of the student body.

At least half of the commission members shall be women.

The names of commission members shall be made public and accessible at all times.

(5) The commission shall adopt its rules of procedure.

(6) The commission shall receive all documents necessary for the fulfillment of its duties. However, the commission has no right to information or inspection of the personal data disclosed during the proceedings.

(7) In order to implement preventative measures, university management shall apply the material and organizational conditions made available for this purpose within budget funds. In particular this includes ensuring the ongoing work and constant training of the Commission for Conflict Prevention. Furthermore, the commission may consult internal and external experts in an advisory capacity.

§ 6 Rights of persons concerned

(1) It is the right of all persons concerned to seek advice in cases of discrimination, bullying, stalking, and sexual harassment and violence. To this end they may get in touch with the following contact people:

- their supervisor
- the relevant staff council
- the central women's representative or women's representatives in the departments
- the German young employees' and trainee representation provision
- the company medical officer
- the disabled employees' representative
- the health promotion working group
- equal opportunities officers.

In each case the person concerned shall be supported and advised with the utmost confidentiality. The person concerned may request a consultation/hearing with a person of their own gender.

(2) If it is the express will of the person concerned to take further steps beyond consultations to resolve the problem, these shall be arranged and agreed upon with him/her. In all interviews the person concerned has the right to be accompanied by a person he/she trusts – including someone from outside the university.

(3) Having been made aware of an incident within the scope of this directive/establishment agreement, the contact persons named in Para. 1 have the duty to promptly and responsibly:

- support and advise the person concerned
- establish and document the facts, as necessary in separate or joint discussions with the persons involved (with the consent of the person concerned)
- accompany him/her to all interviews and reviews, including meetings of the human resources department; advise and support him/her in the representation of his/her interests (with the consent of the person concerned)
- consult a conflict advisor (with the consent of the person concerned).

(4) Furthermore, persons concerned are free to make use of further internal and external information centers or to contact the General Equal Treatment Act complaints office. The latter is obliged to inform the employer and deal with the complaint.

(5) This directive/establishment agreement does not prevent the person concerned from looking for legal advice from third parties and independently instigating legal action.

(6) Persons concerned shall not suffer any negative consequences if they justifiably make known violations pursuant to § 3. The same applies in the case of a refusal

to carry out instructions that run contrary to this directive/establishment agreement.

(7) If the direct target of discrimination, bullying, stalking, or sexual harassment and violence, the person concerned is entitled to discontinue work without loss of earnings insofar as this is necessary for his/her own protection should the employer take no measures or clearly inadequate measures to put a stop to the problem. The human resources department shall be informed before work is discontinued. § 273 BGB shall remain unaffected.

§ 7 Conflict advisors

(1) Conflict advisors are people who, regardless of their post or role at the Humboldt-Universität zu Berlin, are on hand to attend conflict resolution proceedings and, if necessary, to mediate. They are neutral and unrestricted in the exercise of their duties.

(2) The duties of conflict advisors include:

- consultation
- attending further proceedings, informing persons concerned of internal and external offers of assistance
- conflict moderation, mediation or suchlike with the aim of settling the conflict, provided this cannot be achieved by other means.

(3) At least two internal conflict advisors shall be appointed in both the Mitte/North region and Adlershof, half of whom shall be women. The persons concerned are free to choose their conflict advisor.

(4) Internal conflict advisors are put forward by the Commission for Conflict Prevention and in consultation with the Presidency's General Staff Council.

(5) Furthermore, the HU shall conclude a contract with an external conflict counselling authority, in order to quickly and effectively ensure independent assistance or counselling in the event of a conflict. The terms of the contract shall ensure that both women and men are among the contact persons. Those seeking external counselling shall receive the necessary information from a member of the Commission for Conflict Prevention (of his/her own choosing).

(6) Conflict advisors are obliged to maintain data secrecy. The course of events shall be recorded. Conflict advisors shall keep information or documents received or handled in connection with their work separate from other procedures. Documents shall be protected from being accessed by other people. Electronic documents shall be encrypted. Conflict advisors

and the commission shall be contactable via encrypted email.

(7) The obligation to maintain discretion shall also apply between conflict advisors. Any change of conflict advisors shall require the consent of the person being advised. In the context of their work, conflict advisors may pass on any personal data they have handled to the human resources department for the purpose of examining labor law provisions, with the consent of the person concerned. If an examination of labor law provisions is to be carried out, documents shall be handed over to the human resources department as required.

(8) Pursuant to §5 (7) the employer shall ensure the training/education of conflict advisors.

(9) Conflict counselling shall be counted as working hours.

(10) The list of appointed internal and external conflict advisors shall be published internally and is part of this directive/establishment agreement (Annex 2).

§ 8 Provisions and procedures in cases of conflict

(1) Action taken in cases of discrimination, bullying, stalking, and sexual harassment and violence shall proceed according to the specific circumstances and severity of the individual case and while maintaining the anonymity (if desired) and protection requirements of the person concerned. For this purpose, the following measures may be taken:

- personal interview with the person concerned
- personal interview with a supervisor, provided he/she is not him/herself accused
- personal interview with the person accused

At the request of the person concerned, technical aids or other communication aids (such as sign language interpreters) may be used during an interview.

(2) If the steps named in Paragraph 1 are ineffective or due to the severity of the incident seem inadequate or redundant, the following measures shall be considered by the contact person, with the consent of the person concerned:

- further internal counselling or passing on of information regarding external consulting services
- the possibility of conflict moderation, if necessary also in the long term, involving a conflict advisor
- introduction of a mediation process involving a conflict advisor
- engagement of the human resources department.

(3) The human resources department may take the following measures, among others, against the accused, provided the allegation has been confirmed:

- conduct a personal interview
- initiate disciplinary proceedings
- issue a written warning
- transfer to a different workplace
- ordinary or extraordinary dismissal
- exclusion from teaching and/or courses
- exclusion from use of university facilities
- house ban

(4) Prior to such decisions the human resources department shall consult the conflict advisors, provided they were involved in advance.

(5) The person concerned and if necessary the conflict advisors shall be informed of the measures referred to in Paragraph 3 within one week.

(6) The HU shall consider acceptance of the elements of an offense referred to in Annex 1 as toleration thereof and proceed accordingly.

§ 9 Elimination of indirect discrimination

(1) All regulations applicable at the Humboldt-Universität zu Berlin (wage agreements, work instructions, standard employment contracts, establishment agreements, etc.) shall be checked to determine whether they contain provisions or regulations that contradict this directive/establishment agreement in terms of content or language and thereby enable indirect behavior in accordance with Annex 1.

(2) If it is established that a provision or regulation contains an instance of discrimination that is not justified by the provisions of the General Equal Treatment Act or this directive/establishment agreement, then university management and the competent authorities shall endeavor to change these provisions or regulations in order to eliminate the instance of discrimination, without this change leading to a worse position for the Humboldt-Universität employee.

§ 10 Confidentiality/Data protection

(1) In accordance with principles of data economy and necessity, the group of persons informed about the proceedings shall be kept as small as possible. Pending alternative regulations, all persons involved in the proceeding are obliged to treat the personal data made accessible to them confidentially and not to make it accessible to third parties, provided its handing over is not regulated by this directive/establishment agreement or by another statutory provision or all parties to the conflict have not given their explicit consent for this to happen.

(2) Documents submitted by persons concerned shall be returned or destroyed. The destruction of documents and deleting of data must comply with safety standards for sensitive data carriers.

§ 11 Final clause

(1) This directive/establishment agreement shall enter into force on the day of its publication in the *Official Gazette of the Humboldt-Universität zu Berlin*. It shall be made publicly and wholly accessible and handed out to all newly appointed employees at the Humboldt-Universität zu Berlin.

(2) Directly after its entering into force, all necessary steps shall be introduced to set up the Commission for Conflict Prevention, conclude a contract with an external conflict counselling authority and appoint internal conflict advisors.

(3) The directive/establishment agreement shall be indefinitely valid. Changes shall require agreement between university management and the General Staff Council.

(4) The directive/establishment agreement may be declared invalid or cancelled subject to a term of 12 months to the end of the month. This must be given in writing. The contract parties undertake to enter into negotiations to draw up a new directive/establishment agreement no later than the following month. If a new directive/establishment agreement is not entered into force or concluded no later than three months before expiration of the time limit referred to in Item 1 or if one side declares the negotiations failed, the arbitration committee may be called on for matters of employee representation. Until implementation of the arbitration committee's decision the establishment agreement shall continue to apply.

§ 12 Severability clause

Should parts of the directive/establishment agreement be declared ineffective, the effectiveness of the remaining parts shall not be affected. The contract parties shall undertake to work together in confidence to replace the ineffective regulation with a regulation that is as close as possible to the desired aim.

Annex 1: Definitions

1. Discrimination

Discrimination may be directly related to a person or indirectly related via e.g. regulations, actions and conditions that are seemingly neutral, including a lack of freedom from barriers, which should not only be equated with obstacles in the physical sense but also taken to mean accessibility, attainability and usability (in terms of working materials, workplace, work processes, communication and information).

a) Disadvantageous discrimination

Disadvantageous discrimination is the unjustified unequal treatment of another person for reasons such as

- national, regional or ethno-cultural origin
- race
- appearance
- gender
- sexual identity
- disability
- illness
- social background
- religious and/or ideological leanings
- political views
- age.

b) Dignity-violating discrimination

Dignity-violating discrimination is the degradation of another person's dignity (which according to the German constitution shall be inviolable) and/or his/her rights and freedoms. This also includes harassment creating an environment characterized by intimidation, hostility, humiliation, debasement, abuse, sexualization or repression.

Dignity-violating discrimination may include e.g. verbal or written statements or actions having derogatory content for the reasons mentioned in Paragraph 1 (a), but also verbal or visual presentation of pornographic or sexist content and the use of pornographic or sexist internet sites, image, sound or data carriers or computer programs.

2. Bullying

Bullying is a conflict-prone communication or action between individuals or several parties, in which the person concerned is put in an inferior position or made to feel inferior and is repeatedly and systematically attacked and violated by one or more persons, directly or indirectly, often over a protracted period, with the aim or effect of exclusion. This also includes cyberbullying.

Bullying actions are in particular the systematic discrimination, hostility or victimization carried out by individuals or a group of people that has or may have a negative impact on a person or group's social relations, quality of professional or living situation, communication possibilities, health and/or social standing.

Bullying practices are e.g.

- systematic withholding of information necessary for work or study
- disinformation
- defamation of people or groups of people
- spreading of prejudicial or negative rumors
- threats and humiliation, in particular threats of physical or psychological violence
- insults, abusive treatment, mockery and aggressiveness
- inhuman treatment e.g. allocation of insulting, deleterious, unsolvable, senseless exercises or of no exercises at all
- harassment of people touching on their private lives
- systematic exclusion of individuals
- ridiculing of people, e.g. about disability or illness
- ridiculing of people, e.g. about their private lives
- not talking to someone (even pretending they don't exist)
- refusal or withholding of means to improve the barrier-free work environment (incl. refusal to provide these means promptly)

3. Stalking

Stalking is the deliberate, repeated and persistent persecution or harassment of a person, whose physical or psychological integrity may thereby be threatened or harmed directly, indirectly or in the long term (cf. §238 StGB).

Stalking actions are in particular:

- unwanted, frequent attempts at contact (in person, by telephone, letter or email)
- unwanted lingering in proximity to the person, including following someone on foot or by vehicle.

4. Sexual harassment and violence

Sexual harassment and violence refers to behavior directed against the physical and psychological integrity of a person and is related to the sexuality of either the perpetrator or the victim. Sexual harassment and violence are the result of the perpetrator's need to exert power or control.

Sexual harassment manifests itself in the following actions in particular:

- degrading sexualized remarks about people or their bodies
- showing of degrading, sexualized images
- sexually derogatory gestures, requests or behavior
- exhibitionism
- inappropriate and/or unwanted bodily contact
- violent physical attacks.

Annex 2: Internal conflict advisors and external conflict consultancies

Conflict advisors on Campus Mitte/Nord

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Conflict advisors on Campus Adlershof:

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External conflict consultancies:

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