

**Mitteilungen der
Justus-Liebig-Universität Gießen**

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Guidelines on Preventing and Dealing with Cases of Discrimination of
Justus-Liebig-Universität Gießen

**Guidelines on Preventing and Dealing with Cases of Discrimination
in Consideration of the General Equal Treatment Act
for All Students and Other Members and Affiliates
of Justus Liebig University Giessen**

dated 11.02.2020

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Inhaltsverzeichnis

Preamble	2
Section 1: Goals.....	2
Section 2: Scope of Application.....	2
Section 3: Definition of Terms	2
Section 4: General Prohibition of Discrimination	3
Section 5: Prevention	3
Section 6: Contact Points and Counselling Centres.....	4
Section 7: Complaints Office	4
Section 8: Right of Complaint.....	5
Section 9: Complaints Procedure	5
Section 10: Measures and Sanctions.....	6
Section 11: Reporting System and Evaluation	6
Section 12: Coming into Force (Commencement)	6

Preamble

Justus Liebig University Giessen (JLU) promotes a culture of equitable cooperation among its members, affiliates, and guests at all functional levels and across the individual areas of services, studies, teaching, and research. JLU emphasizes the great importance it places on trusting cooperation and on the respectful and appreciative interaction of its members, affiliates, and guests with each other.

According to the JLU's conception of itself, the totality of individuals comprises men and women as well as all those who do not identify with either of those categories of identity. The recognition of individual and cultural diversity at JLU includes protection against discrimination based on attributions of race, or on the basis of ethnicity, gender, religion or belief, disability, age or sexual identity; it also comprises the promotion of life-cycle fairness and family-friendliness as integral to the equality of opportunities.

These Guidelines serve to detail how the prohibition of discrimination contained in the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) shall be implemented at JLU, not excluding the cases of complainants or complainees who are members or affiliates of JLU but are not bound to the University under labour law or public service law and are thus not per se subject to the AGG.

Through these Guidelines, all individuals affected by discrimination as detailed below are given the right to lodge a complaint. At the same time, they oblige JLU to provide instruments of prevention and make provisions for sanctioning measures.

Section 1: Goals

These Guidelines serve to counteract discrimination at JLU. Their aim is to prevent or remedy discrimination based on attributions of race, or on the basis of ethnicity, gender, religion or belief, disability, age or sexual identity.

Section 2: Scope of Application

(1) These Guidelines shall not find application in cases in which the AGG applies directly.

(2) In all other cases, these Guidelines apply to all members and affiliates of JLU within the meaning of Section 32 of the Hesse Higher Education Act (Hessisches Hochschulgesetz, HHG).

(3) These Guidelines also apply in the event of discrimination of third parties or against third parties within the JLU campus area if at least one of the persons involved belongs to the group of persons referred to in para 2.

Section 3: Definition of Terms

(1) The definitions found in Section 3 AGG in its latest version, including the applicable case law based on it, shall apply for the purposes of the present Guidelines:

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. Direct discrimination on grounds of sex shall also be taken to occur 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, 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 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.

Guidelines on Preventing and Dealing with Cases of Discrimination of Justus-Liebig-Universität Gießen	05.03.2020	2.10.00 Nr. 1
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4. Sexual harassment shall be deemed to be discrimination 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.
5. An instruction to discriminate against a person on any of the grounds referred to under Section 1 shall be deemed as discrimination. Such an instruction shall in particular be taken to occur where a person instructs an employee to conduct which discriminates or can discriminate against another employee on one of the grounds referred to under Section 1.

(2) Harassing behaviour can be either of a verbal or a non-verbal nature. This may include, for example, defamation, insults or derogatory statements, hostility, threats and physical assaults which are connected to any of the reasons referred to in Section 1.

(3) Behaviour covered by the concepts of harassment and sexual harassment includes, a fortiori, (sexual) acts and behaviours which are actionable under criminal law.

(4) Behaviour deemed so-called mobbing can represent harassment or sexual harassment within the meaning of para 1. Mobbing can be understood as systematic and repeated hostility, harassment and marginalisation, with the aim or consequence that the person mobbed is made to feel intimidated, insecure, and humiliated.

(5) Behaviour deemed stalking (Nachstellung under the German Criminal Code, StGB) can also represent harassment or sexual harassment within the meaning of para 1. Stalking can be understood as the deliberate and repeated harassment of a person, in a manner which is suitable for seriously restricting that person's lifestyle by persistently seeking the other person's personal proximity, trying to establish contact with the other person, or committing other comparable acts (cf. Section 238 StGB).

Section 4: General Prohibition of Discrimination

(1) Persons within the meaning of Section 2 must not be discriminated against for one or more grounds referred to in Section 1. This shall also apply when the person committing the act of discrimination only assumes the existence of any of the reasons referred to in Section 1.

(2) Any agreement concluded by JLU shall be drafted and/or executed in accordance with the prohibition of discrimination contained in para 1.

(3) Discrimination pursuant to para 1, when committed by members or affiliates of JLU, can constitute a violation of obligations arising from contract law, public or civil service law, or higher education law.

Section 5: Prevention

JLU shall adopt measures to prevent discrimination based on any of the grounds named in Section 1. These include, in particular:

- making these Guidelines known to all members and affiliates of JLU, and making them permanently available on the University's website;
- providing relevant information and information materials, on a regular basis, for all affiliates and members of JLU, and for its student body, in particular;
- providing training opportunities to raise discrimination awareness;
- bearing in mind possible risks of discrimination when planning and developing projects and changes in infrastructure, e. g. considering questions of accessibility within the context of building projects or the provision of information technology;

Guidelines on Preventing and Dealing with Cases of Discrimination of Justus-Liebig-Universität Gießen	05.03.2020	2.10.00 Nr. 1
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- bearing in mind possible risks of discrimination in the curriculum, when developing degree programmes, and regarding the framework conditions of courses offered, such as course time periods, teaching staff behaviour, and the use of discrimination-sensitive language.

Section 6: Contact Points and Counselling Centres

(1) JLU shall provide the following for its members and affiliates as well as for third parties pursuant to Section 2, who feel that they have been discriminated against within the meaning of Section 3:

1. Contact points, offering a low-threshold source of information and support to all affected (this includes, for instance, JLU's feedback management and the Staff Council as well as other institutions such as dean's offices, where appropriate);
2. counselling centres, offering qualified guidance which may be specialised with a view to particular categories of discrimination (e. g., the conflict management office in the Human Resources Development Division, the Women's and Gender Equality Representative, the Disability Representatives, the Central Student Advisory Service, and others);
3. a complaints office (cf. Section 7), initiating and implementing a systematic facilitation of the official complaints procedure detailed in these Guidelines (cf. Section 9).

In addition to these options, members and affiliates of JLU may address themselves to JLU's Executive Board; to the head of the relevant personnel division; to the deans of individual faculties; as well as to their immediate superiors, where applicable. Furthermore, JLU cooperates with external counselling agencies and provides information regarding their respective offerings.

(2) In order to protect their anonymity, affected persons may approach the contact points and the counselling centres by involving third parties that they trust or through the use of a pseudonym. This does not apply, however, with regard to the complaints office.

(3) It is the task of the contact points to advise those affected by discrimination regarding the various possibilities of support, and to support them in taking their concern to the relevant internal or external counselling services and/or to the complaints office, where applicable. All advisory interactions with contact point staff are confidential; only advisees themselves may release contact point staff from their obligation to confidentiality. Insofar as this is necessary, contact point staff refer advisees to the complaints office and/or to external counselling agencies.

(4) It is the task of the counselling centres to give those affected by discrimination the opportunity to talk about their concerns and to further advise them regarding the various possibilities of support, as well as to inform them about their rights. All advisory interactions with counselling staff are confidential; only advisees themselves may release counselling staff from their obligation to confidentiality. Insofar as this is necessary, counselling staff refer advisees to the complaints office and/or to external counselling agencies.

(5) JLU shall enable all counselling staff to participate in further and continuing training regarding both anti-discrimination law and their anti-discrimination counselling practice.

(6) JLU is under an obligation to ensure that persons affected by discrimination (or, where applicable, their third-party representatives) do not suffer any personal or professional disadvantages on account of their taking recourse to JLU's contact points, counselling centres, and/or complaints office. For this reason, all action to be taken must be carried out in agreement with the persons concerned or their third-party representatives.

Section 7: Complaints Office

(1) The complaints office is located in JLU's Department B (Legal Matters, Central Duties, Safety and Student Affairs).

(2) The task of the complaints office is to implement the complaints procedure pursuant to Section 9.

Guidelines on Preventing and Dealing with Cases of Discrimination of Justus-Liebig-Universität Gießen	05.03.2020	2.10.00 Nr. 1
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(3) JLU shall enable all complaints office staff to participate in further and continuing training regarding both anti-discrimination law and their anti-discrimination counselling practice.

Section 8: Right of Complaint

Members and affiliates of JLU, as well as third parties within the meaning of Section 2, who feel that they have been discriminated against by another person within the meaning of Section 2 on any of the grounds named in Section 1, have the right to lodge complaints with JLU's complaints office. They must not suffer any disadvantage on account of their availing themselves of this right. The same applies to those who have supported the complainant or have acted as witnesses for them.

Section 9: Complaints Procedure

(1) All persons within the meaning of Section 2 have the right to lodge a complaint with JLU's complaints office, thus initiating the formal complaints procedure. Pursuant to Section 6 para 2, the complainant initiating a formal complaints procedure may not remain anonymous. The complaint shall be submitted in writing. If the complainant is unable to submit a written complaint, the complaint shall be submitted orally to the complaints office. In the case of an oral declaration, the complaint and the contents of the meeting shall be documented by the complaints office staff in the form of written minutes. This shall then be played back to the complainant (if a recording has been made) and/or shall be presented to the complainant for their review and approval, which is to be given by signature of the written version. The written minutes shall be read back to the complainant, if required.

(2) The complaint shall be phrased in such a way that it describes, in detail, the occurrences perceived as discriminatory. As far possible, witnesses and, where applicable, evidence shall be named or indicated. As part of their complaint, complainants are requested to name any other persons they might have informed of those occurrences, as well as state whether any measures have been taken in response to them.

(3) After the complaint has been lodged, the complainant shall be informed, in a first consultation, of their rights and duties, as well as regarding the further course of action. The complainant shall also be informed about support measures available through advocacy groups and JLU's counselling centres pursuant to Section 6.

(4) The complaints office shall then investigate the matter and gather more information, if required. If the complaints office itself is not competent to decide in the matter at hand, it is required to forward the facts of the matter, as they have been ascertained to far, to an authority that shall be designated by JLU's Executive Board. This authority shall then carry out an assessment.

(5) The complaints office shall, as a rule, contact the person or persons against whom the complaint is directed within the period of one month, giving them an opportunity to answer to the complaint. They may also be cautioned as appropriate. The response statement may be given in writing. A third-party confidant may take part in this meeting, if desired by the complainee.

(6) The complaints office may involve persons in charge of the department concerned. This applies in particular when immediate measures are necessary to prevent discrimination.

(7) The complaints office shall inform the President, by way of the Director of Finance and Administration, of the results of the legal assessment, and shall make a recommendation as to the further course of action.

(8) The complaints office shall document all hearings, as well as the facts of the matter as found by the investigation, and shall inform both parties about the results of the talks and the investigation.

(9) The President decides on the taking of any further measures and/or potential consequences pursuant to Section 10.

(10) Without prejudice to para 9, the complainant may retract their complaint at any time or may request a suspension of the proceedings.

Section 10: Measures and Sanctions

In the event of discrimination within the meaning of Section 3, measures appropriate to the case at hand shall be taken, to a necessary and reasonable extent, for the protection of the person or persons affected. The measures and/or sanctions to be taken depend on the position of the complaine, in terms of public service law, civil service law, or higher education law. The following measures in particular may be considered:

- A disciplinary interview
- A verbal or written admonition
- A written warning
- Transfer or relocation to another position within the University
- Dismissal with or without notice
- Disciplinary action
- Cancellation of teaching contract
- Exclusion from a lecture course or seminar
- Ban from using JLU facilities
- Ban from entering JLU premises
- Criminal charges from JLU
- Expulsion pursuant to Section 59 para 3 of the Hesse Higher Education Act (Hessisches Hochschulgesetz, HHG)

Section 11: Reporting System and Evaluation

(1) The complaints office shall report to JLU's Executive Board at least once a year regarding the fulfilment of its duties as well as concrete cases of discrimination.

(2) The complaints office and the counselling centres shall ensure a regular exchange of information, also involving the Staff Council and the Central Student Advisory Service, where necessary. This exchange is intended to provide points of reference for the continuous development of the complaints and sanctions procedure, and for improving cooperation regarding consultations, the handling of complaints, and preventative measures. This wider exchange of information regarding discrimination cases shall be conducted in a general manner, not by reference to individual cases, and shall always take place in an anonymised form.

Section 12: Coming into Force (Commencement)

These Guidelines shall be effective from the day following that of their publication in the University's official gazette, Mitteilungen der Justus-Liebig-Universität ("Announcements of Justus Liebig University").

Giessen, 12 February 2020

signed

Professor Dr. Joybrato Mukherjee

JLU President