

Statute for Protection against Discrimination at the BTU Cottbus-Senftenberg (dated 28 October 2022)

On the basis of the Brandenburg Higher Education Act (BbgHG) of 28 April 2014 (GVBl. I/14 No. 18), last amended by the law of 23 September 2020 (GVBl. I/20, No. 26), § 5 clause 1 sentence 2 in conjunction with § 64 clause 2 no. 2, and taking into account the General Equal Treatment Act (AGG) of 14 August 2006 (Federal Law Gazette I p. 1897), last amended by Art. 8 of the law of 3 April 2013 (Federal Law Gazette I p. 610), in conjunction with § 16 clause 2 No. 1 of the Basic Regulations of the Brandenburg Technical University of Cottbus-Senftenberg (GO BTU) of 8 January 2016, last amended by the first amendment of 17 November 2016 (AMbl. 12/2017), the Senate issues the following statute:

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Preamble

According to its general principle, ¹the BTU is geared towards promoting equal opportunities as a place of training, work, research and study, recognising and reducing disadvantages and discrimination and ensuring protection for those affected. ²In accordance with the General Equal Treatment Act, the BTU wants to protect all relatives and guests from any form of discrimination in the sense of § 1.3. of the BTU house-rules.

³With this statute, the establishment of a university anti-discrimination protection policy, which is declared as obligatory in the university contract between the Ministry of Science, Research and Culture of the State of Brandenburg (MWFK) and the BTU Cottbus-Senftenberg of 27 March 2019, is implemented. ⁴The statute transparently enshrines the right to complain by means of a university-wide complaints channel, generally applicable procedural rules with corresponding rights and responsibilities, and clearly defined contact partners. ⁵Thereby, the statute is related to the BTU's overall goal of ensuring the protection of human dignity and peaceful co-existence in accordance with Article 7-7a of the Brandenburg state constitution. ⁶In addition, reference is made, in this context, to the comment of 'Individual performance assessment and exclusion of discrimination' of guideline 5 of the 'Guidelines for Safeguarding Good Scientific Practice' code of the German Research Foundation (DFG), especially with regard to research.

Section 1 - General

§ 1 Scope

- (1) The statute applies to all members and employees of the BTU in the sense of § 60 BbgHG.
- (2) It applies to other persons who are, or were, affected by discriminatory behaviour by members or associates of the BTU.
- (3) ¹For external rooms, systems, facilities, events, etc., or external behaviour (guests, external organisers, tenants, etc.), the statute only applies to the extent that the BTU can influence them. ²The same applies to rooms, systems, facilities, etc., which the BTU has made available to others for use (rental, leasing, other types of transfer of use, etc.).
- (4) The BTU undertakes to make use of its domestic authority to avert discrimination.
- (5) ¹The statute does not restrict the powers of the university management under service and labour law. ²In particular, the initiation of a complaints procedure, in accordance with the statute, does not prevent the university management from immediately taking official and/or labour law measures in the submitted facts/case in order to meet the deadline; in this respect, reference is made to § 8.

§ 2 Definitions

¹For the determination of the terms, 'disadvantage' or 'discrimination', the explanations in appendix 1 of these statute and § 3 AGG apply. ²Sentence 1 is to be interpreted in such a way that the areas of application do not limit one another.

Section 2 - Obligations

§ 3 Preventative duties of the BTU

(1) ¹The BTU takes measures to raise awareness and prevention in order to create working and study conditions which are characterised by tolerance and mutual respect. ²In this context, the following measures in particular are possible:

No. 1 The university guarantees regular information and suitable awareness-raising and qualification measures for protection against discrimination for people with supervisory, managerial and training tasks.

No. 2 Employees and students regularly receive offers to raise awareness of discrimination issues.

No. 3 The BTU works to ensure that there is a comprehensive willingness to act as a mediator and to resolve conflicts and offer support.

No. 4 The members of the complaints office who receive or record complaints are trained in conducting 'structured interviews'.

No. 5 The BTU enables scientific research on complaints, provided that all those involved in the complaints procedure have agreed to this and the data has been made anonymous.

No. 6 ¹The university guarantees the archiving of the documentation created as part of the work of the complaints office for a period of 30 years. ²The university also undertakes to carefully process complaints that relate to events in the past, subject to the provision in § 12, clause 2.

(2) ¹If required, the BTU also offers a number of contact points with different thematic priorities, which are available to provide support for advice on questions of protection against discrimination and related potential conflicts. ²The aim of the counselling is to provide space for a discussion by means of a confidential conversation, and to support those affected in the selection of alternative courses of action. ³The advice can be anonymous. ⁴The counselling centres clearly communicate the limits of the counselling services. ⁵In addition, the 'Agreement for a respectful and collegial co-operation for conflict resolution at work and study', concluded in 2017, forms a low-threshold offer for discussion and advice aids in various conflict situations. ⁶Reference is made in Appendix 3 to the counselling centres, which can be considered within the sense of the present regulation.

§ 4 Reactive duties of the BTU

(1) ¹In the event of discriminatory behaviour by external individuals, the BTU will check to what extent this statute, or its domestic authority, can be used to react. ²The BTU also uses every possibility to counteract discrimination within the sense of § 2. ³This includes, in particular, talks with contractual partners, information to organisers, contractual options and the termination of collaboration with external parties.

(2) If a member or an associate of the BTU is accused of a criminal offence or an administrative offence, the BTU undertakes to participate in the investigations of the responsible authorities within the framework of the legal obligations.

§ 5 Obligations of the members and relatives of the BTU

- (1) The members and associates of the BTU refrain from any discriminatory behaviour, within the sense of § 2, on the university campus or in connection with official/university behaviour.
- (2) ¹All members and affiliates of the BTU are called upon to help shape a university culture which is characterised by mutual respect and tolerance. ²The aim is to establish a culture of looking at, and naming, discriminatory, disadvantageous, harassing and violent behaviour and, if possible violations of these statutes become known, to work together with the person concerned and the relevant departments to ensure that these are investigated. ³Individuals affected by the incidents described in § 2 should be encouraged not to accept harassment, discrimination and violence, to seek advice and, if necessary, to initiate a complaints procedure and to inform those responsible at the university.
- (3) All members and associates of the BTU have the duty to behave sensitively in the situation of those affected, and to act in a mediating and conflict-solving manner.

§ 6 Duties of the executive committee and responsibility of persons with management and support tasks of the BTU

- (1) ¹The university management ensures that the complainant does not suffer any disadvantages as a result of the complaint. ²Confidentiality regarding the process and impartial support for all those involved is ensured. ³The BTU informs those affected about the possibilities of legal prosecution. ⁴The BTU also provides information about offers from recognised victim support organisations.
- (2) ¹The university management supports clarification, processing and, if necessary, imposes sanctions according to § 11 and in connection with Appendix 2 of the statute. ²Fees for external consultation are made available promptly, or a corresponding quota is reserved.
- (3) ¹If an incident in the form of harassment, discrimination and violence against employees and relatives becomes known, supervisors must ensure that provisional measures are taken to protect the person concerned. ²This happens in co-operation with the disadvantaged person.
- (4) ¹If such an incident is directed against students, the university management must ensure protective measures are put in place. ²This also happens in co-operation with the disadvantaged person.

Section 3 – Complaints Office

§ 7 Establishment and tasks of the complaints office

- (1) The BTU will set up an independent contact point to deal with personal and structural discrimination, to which a formal complaint can be submitted (complaints office).

(2) ¹The complaints office consists of four members: three regular members and one extraordinary member. ²The group of regular members includes the anti-discrimination officer and two other personally suitable people with proven legal expertise or knowledge in the field of anti-discrimination, who are elected by the Senate with a simple majority of the members. ³At least one person should be a non-academic member of the university, e.g. from the staff representation. ⁴The Senate elects two representatives for each of the three regular members of the complaints office. ⁵The term-of-office of the regular members of the complaints office is four years. ⁶Membership also ends upon retirement, ex-matriculation, or the end of service, or employment, or comparable legal relationships. ⁷When a member leaves, the Senate elects a new member. ⁸Until the new election, the office will be continued by the representative. ⁹The fourth extraordinary member of the complaints office is appointed by the complainant for the duration of the complaints procedure. ¹⁰This member of the complaints office should come from among the members or relatives of the BTU. ¹¹Equal gender representation in the complaints office is sought.

(3) ¹The complaints office shall adopt rules of procedure to regulate its internal affairs. ²In particular, the rules of procedure regulate the quorum of the complaints office and rules for representation in the event of bias of individual members.

(4) ¹In accordance with this statute, the complaints office is involved in the implementation of complaints procedures in accordance with §§ 8 to 12. ²In addition, it offers regular open counselling hours in which people are informed about rights, the course of the procedure and other support options. ³There are also regular consultations with other BTU officials, who are also responsible for questions of protection against discrimination. ⁴The open consultation hours, and the regular consultations with the officials, take place every four months and are announced by the university.

§ 8 Complaints procedure

(1) ¹The complaints procedure is managed by the university management. ²The university management is entitled to be represented in whole, or in part, in a suitable manner in the procedure. ³The complaints office is to be involved in this in accordance with this statute. ⁴The complaints procedure is initiated by a written complaint to be submitted to the complaints office. ⁵The complaint can also be filed with the complaints office for the record. ⁶The complaints office must point this out when making initial contact. ⁷The complaint should include the following points: What discrimination was experienced when, where, by whom or through what process? Are there other people who are also affected by this? Are there witnesses? Have other people already been informed about the incidents? Have measures already been taken? The complaint must be signed by the complainant.

(2) The complaints office immediately forwards the complaint to the university management and informs the complainant about the further course of the procedure.

(3) After receiving the complaint, the university management will check whether the facts presented are behaviour that requires official or employment law measures, e.g. the initiation of disciplinary proceedings, or the declaration of an extraordinary termination, in order to also immediately, if necessary, take appropriate legal action.

(4) ¹The university management determines the facts on which the complaint is based with the participation of the complaints office. ²The person affected by the complaint must be given the

opportunity to comment on the allegations to the university management (hearing). ³A member of the complaints office takes part in the hearing. ⁴Even if the person affected by the complaint fails to comment, this does not preclude the continuation of the procedure.

(5) ¹The complainant can withdraw the complaint. ²If the complaints office and the university management agree, the procedure will be declared finished. ³With the approval of the university management, and in agreement with those involved in the procedure, the complaints office can, in individual cases, work towards an amicable agreement between the person making the complaint and the person affected by the complaint, instead of conducting a complaint procedure. ⁴If the attempt to reach an agreement fails, or if there are indications of behaviour that require official or employment law measures, the complaints office immediately passes the procedure on to the university management.

§ 9 Representation in complaints proceedings

¹The complainant may be represented in the complaints procedure by a person authorised to do so. ²In order to enable the most barrier-free access to the complaints procedure, a language mediator, or an interpreter, can be provided by the BTU at the request of the complainant or at the request of the complaints office.

§ 10 Other rules of procedure

(1) ¹At the beginning of a complaints procedure, the members of the complaints office document that the respective member is not biased. ²If there is a concern that individual members of the complaints office may be biased in a complaints procedure, their representatives will take their place. ³The same regulations according to § 1, 2 also apply to members of the university management who are involved in a complaints procedure.

(2) All those involved in the complaints procedure ensure in writing that they will maintain the confidentiality of the procedure and comply with data protection regulations.

§ 11 Possible measures

(1) ¹If the university management, after determining the facts relevant to the decision with the participation of the complaints office in accordance with this statute, comes to the conclusion that discrimination pursuant to § 2 has occurred, it can take the following measures:

No. 1 ¹The persons concerned immediately receive the greatest possible protection and support from the university management, the complaints office and other functions and persons involved. ²This always happens when co-operating with the complainants.

No. 2 ¹Depending on the individual case, measures according to Annex 2 will be initiated against members, relatives or students of the BTU. ²When choosing the measures, the principle of proportionality must be observed. ³The person affected by the complaint should receive appropriate sanctions for their misconduct and be held accountable. ⁴As a rule, they should be given the opportunity to change their behaviour in the long-term.

No. 3 In the event of an indirect disadvantage or structural discrimination, the relevant Senate commissions, and/or other bodies of the university self-government, are requested to work-out a clarification and change the discriminating facts.

(2) The university management can ask the complaints office to examine what measures can be taken against the continuation, or repetition, of the discrimination.

§ 12 Rehabilitation in case of false accusation and deletion of the documentation

(1) If the allegations made are refuted as part of the complaints procedure, the university management, and all other individuals and functions involved, are obliged to comprehensively rehabilitate the accused person.

(2) ¹Insofar as legal regulations, in particular from employment or service law, do not contain any storage obligations, documents relating to processes with complaints, allegations, and/or comments that have proven to be unfounded or incorrect after a determination of the facts, must be immediately destroyed in accordance with data protection after the accused has given his or her consent. ²In as far as electronic correspondence is available, it is to be deleted accordingly. ³This destruction of documents, or deletion of the data, is carried-out by the complaints office and the university management, insofar as documents have been created or used there to examine the relevant facts. ⁴At the request of the accused, a statement on the destruction/deletion of these documents or data must be submitted by the agency involved.

Section 4 - Final Provisions

§ 13 Reporting and evaluation

(1) The complaints office collects case numbers and categories of discrimination in an anonymous form and in compliance with all data protection regulations.

(2) This statute is subject to a continuous process of evaluation and revision.

§ 14 Entry into force

This statute is to be published in the official bulletin of the BTU and come into force one day after publication.

Issued on the basis of the decision of the Senate dated May 19th 2022, after approval by the President of the Brandenburg Technical University Cottbus-Senftenberg dated October 28th 2022.

Cottbus, the 28th October 2022

Prof. Dr. Gesine Grande
President

Appendix 1 - Disadvantage and discrimination in terms of § 2

The terms, 'disadvantage' and 'discrimination' are synonymous.

1. Discrimination is when people experience prejudice without objective justification based on characteristics, such as ascribed race, ethnic origin, gender, age, impairment and disability, sexual identity, social origin, world view or religion. Discrimination also occurs when people are subjected to prejudice because of an illness, their appearance, their individual family situation (e.g. pregnancy or care-giving) and their political orientation. Serious forms of discrimination are, in particular, discrimination and harassment by exploiting dependency relationships during studies, and in training and jobs.
2. Disadvantages are direct or individual if a person is, has been, or would be, treated less favourably than a comparable person for one of the reasons mentioned without objective justification. Indirect or structural discrimination occurs when rules, criteria, or procedures appear to be neutral and apply to everyone but, in practice, put certain groups at a disadvantage without any objective reason.
3. Forms of direct or individual discrimination are behaviours that intimidate a person because of a characteristic, violate the dignity of the person concerned, offend or degrade them, or create or aim to create a hostile environment. Discrimination can also take the form of harassment, contempt or exclusion. They can be physical, verbal, and non-verbal. This can be direct or indirect, e.g. through the use of digital media. Multiple discrimination occurs when the discrimination relates to a combination of several characteristics.
4. Sexualised discrimination is a specific form of discrimination that is an unwanted sexual act. This includes unwanted sexual touching and unnecessary physical contact, unwanted showing, or visibly attaching, sexualising and pornographic images on campus, in offices or IT systems (e.g. posters, screen-savers, calendars). Addressing people in a sexist manner (e.g. unwanted jokes, comments on appearance and body, unsolicited sending of pornographic material, for example) also constitute forms of sexual harassment.
5. Racial discrimination is non-verbal, verbal or physical action with the purpose or effect of violating the dignity of the person or group concerned. This includes statements based on racist attributions, posting, distributing, or showing of images with racist content (e.g. posters, screen-savers, calendars, on campus grounds), copying, using and/or disseminating on the university's computer systems, as well as racist salutation of individuals.
6. According to Olweus (1994)¹, bullying occurs when one or more people are repeatedly exposed to negative actions (physical, verbal, relational) that are intentionally carried-out by one or more other people, and when there is a power imbalance between the bullies and the people being bullied. A power imbalance can arise from various aspects. The time period during which these acts take place cannot be determined in general, because the burden associated with the discrimination is decisively determined by the intensity of the discriminatory acts. Intense discrimination can cause severe stress symptoms after a short period, and low-threshold discrimination after a longer period.

7. The actions defined here include above all, but not only, those behaviours that are subject to the Criminal Code (e.g. violation of personal honour according to § 185 StGB (criminal code); slander according to § 186 StGB; stalking, or stalking according to § 238 StGB, and all forms of criminal offences against sexual self-determination §§ 174 ff. StGB, etc.).

Olweus, Dan (1994): Bullying at School. In: Huesmann, Rowell L.: Aggressive Behaviour. Current Perspectives. Springer Boston, S. 97-130

Appendix 2 - Actions taken after allegations are confirmed

If the allegations made in a complaint are confirmed, the following measures and sanctions can be taken against employees of the BTU, depending on the severity of the basis for the complaint, and provided that the relevant legal facts are fulfilled:

1. Oral or written instruction/admonition
2. Conducting of a formal work interview
3. Partial or temporary exclusion from the use of university facilities, partial or temporary house-ban
4. Revocation of a teaching position
5. Cancellation of an honorary professorship (subject to the requirements of § 32 (2) BTU appointment regulations)
6. Initiation of disciplinary proceedings
7. Transfer or relocation to another job or location within or outside the BTU
- .8. Other service and/or employment law measures.

Depending on the severity of the offence, and on condition that the relevant legal facts have been fulfilled, the following sanctions can be imposed on students of the BTU or third-parties:

1. Oral or written instruction/admonition
2. Exclusion from the use of (certain) university facilities
3. In the case of harassment via data (processing): (un)limited account withdrawal
4. Exclusion from one/several courses
5. House-ban (e.g. partial or temporary)
6. Threat of de-registration (exmatriculation), or declaration of de-registration (exmatriculation)
7. Criminal complaint.

Appendix 3 - BTU advice centres (questions on protection against discrimination and related potential conflict situations)

- General staff council, academic and non-academic staff council
- Student councils and student representatives (Student Council – StuRa)
- International Relations Office
- Representation for the severely disabled
- Representative for the disabled (§ 98 S. 1 SGB IX and § 69 BbgHG)
- Youth and trainee representatives
- Central and decentralised equal opportunities officers
- Office for Equal Opportunities and Health Promotion
- Anti-discrimination officer
- Contact person for complaints under the General Equal Treatment Act (AGG)
- Student chaplain
- Senate Commission: 'University Culture and University Community'
- Confidentiality Office of the Conflict Prevention Commission
- Company doctor
- Ombudsperson for employees according to TV-L part B. Special regulations § 40 No. 2 § 3 (8)