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verder



DIENST HRM (Service department to Human Resource Management)

UNDESIRED BEHAVIOUR COMPLAINTS SCHEME

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UNDESIRED BEHAVIOUR

The purpose of the policy on (sexual) harassment and aggression is to prevent, or combat, undesired behaviour within the *Stichting SAXION* Foundation. The Foundation wishes to offer its staff, students and course members a safe and inspiring working and living environment. Every person involved will probably agree with this. And yet, individual students, course members or staff members occasionally feel (sexually) harassed or discriminated or may be faced with aggressive behaviour.

If the persons involved are unable to solve issues like these themselves, it is useful to have regulations that record individual rights and internal legal procedures based on due care. The scheme below provides such regulations.

CHAPTER I. GENERAL

Section 1. Definitions

In these regulations the following terms have the following meaning:

- a. Foundation: Stichting SAXION;
- b. University of applied sciences: Saxion University of Applied Sciences;
- c. Board of Directors: the Board of Directors as referred to in Article 7 of the articles of Stichting SAXION;
- d. Undesired behaviour:
 - harassment: behaviour relating to the gender of a person and which has the intention of, or results in, the dignity of a person being compromised and which creates a threatening, hostile, insulting, degrading or offending environment.
 - sexual harassment: any form of verbal, non-verbal or physical behaviour with a sexual connotation which has the intention of, or results in, the dignity of a person being compromised, in particular if a threatening, hostile, insulting, degrading or offending situation is created;
- e. Report:
a complaint with regard to undesired behaviour which has been notified to a confidential counsellor;
- f. Submission:
an official notification of a complaint with regard to undesired behaviour to the Reporting Centre for Complaints and Disputes (*Meldpunt Klacht en Geschil*) or directly to the complaints committee;
- g. Complainant: the person who has reported a complaint to the confidential counsellor, or has submitted it to the Reporting Centre for Complaints and Disputes or directly to the complaints committee. The complainant is either a (former) staff member, or a (former) student, or a (former) *extraneus* (a person who is registered for taking part in exams and examination, but not for taking part in education) within the meaning of the Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*; WHW), or a (former) course member;

- h. Alleged perpetrator:
the person with regard to whose behaviour a complaint has been made to the confidential counsellor, or has been submitted to the Reporting Centre for Complaints and Disputes or directly to the complaints committee;
- i. Confidential counsellor:
a person as described in Section 4 of this scheme;
- j. Complaints committee:
a complaints committee for undesired behaviour, as described in Section 10 of this scheme;
- k. Administrative unit (*Beheerseenheid*):
organisational unit as determined by the Board of Directors;
- l. the Collective Labour Agreement (*CAO*):
the Collective Labour Agreement for Higher Professional Education, as most recently adopted on 1 August 2010;
- m. Day:
all days not being a Sunday, New Year's Day, Good Friday, Easter Monday, Ascension Day, Whitsun Monday, Christmas Day and Boxing Day, the day of the King's national birthday celebrations, 5 May and the holidays recognised as memorial days by the authorities, and the compulsory days holiday as determined by Stichting SAXION.

CHAPTER II. TREATMENT OF THE COMPLAINT

Section 2. Reporting

- 1. Each (former) staff member or each (former) student of Saxion University of Applied Sciences who is or has been confronted with undesired behaviour in the working or study environment, can make a report of this to a confidential counsellor. (Former) student in this Section is also understood to mean the (former) *extraneus* or (former) course member.
- 2. A report of undesired behaviour is to take place as soon as possible after the confrontation, but at any rate within a reasonable period.
- 3. A report is to be made orally or in writing, but under no circumstances anonymously. In case of an oral report, the confidential counsellor will submit a protocol to the complainant for signing, which shall at any rate include the content, the time and place of the confrontation, the name of the complainant and the name of the alleged perpetrator.

Section 3. Submission of complaints

- 1. Each (former) staff member or each (former) student of Saxion University of Applied Sciences who is (or has been) confronted with undesired behaviour in the work or study environment, can submit a complaint to the Reporting Centre for Complaints and Disputes or directly to the complaints committee. In this Section (former) is also understood to mean the (former) *extraneus* or (former) course member.
- 2. Submission of a complaint is to take place as soon as possible after the confrontation, but at any rate within a reasonable period.

3. Submission of a complaint takes place in writing, but under no circumstances anonymously.
4. The complaints committee notifies the Board of Directors confidentially of the fact that a complaint has been submitted against the person involved.

CHAPTER III. PROCEDURE AT CONFIDENTIAL COUNSELLOR

Section 4. Confidential counsellor

1. The Board of Directors appoints confidential counsellors for staff and students for the location Enschede and the location Deventer/Apeldoorn. The appointment is for a period of 3 years.
2. The confidential counsellors are employed by the Stichting SAXION. Where appropriate, an external confidential counsellor can be called in.
3. At least half of the confidential counsellors are female.

Section 5. Tasks of the confidential counsellor

1. The confidential counsellor has the following tasks:
 - a. to register the report as defined in Section 1 of this scheme;
 - b. to provide assistance and advice to the complainant;
 - c. through mediation, to make an attempt to find a solution for the problems signalled;
 - d. at the complainant's request, to provide support in the submission of a complaint to the complaints committee;
 - e. in so far as necessary and desired, to refer the person involved to specially trained support agencies;
 - f. to maintain contact with the complainant to check whether the submission of the complaint does not lead to repercussions for the complainant, and to report on this to the Board of Directors.
2. Based on his/her expertise and integrity, the confidential counsellor can, in the interest of the organisation and in accordance with the provisions in Section 12 of this scheme, submit a complaint to the complaints committee.
3. The confidential counsellor gives the Board of Directors solicited and unsolicited advice on the policy of the university of applied sciences on combating undesired behaviour and the consequences thereof.
4. For all steps taken by the confidential counsellor in the treatment of a report, the prior permission of the complainant is needed, with the proviso that a confidential counsellor does not require the permission of the complainant with regard to the submission of a complaint in the interest of the organisation.

Section 6: Powers confidential counsellor

The confidential counsellor is entitled to:

- a. mediate between the complainant and the alleged perpetrator;
- b. consult (one of the) other confidential counsellors and/or the complaints committee with regard to the treatment of a report;
- c. submit a complaint in the interest of the organisation.

Section 7: Archive confidential counsellor

1. Each confidential counsellor keeps an archive of the complaints reported to him/her and the settlement of the complaint.
2. Only the confidential counsellor in question and the complaints committee may inspect this archive. All data concerning a complaint shall be destroyed after five years.

Section 8: Annual report confidential counsellor

The confidential counsellor keeps an anonymous registration of the nature and extent of the cases settled by him/her and the results of the mediation. These data are included in a report that is attached to the annual report as referred to in Section 19 of this scheme. The annual report is public.

Based on the annual report, the Board of Directors and the confidential counsellors shall meet to consult at least once a year. The Board of Directors will take the initiative for this meeting.

Section 9: Facilities

1. The confidential counsellor can be reached at set times.
2. The Board of Directors takes care of the facilities needed for a proper performance of tasks by the confidential counsellor, such as a reasonable work load and workplace. The Board of Directors also sees to it that adequate information and training are provided.

CHAPTER IV. PROCEDURE AT COMPLAINTS COMMITTEE**Section 10: Appointment and composition**

1. Stichting SAXION has a complaints committee that consists of three members, at least one of whom is female and one male. At least one member is from outside the Foundation.
2. The composition of the committee is such that sufficient knowledge and experience is available of the psychosocial and legal aspects of undesired behaviour and of the treatment of complaints.
3. The complaints committee elects a chairperson from its midst.
4. A minutes taker is added to the complaints committee if so required by the committee.
5. The Board of Directors appoints the members of the complaints committee and any substitute members for a period of three years. The members and substitute members can be re-appointed. Students and staff can nominate candidates as members of the complaints committee.
6. Members of the Board of Directors, superiors and confidential counsellors cannot be appointed as members of the complaints committee.

Section 11: Objections and exemption

1. A member of the complaints committee can be objected against or can be exempted if:
 - a. he/she has a functional involvement in the complaint or is part of the organisational unit to which the complainant or alleged perpetrator belongs;

- b. there exists a family relationship between the complainant or alleged perpetrator and a committee member;
 - c. he/she has been involved in a matter or matters related to the complaint at an earlier stage.
2. The other members of the complaints committee shall decide as soon as possible on whether the objection or exemption will be allowed.

Section 12: Tasks and powers complaints committee

1. The complaints committee takes cognisance of complaints, investigates whether any undesired behaviour within the meaning of this scheme is involved and advises the Board of Directors on any measures to be taken, if necessary.
2. The complaints committee may seek information from anyone who is able to provide information on the circumstances under which the (alleged) undesired behaviour took place. No impediments shall be imposed on the members of the complaints committee in seeking information. The seeking of information shall be confined to that which is necessary with a view to the complaint.
3. If the complaints committee sees reason to do so, it may instruct the parties involved to reach a settlement. The complaints committee may appoint a mediator to this end. If no compromise is reached within 14 days, the complaints committee will settle the complaint.
4. A complaint can be submitted to the complaints committee:
 - a. by the complainant;
 - b. by the confidential counsellor, in the interest of the organisation.
5. A complaint in the interest of the organisation is only involved if the complaint is based on several complaints concerning one and the same alleged perpetrator which have not been notified separately by the complainant or complainants to the complaints committee.
6. Without prejudice to the provisions in Section 3 paragraph 2 and 3, a complaint shall consist at any rate of a written description of the time, nature, content and the place of the challenged behaviour or acts, as well as the identity of the alleged perpetrator.

Section 13: Immediate settlement and objection

1. The chairperson of the complaints committee establishes whether a complaint submitted meets the requirements laid down in Section 12 paragraph 6 of this scheme, and, if necessary, gives the complainant the opportunity to remedy any defects. In case of Section 12 paragraph 4 sub b and paragraph 5, the confidential counsellor shall act.
2. The complaints committee may settle the complaint immediately without hearing the parties if it is of the opinion that:
 - a. the committee is apparently unauthorised;
 - b. the complaint is apparently inadmissible;
 - c. the further treatment of the complaint does not appear necessary to the complaints committee because it is apparently unfounded.
3. The complainant may object against the decision referred to in the first paragraph or, in case of Section 12 paragraph 4 sub b and paragraph 5, the confidential counsellor may object against the decision to the complaints

committee within fourteen days after the day on which the decision was sent to him/her. The objection shall be made supported by reasons by means of a document that is signed by the complainant or, in case of Section 12 paragraph 4 sub b and paragraph 5, by the confidential counsellor.

4. As a result of an objection the decision referred to in the second paragraph shall cease to have effect, unless the objection is declared inadmissible or unfounded by the committee.
5. If the complaints committee is of the opinion that the objection is apparently inadmissible or unfounded, it will not proceed to declaring it inadmissible or unfounded before giving the complainant or, in case of Article 12 paragraph 4 sub b and paragraph 5, the confidential counsellor, the opportunity to be heard.

Section 14: Provisional arrangements

1. The complainant may request the complaints committee to make provisional arrangements during the period that the complaint is still pending.
2. After receipt of a request for provisional arrangements the chairperson of the complaints committee, after consultation with the chairperson of the Board of Directors, and after hearing both sides of the argument, decides whether, and if so, which, provisional arrangement needs to be made. The outcome will be communicated in writing to the parties.
3. During the investigation the provisional arrangement can be lifted or changed by the chairperson of the complaints committee.
4. The provisional arrangement shall at any rate cease to have effect once the complaints committee has rendered a decision in the principal case.

Section 15: Investigation; hearing both sides of the argument

1. The investigation by the complaints committee takes place in a closed hearing. Before hearing persons, the alleged perpetrator is allowed the opportunity to submit a written defence. This defence must have been received by the complaints committee within 10 days after receipt of the written complaint. Subsequently the complainant is given the opportunity to submit a reply. The statement of reply must have been received by the complaints committee within 8 days after receipt of the defence. Subsequently the alleged perpetrator is given the opportunity to submit a rejoinder. The statement of rejoinder must have been received by the complaints committee within 8 days after receipt of the statement of reply.
2. The complaints committee hears the complainant or, in case of Section 12, paragraph 4 sub b and paragraph 5, the confidential counsellor and the alleged perpetrator, at the hearing. They are obliged to render their cooperation in this. The complaints committee may hear the complainant and the alleged perpetrator separately. Both the complainant and the alleged perpetrator may have themselves assisted by a counsel with a written authorisation. If heard as a witness, the confidential counsellor may invoke his/her right of non-disclosure with regard to information that has been communicated to the confidential counsellor confidentially. The complaints committee may have the witnesses and the other persons involved heard by one or two members of the complaints committee.

3. A record is made of each session of the hearing. The record shall be signed for approval or 'as seen'. In the event that the record is signed 'as seen', the complaints committee shall allow the person involved the opportunity to attach his/her comments to the report. The complainant and the alleged perpetrator shall receive the record of each session of the hearing.
4. During the investigation the secretary of the complaints committee keeps both the complainant and the alleged perpetrator informed of the course of the proceedings.
5. If it is required that the complaints committee, in the context of its investigation, inspects (confidential) documents, the secretary of the complaints committee will ask permission for this from the Board of Directors.
6. If during the investigation the complaint is withdrawn, the complaints committee shall still continue its investigation unless the alleged perpetrator has agreed to the withdrawal of the complaint.
7. At the end of the investigation the alleged perpetrator is once again allowed the opportunity to respond either in writing or orally.

Section 16: Hearing of witnesses and experts

The complaints committee can hear witnesses and other persons involved who may provide information on the circumstances under which the undesired behaviour took place as well as other experts in the closed hearing referred to in Section 15.

Section 17: Conclusion and advice

1. The complaints committee shall decide as soon as possible but no later than within 20 days after the investigation has been completed.
2. The conclusion is substantiated and may comprise of:
 - a. a declaration by the complaints committee that it has no authority;
 - b. a declaration that the complaint is inadmissible;
 - c. a declaration that the complaint is unfounded;
 - d. a declaration that the complaint is fully or partially well-founded.
3. If the conclusion implies a decision as referred to in paragraph 2 sub a, sub b or sub c, the conclusion is only brought to the attention of the complainant and the alleged perpetrator, with the proviso that the Board of Directors will be informed as yet if the complaints committee makes a recommendation.
4. If the conclusion implies a declaration that the complaint is fully or partially well-founded, the complaint committee, if it considers this desirable, will issue a substantiated advice to the Board of Directors on the measures to be taken against the alleged perpetrator. This conclusion and this advice are sent to the Board of Directors and the parties. If a complaint was lodged against a member of the Board of Directors, the conclusion and the advice are addressed to the Supervisory Board of Stichting SAXION.
5. The complaints committee seeks to effect unanimity. If the complaints committee appears not to reach a unanimous conclusion, a decision will be taken by a majority of the votes. The complaints committee shall give a unanimous decision.

Section 18: Measures

1. The complaints committee may give the Board of Directors the following advice with regard to the alleged perpetrator, if it involves a staff member of the Foundation:
 - a. to issue a written reprimand;
 - b. to transfer the staff member;
 - c. to suspend the staff member;
 - d. to dismiss the staff member.
2. The complaints committee may give the Board of Directors the following advice with regard to the alleged perpetrator, if it involves a student of the university of applied sciences,
 - a. to issue a warning;
 - b. to issue a written reprimand;
 - c. to transfer the student to another group;
 - d. to full or partly deny the student access to the buildings and premises of the university of applied sciences for the period of one year at most, or to terminate the enrolment during the same period.
 - e. to definitively deny access to the institute or terminate the student's enrolment, if he or she has caused serious inconvenience inside the buildings or on the premises of the institute and has not stopped this inconvenience after a warning by or on behalf of the Board of Directors.
3. The complaints committee may give the Board of Directors the following advice with regard to the alleged perpetrator, if it involves a course member of the university of applied sciences:
 - a. to issue a warning;
 - b. to issue a written reprimand;
 - c. to transfer the course member to another group;
 - d. to terminate the course agreement (with immediate effect).
4. If the advice of the complaints committee concerns a member of the Board of Directors, the advice shall be addressed to the Supervisory Board of the Foundation.

Section 19: Confidentiality and secrecy

All persons involved in a complaints procedure must treat that which they have taken cognisance of within the context of a complaints procedure confidentially and are held to observe secrecy, except if any statutory provision of this scheme obligates them to make a statement or if their task involves that they need to make a statement.

Section 20: Archive and annual report complaints committee

1. The complaints committee keeps a registration of complaints and their treatment for the archive of the complaints committee.
2. Only members of the complaints committee may inspect this archive. All data relating to a complaint are destroyed after five years.
3. The complaints committee also keeps an anonymous registration of the nature and extent of the complaints handled by the complaints committee, which will be included in the annual report of the complaints committee or the annual

report of the Reporting Centre for Complaints and Disputes for the Board of Directors. The annual report is public.

CHAPTER V. MEASURES BOARD OF DIRECTORS

Section 21: Decision by the Board of Directors

1. If circumstances occur which in the opinion of the Board of Directors cannot be put off, the Board of Directors can take measures before the complaints committee has taken a decision.
2. With due observance of the provisions in the chapters P and Q of the Collective Labour Agreement – Higher Professional Education (CAO-HBO) and Section 7.57h WHW, the Board of Directors will take a well-reasoned decision based on the advice given as soon as possible but at any rate within 30 days.
3. The Board of Directors will communicate the decision to the complainant, the alleged perpetrator, the complaints committee and the confidential counsellor, if involved, as soon as possible but at any rate within 30 days.
4. A decision of the Board of Directors as described in Section 18 paragraph 1 of this scheme will be included in the staff file.

Section 22: Appeal and objection

1. In accordance with the provisions in Section 4.7 WHW and chapter S of the CAO-HBO staff members can appeal against a decision of the Board of Directors as described in the previous Section to the Appeals Committee.
2. In accordance with the provisions in the Student Statute and in Section 7.63a WHW, students and *extranei* can appeal against a decision of the Board of Directors as described in the previous Section to the Disputes Advice Committee.

Section 23: Evaluation

Twice a year an evaluation of the undesired behaviour complaints scheme takes place. This evaluation is carried out by the Board of Directors, having heard the complaints committee, and based on the annual reports of the complaints committee or the Reporting Centre for Complaints and Disputes and the confidential counsellors.

Section 24: Disputes

In case of disputes on the interpretation of this scheme, or in the event of issues not covered by this scheme, the chairperson of the complaints committee shall decide after hearing the other members of the complaints committee.

Section 25 Short title

This scheme can be cited as: Stichting SAXION undesired behaviour complaints scheme.

Section 26: Effective date

This scheme becomes effective on 1 June 2012.