

Preamble

People's performance in an organization is influenced by such factors as their relationships with each other, which may be governed or not by relationships of authority. Employees in an educational institution's work organization not only have contact with each other, but also with students and people not affiliated with the institution.

Design Academy Eindhoven interprets 'misconduct' to include 'undesirable behaviour', 'sexual harassment', 'unwanted sexual advances', 'aggression and violence', 'discrimination' and 'bullying'.

Specifying exactly what constitutes misconduct is not easy. Conscious or unconscious behaviour by a worker or student may be perceived as undesirable and offensive by another person. Comments may also be regarded as inappropriate and undesirable.

The personal interpretation of the conduct or remark, the hierarchical relationships between workers, the relationship of dependency between teacher and student, and the emotions which come into play make this subject complex and difficult to manage. What society considers misconduct may be gathered from articles, literature and case law. Within the context of these regulations, sexual harassment, violence, aggression and discrimination, in whatever form, come to mind. Talking to one another about misconduct is not easy.

Design Academy Eindhoven's Executive Board will not tolerate misconduct. On the one hand, it would like to protect the worker or student against improper complaints made against him/her and possibly imposing sanctions too quickly, and, on the other hand, it would like to offer anyone involved in the University's activities adequate opportunities for making legitimate complaints known. The Board's intentions are set out in these regulations. Specifically, two measures have been instituted in the regulations:

- a. the appointment of a confidential counsellor;
- b. the establishment of a misconduct complaints committee.

The confidential counsellor will serve as a soundboard for the complainant and will, above all, act as an intermediary in finding a solution. The confidential counsellor's mediation will not be public in nature. The counsellor will try to achieve an amicable settlement. If the complainant believes that such a solution is inadequate, he/she can still go to the complaints committee. Several people will become involved in handling the complaint at that moment.

The accused party may also turn to a confidential counsellor, on the understanding that the complainant and accused party may not be assigned the same counsellor.

Both upon request and on his/her own initiative, the confidential counsellor will advise Design Academy Eindhoven's Executive Board on a policy concerning misconduct. Thus, the duties of the counsellor will be broader than indicated in these regulations. The establishment of a complaints committee will be expected to primarily have a preventive effect.

Legal framework

The following documents constitute the basis and the review framework for these regulations:

- 7A, Part 3, of the Dutch Civil Code [Burgerlijk Wetboek], stating an employer's duty of care towards its employees;
- the prevailing Collective Labour Agreement for Higher Professional Education [CAO-HBO], as most recently amended and supplemented;
- the Dutch Working Conditions Act [Arbeidsomstandighedenwet (Arbowet)], in which, in Section 1.3, definitions are given for the terms 'sexual harassment', 'aggression' and 'violence', and, in Section 4.2, an obligation is imposed on the employer to have a policy in this regard;
- the Dutch Higher Education and Research Act [Wet op het hoger onderwijs en wetenschappelijk onderzoek];
- Design Academy Eindhoven's Co-Determination Regulations [Medezeggenschapsreglement];
- Design Academy Eindhoven's Student Charter [Studentenstatuut];
- Design Academy Eindhoven's Integrity Code [Integriteitscode].

Article 1: Definitions

1. University: Design Academy Eindhoven, University of Applied Science.
2. Executive Board: the University's competent authority.
3. Misconduct:
 - Sexual harassment: the definition and scope of 'sexual harassment' is based on Section 1 of the Working Conditions Act. It pertains to unwanted sexual advances, requests for sexual favours or other verbal, non-verbal, written or physical behaviour of a sexual nature which the complainant considers an unjustifiable infringement of his/her intimate life, which the accused party knew or at least should have understood.
 - Discriminatory behaviour: behaviour in which similar situations are not treated the same, based on religion, personal beliefs, political affiliation, race, sex, sexual preference, physical or mental disability, or any ground whatsoever;
 - Aggression/Violence/Bullying: incidents in which a complainant is harassed, threatened or attacked mentally or physically,
 - with the misconduct occurring under circumstances directly relating to performing work or pursuing an educational programme for or at the University
4. Complaint: a complaint about misconduct within the meaning of Article 1.3.
5. Complainant: a worker or student who approaches the Executive Board, a confidential counsellor or the complaints committee with a complaint about misconduct.
6. Accused party: a worker or student against whom a complaint about misconduct is directed.
7. Worker: anyone performing work at the University's instruction, for compensation or not. The term 'worker' includes at any rate lecturers, coordinators, heads of educational departments, lectors, support staff and interns.
8. Student: anyone studying at the University on payment of tuition or course fees;
9. Confidential counsellor: the person referred to in Article 3 of these Regulations and in Section V of the Collective Labour Agreement for Higher Professional Education. The confidential counsellor can be a worker employed at the institution or an external confidential counsellor.
10. Complaints committee: the committee referred to in Article 6 of these Regulations and in Section V of the Collective Labour Agreement for Higher Professional Education.
11. Week: a normal calendar week, with a holiday week under the University's annual schedule not being counted in calculating the procedural time limits.

Article 2: Filing a complaint

1. A complainant may approach the Executive Board or the confidential counsellor with a complaint about misconduct or approach the complaints committee directly.
2. If the complaint is directed against the Executive Board, it will forward the complaint to either the confidential counsellor or the complaints committee.
3. If the complaint relates to a situation occurring during an internship, the confidential counsellor will help the complainant to find a solution. The complaints committee cannot render any binding decisions about situations at internship locations.
4. The complainant must not experience any adverse effects in his/her position as a worker or student within or with the institution as a result of filing a complaint.
5. A complaint may not be made anonymously.
6. If the complaint has been filed with the confidential counsellor, directly by the complainant or through the Executive Board, the counsellor will ask the complainant to consider, depending on the seriousness of the matter:
 - initiating mediation;
 - filing a complaint with the complaints committee;
 - not filing a complaint with the complaints committee.
7. If a complaint is filed about conduct which occurred more than a year ago, the complaint need not be taken up. For purposes of the limitation period, the period from the time when the complainant first approached the Executive Board, a confidential counsellor or the complaints committee about the conduct in question will be counted.

Article 3: Confidential counsellor

1. The University's Executive Board will designate three confidential counsellors, one of whom will be from outside the University, in connection with these Regulations. The appointment will apply in principle for a three-year period, after which the person may be reappointed.
2. The Executive Board will ensure that the confidential counsellors' names and contact information can easily be found by workers and students.
3. The confidential counsellor may never be the same person for both the complainant and the accused party.
4. The Executive Board may only relieve a confidential counsellor of his/her duties if there are negative signals about the counsellor's performance which can be demonstrated objectively. The Executive Board will discuss this confidentially with the Works Council's and Student Council's presidents.
5. The confidential counsellor will:
 - a. act as a contact person for the complainant or the accused party (listening, providing advice);

- b. take action at the complainant's request, for example, performing mediation or initiating a complaints procedure for additional, independent investigation to possibly have appropriate measures taken against the accused party based on the conclusions arising from the investigation, as well as, if necessary, providing support in this respect;
 - c. represent the accused party in the mediation process or complaints procedure;
 - d. refer the complainant or accused party on, if appropriate, to support agencies;
 - e. provide information about misconduct;
 - f. furnish follow-up care to the complainant or accused party if desired;
 - g. advise the Executive Board on policy measures to combat misconduct.
6. The confidential counsellor will ensure that the confidential nature of the information made available to him/her remains safeguarded, so as to guarantee the privacy of all of the people involved in a complaint.
 7. Subject to the provisions in Article 3.5, the complainant's confidential counsellor will, with the complainant's express permission, specifically be authorized to mediate between the complainant and the accused party, obtain information from the University in the form of documents and examining witnesses and other relevant parties within the University. All of the parties concerned must treat the information which they learn of as confidential.
 8. In providing advice, the confidential counsellor must also bear in mind that, insofar as misconduct concerns criminal behaviour, the University's policy is that filing a report with the police should be encouraged in these instances.
 9. The confidential counsellor will render account to the Executive Board on the performance of his/her duties and will set forth a report each year in the University's annual report.
 10. If mediation results in a solution which is accepted as satisfactory by the complainant, the complaint will be regarded as settled. If a satisfactory solution is not obtained through mediation, the confidential counsellor will support the complainant in every possible way and, if desired, assist the complainant in filing a complaint with the complaints committee.

Article 4: Complaints committee

1. The complaints committee will consist of at least three and at most five members, including at least one external member.
2. The Executive Board, confidential counsellors, Executive Board secretary and the HR Department's staff may not be members of the complaints committee.
3. At least one of the members will be appointed from the staff section and at least one member from the student section of the University, on the recommendation of, respectively, the Works Council and the Student Council. The chairperson will always be an external member.
4. The complainants committee's members will be appointed for a two year period by the Executive Board, with the option of reappointment. Dismissal of a committee member will likewise occur through the Executive Board in cases in which:
 - a. the member concerned's performance has repeatedly been observed to be unsatisfactory, at the other members' unanimous request;

- b. the positions held by the member concerned are structurally incompatible with membership in the complaints committee;
 - c. the member concerned has been subject to criminal or disciplinary proceedings, or he/she has been convicted in such proceedings;
 - d. the member himself/herself requests this.
5. The complaints committee will be assisted by an administrative secretary, who will be appointed in consultation with the Executive Board's president.
6. Three committee members, including one external member as chairperson, will participate in the handling of a complaint. They must make sure beforehand that they do not have any personal and/or business interests regarding the complainant and/or the accused party.
7. The complaints committee members and the administrative secretary must keep confidential information which they learn of in handling a complaint. The duty of confidentiality will not apply to the University's Executive Board nor to the complainant, accused party, or the parties' confidential counsellors or lawyers as regards the complaint, the statement of defence and the complaints committee's recommendation.
8. The complaints committee's hearings will not be open to the public. The confidential counsellor or lawyer for the party being examined may be present and speak during the hearings.
9. The complaints committee's duties will consist of the following:
 - a. it must issue investigate complaints about misconduct by workers or students in the workplace or in a study or counselling situation at the University and must issue a recommendation on this to the Executive Board;
 - b. it may indicate to the Executive Board its views on potential measures to be taken, in situations in which it deems the complaint allowable and well founded;
 - c. it may make proposals to the Executive Board on taking general measures to prevent complaints about misconduct.

Article 5: Complaints committee proceedings

1. English will be the language used in proceedings before the complaints committee.
2. If the complainant, the accused party and/or a witness speaks Dutch, the complaints committee may decide that one or more portions of the proceedings will be solely or partly in Dutch.
3. Complaints may be filed with the complaints committee by a complainant directly or through the Executive Board or a confidential counsellor.
4. The complaint must be filed in writing, which may also include by e-mail, with the following being indicated:
 - a. the complainant's name and contact information;
 - b. the accused party's name and position;
 - c. a description of the misconduct;

- d. the steps already taken by the complainant and any documents relating to this;
 - e. if applicable, the name of and contact information for the complainant's confidential counsellor or lawyer, and with the size of the notice of complaint (not including exhibits in appendices) not exceeding five (5) pages (A4 format).
5. Within two weeks after receiving the complaint, the complaints committee will meet to discuss it.
6. The complaints committee will inform the complainant within three weeks after receiving the complaint whether the complaint will be taken up. A complaint will immediately be inadmissible if:
 - a. the complaint is time barred under Article 2;
 - b. the complaints committee lacks jurisdiction;
 - c. the complaint has already been filed with another body;
 - d. the same complaint was taken up by the complaints committee earlier.
 - e. the complaint must obviously be declared inadmissible for other reasons.
7. If the complaints committee takes up the complaint, the committee will send a copy of it to the accused party within three weeks after receiving the complaint.
8. After the complaints committee sends the complaint, the accused party will have three weeks to file a statement of defence. The committee will send a copy of this to the complainant.
9. The complaints committee will give both the complainant and the accused party the opportunity to each be separately heard. The committee may decide to hear the parties jointly if both the complainant and the accused party expressly desire this.
10. A hearing will not be open to the public and will take place within three weeks after the complaint was filed with the complaints committee. This period may be extended once by two weeks. Both the complainant and the accused party may be represented at the hearing by a confidential counsellor or lawyer. The hearing will be conducted by at least two committee members.
11. The complaints committee may examine witnesses. An examination of witnesses will not be open to the public, that is, without the complainant, the accused party and/or their confidential counsellors or lawyers being present, and will occur within eight weeks after the complaint was filed with the complaints committee. This period may be extended once by two weeks. A witness may be represented at the hearing by a confidential counsellor or lawyer. The hearing will be conducted by at least two committee members. The complaints committee may only guarantee a witness anonymity if the committee feels that there is a compelling need for this.
12. A summary report will be drawn up of each hearing. The persons examined will receive a copy of the report within two weeks of the hearing.
13. The written correspondence between the complaints committee and the complainant, the accused party and any witnesses, as well as their confidential counsellors or lawyers, if any, will occur by registered post or by e-mail if, in the committee's judgment, the electronic communications have been sufficiently secured to ensure that the proceedings remain closed and the documents remain confidential.
14. The complaint file will be available for inspection at the offices of the complaint committee's administrative secretary and may be viewed there by the complainant, the accused party and their confidential counsellors or lawyers by appointment. If a complainant or accused party is

represented by counsel, he/she may request a copy of the complaint file from the administrative secretary, on the condition that his/her client can only view the file at the counsel's offices. The only exception to the latter condition will be documents which the complainant and the accused party directly receive from the committee in accordance with Articles 4.6 and 5.11.

Article 6: The decision

1. Within 12 weeks after receiving a complaint, the complaints committee will render a decision on the admissibility and/or merits of the complaint. The period may be extended once by four weeks, or longer with both parties' consent.
2. The complaints committee will decide the case by a majority vote, with all of the committee members having an equal vote.
3. If the complaints committee deems the complaint non-actionable and/or unfounded, it will notify the complainant, the accused party and the Executive Board of this in writing, stating the reasons.
4. If the complaints committee deems the complaint non-actionable and/or unfounded, it will notify the complainant, the accused party and the Executive Board of this in writing, stating the reasons. In that instance, the committee may also indicate to the Executive Board its views on any measures to be taken.
5. If the complaints committee believes this is necessary, it may, through an interim recommendation, ask the Executive Board to take temporary measures at an earlier point in the proceedings.
6. The complaints committee's decision may not be objected to or appealed.
7. The decision will constitute a recommendation to the Executive Board on the decision to be taken regarding the complaint.

Article 7: Decision and measures by Executive Board

1. The Executive Board may decide to take measures or file a police report at any time, without awaiting the complaints committee's judgment.
2. In principle, the University's Executive Board will adopt the complaints committee's recommendation and may only deviate from the recommendation if it explains why. The Executive Board will decide on any measures to be taken in response to the recommendation within six weeks after receiving the committee's report. The complaints committee, the complainant and the accused party will be provided written notice of the decision.
3. Depending on the situation and the nature and seriousness of the complaint, the measures taken by the Executive Board may be preventive or corrective in nature or a combination of both.
4. Pursuant to Sections 7.34(1)(c) and 7.57(h) of the Higher Education and Research Act, the following measures may be taken against students:
 - a. a warning;
 - b. a written reprimand;
 - c. suspension;

- d. denial of access to the institution's buildings and premises for at most one year;
 - e. in compelling cases, continued enrolment for the party concerned may be refused or revoked in accordance with the provisions in Sections 7.37(4) and (5) of the Higher Education and Research Act.
5. The following disciplinary measures may be taken against workers under Article P-4 of the Collective Labour Agreement for Higher Professional Education:
- a. a written reprimand;
 - b. a transfer;
 - c. suspension;
 - d. dismissal.
6. Appeals process.
- a. Workers may appeal the Executive Board's decision to the Appeals Committee for Higher Professional Education (Personnel) of the Education Dispute Resolution Committees [Stichting Geschillencommissies Onderwijs], P.O. Box 132, 3440 AC Woerden.
 - b. Students may appeal the Executive Board's decision to the Higher Education Appeals Tribunal [College van Beroep voor het Hoger Onderwijs], P.O. Box 20302, 2500 EH The Hague.

Article 8: Final provisions

- 1. Anyone who is involved in an intervention by a confidential counsellor or in a complaints committee procedure and who, as a result, is aware of facts and/or in possession of documents relating to an alleged case of inappropriate behaviour, is bound to confidentiality and thus prohibited from sharing such facts and/or documents with others who have not been granted access on the basis of these regulations.
- 2. The complaints committee will maintain an archive of the complaints handled by it. The Executive Board will send the HR Department a copy of the complaints committee's decision for the personnel file of the worker concerned.
- 3. In situations not provided for by these Regulations, the complaints committee will decide the matter based on the principle of reasonableness and fairness.
- 4. These Regulations are translated into English. If there is a dispute about the interpretation of the Regulations, the Dutch version of the Regulations will be decisive.
- 5. These Regulations may be cited as the 'Design Academy Eindhoven Misconduct Complaints Procedure' and will take effect on 1 September 2019. The Regulations will be evaluated five years after the effective date.

The Works Council agreed to these Regulations in its meeting in Eindhoven on
5 February 2019.

The Student Council agreed to these Regulations in its meeting in Eindhoven on
8 July 2019

Adopted by the Executive Board in its meeting in Eindhoven on 10 July 2019.