

COMPLAINTS PROCEDURE REGARDING

UNDESIRABLE BEHAVIOUR

GERRIT RIETVELD ACADEMIE

Sexual intimidation, verbal intimidation and discrimination,
aggression and violence, bullying, etc.

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Complaints procedure regarding undesirable behaviour Gerrit Rietveld Academie

The Executive Board has resolved,
Taking into consideration Article U-1 of the Collective Labour Agreement for Higher Professional Education (*Collectieve Arbeidsovereenkomst HBO*) 2018-2020,
To approve the following Complaints Procedure regarding Undesirable Behaviour:

Article 1. Objective and policy regarding undesirable behaviour; scope

1. Everyone at the Rietveld Academie and the Sandberg Instituut must have the opportunity to be able to study and work in a pleasant atmosphere. Safety is one of the conditions for this. The Academie takes measures to minimise the psychosocial study load and workload caused by undesirable behaviour (bullying, discrimination, sexual intimidation, aggression and violence etc.) to the greatest degree possible. In the policy to combat undesirable behaviour documented in these regulations, the emphasis is on prevention.
2. These regulations apply to:
 - employees and students of the Rietveld Academie and the Sandberg Instituut;
 - participants in the preparatory course or orientation course;
 - persons working or pursuing activities under commission from the Rietveld Academie or the Sandberg Instituut, such as guest lecturers and freelancers.
3. Anyone who, in the work or study situation at the Academie, experiences undesirable behaviour from another individual studying or working at the Academie can turn to a confidential adviser (see Article 5 Confidential adviser) or the complaints committee on undesirable behaviour (see Article 6 Complaints committee) with a complaint within a period of two years, unless there are facts or circumstances on the basis of which the complainant could not reasonably be expected to submit the complaint within the stipulated period, whereby the maximum period expires one year after the completion or termination of the educational programme or employment;
4. As Stichting Gerrit Rietveld Academie has committed itself to the Collective Labour Agreement for Higher Professional Education (*Collectieve Arbeidsovereenkomst hbo*), it is obliged to comply with the formulated provisions with regard to undesirable acts, as stated in the Collective Labour Agreement (chapter U: sexual intimidation and aggression).

Article 2. Definitions

The following definitions are used in this procedure:

- a) Undesirable behaviour, which has the intended or unintended result of:
 - creating an unpleasant, intimidating or hostile work or study situation; and/or
 - a disruption of work or study performance for the person subjected to the behaviour; and/or
 - the person subjected to the behaviour being obstructed or impaired in the full and equal enjoyment of work or study facilities, benefits or opportunities; and/or
 - the full and equal enjoyment of work or study facilities being made subject to conditions.

Also see the definitions included in the annex to this procedure.

- b) Executive Board: the Executive Board of the Gerrit Rietveld Academie.
- c) Confidential adviser: a person as referred to in Article 5 of this procedure.
- d) Complaints committee: a committee as referred to in Article 6 of this procedure.
- e) Complaint: a complaint concerning undesirable behaviour submitted to the complaints committee.
- f) Complainant: a staff member or student of the Academie confronted with unwanted attentions, sexual or verbal intimidation, aggression or violence in the work or study situation and who approaches the confidential adviser or complaints committee with a complaint.
- g) Defendant: the person about whose behaviour a complaint has been submitted to the complaints committee.

Article 3. Right of complaint

Any employee or student at the Academie who is confronted by undesirable behaviour in their work or study situation can turn to the confidential adviser and file a report, or submit a complaint to the complaints committee.

Article 4. Confidentiality, obligation of secrecy

1. Anyone who under these regulations learns about facts and documents regarding an instance or possible instance of undesirable behaviour, is obliged to keep such facts and documents secret.
2. Failure by an employee of the Academie to observe this obligation of secrecy will be regarded as dereliction of duty as defined in Article E-2 of the Collective Labour Agreement for Higher Professional Education.

Article 5. Confidential adviser

1. The Executive Board appoints one or more confidential advisers. The appointment is indefinite, in principle.
2. The duties of the confidential adviser are described in the Protocol regarding the confidential adviser approved by the Executive Board and which is an appendix to these regulations.

Article 6. Complaints committee

1. There is a complaints committee on undesirable behaviour at the Academie. The complaints committee will give a judgement on complaints regarding undesirable behaviour.
2. The complaints committee has three members. A deputy is designated for each of the members.
3. The Executive Board appoints the members and deputy members for a 4 year period.
4. Members of the Executive Board and confidential advisers cannot be appointed to the complaints committee. Similarly, the senior lecturer and lecturers of the department to which the complaint relates cannot be appointed to the complaints committee.
5. The members of the committee elect a chair from their number.
6. The committee shall be assisted in the exercise of its duties and powers by a permanent secretary appointed by the Executive Board.
7. The complaints committee will register the complaints it receives and keep record of how they are handled. These records are only accessible to the members of the complaints committee and the confidential adviser. The data will be destroyed after five years.
8. The complaints committee reports to the Executive Boards annually about its activities.

Article 7. Termination of membership

Membership of the complaints committee ends after 4 years, or:

1. Effective on the day on which the employee ceases to work or be involved with one of the programmes of the Academie.
2. Upon written notice of termination by the member or the Executive Board.

Article 8. Lodging a complaint

1. A complainant can lodge a complaint with the secretary of the Executive Board. The secretary will send the complainant a confirmation of receipt.
2. A complaint must be in writing and may be lodged in Dutch or in English. It must include:
 - a) Name, address, residence, position and workplace/study of the complainant;
 - b) Name, position and workplace/study of the accused,

- c) A description of what occurred, giving as much detail as possible such as date, time, place, circumstances and content of conduct;
 - d) A description of the steps already taken by the complainant;
 - e) A description of any past history/context
 - f) Any witnesses;
 - g) Any other evidence;
 - h) Date signature;
 - i) Signature of the complainant.
3. The complaints committee can decide to declare a complaint inadmissible, if:
- a) The complaint does not relate to unwelcome conduct;
 - b) The complaint relates to a criminal offence such as assault or rape. In that case, the complainant must report it to the police. The confidential advisor can provide support in this;
 - c) The complaint does not comply with the points as referred to in paragraph 2;
 - d) The undesirable behaviour occurred more than two years before the complaint was made;
 - e) It concerns an anonymous complaint.
4. If the Complaints Committee decides to declare the complaint inadmissible it shall notify the complainant in writing as soon as possible with a copy to the Executive Board;
5. The complainant may withdraw the complaint at any time. In that event, the complaints committee will terminate its handling of the complaint forthwith.
6. The complainant and the defendant may be assisted by the confidential adviser and/or a lawyer of their own choosing during the procedure before the complaints committee. The party engaging the services of the adviser will bear the costs of engaging the adviser.
7. Complainant may request the Complaints Committee to handle the complaint anonymously. This means that the name of the complainant is known only to the Complaints Committee and is not disclosed to the defendant, the complainant's confidential advisory or witnesses of the complainant. A request for anonymous treatment is always made in writing by the complainant to the committee.

Article 9. Handling the complaint

- 1. The complaints committee finds the complaint is admissible and that it will handle the complaint.
- 2. The complainant and defendant will be notified in writing that the complaint is being handled with a copy to the Executive Board;
- 3. The complaints committee will request the defendant to draw up a statement of defence within a period determined by it.

4. The complaints committee will invite the defendant and complainant to a hearing.
5. The complaints committee will hear the complainant and the defendant separately. The hearings are focused on truth-finding through adversarial process;
6. All hearings of the complaints committee are closed hearings.
7. The complainant and defendant are entitled to inspect the documents relating to the complaint. In the interest of confidentiality, the complaints committee is at liberty to render any personal data illegible.
8. The complaints committee will gather such information as it deems necessary, which will include the hearing of witnesses and other persons involved who can give information regarding the circumstances under which the undesirable behaviour took place.
9. A written report will be made of every hearing; this must be signed for approval by the person involved. If the person involved cannot approve the written report, he/she/they will be given the opportunity to appendix written commentary to the report within a set period.

Article 10. Decision and recommendation

1. In its decision, the complaints committee will declare the complaint
 - a) inadmissible, or
 - b) unfounded, or
 - c) upheld.The decision will, moreover, contain the grounds for the committee's decision.
2. If the complaints committee finds the complaint inadmissible, the committee will inform the complainant of its decision.
3. If the complaints committee declares the complaint unfounded, or upheld, it will inform the complainant, the defendant and the Executive Board of its decision.
4. If the complaints committee upholds the complaint, it will if possible provide the Executive Board with a recommendation regarding measures the Executive Board is authorised to take. The complaints committee will also notify the complainant and the defendant of its recommendation.

Article 11. Overview of measures

1. If the complaint is upheld, the complaints committee can advise the Executive Board regarding to impose the following measures:
 - a. warning
 - b. refusal or withdrawal of enrolment
 - c. complete or partial refusal of access to the buildings and premises of the Academie for a period yet to be decidedin the case of employees:

- a. warning
 - b. suspension
 - c. dismissal
2. If the complaint is declared inadmissible, the complaints committee can advise the Executive Board to impose the following measures:
- a. the complainant is to cease making accusations against the defendant.
 - b. if the accusations do not cease, enrolment may be refused or withdrawn (in the case of students)
 - c. suspension (in the case of employees)
 - d. full or partial refusal of access to the building and premises of the Academie for a maximum of one year.

Article 12. Recommendation to the Executive Board

Within 30 working days after the confirmation of receipt, the Committee will issue its recommendation to the Executive Board, with the complainant and the defendant being notified of the recommendation as soon as possible.

Article 13. Decision of the Executive Board

1. Once it has received the decision of the complaints committee, as intended in Article 10 paragraph 3, and the recommendation of the complaints committee as intended in Article 8 paragraph 4 (if such has been issued), the Executive Board will take a decision within 15 working days.
2. The Executive Board will give a substantiated decision in the unlikely event that it deviates from the decision and recommendation of the complaints committee.
3. The Executive Board's decision will be notified to the complainant, the defendant and the complaints committee in writing.

Article 14. Review

1. Either party can request the complaints committee to review the decision and/or recommendation in the light of further facts or circumstances which, if they had been known earlier, might have led to a different decision and/or recommendation.
2. The review is, in principle, conducted by the same complaints committee.
3. The right of review lapses after a period of one year after the complaints committee gave its decision.

Article 15. School holidays and terms

1. With the exception of the prescription period mentioned in Article 1.3 of these regulations, the school holidays applying to the Academie will not be included in the calculation of any terms mentioned in these regulations.

2. If there should be compelling reasons to do so, the chair can extend the terms specified in these regulations. The Parties will be notified of this.

Article 16. Replacement in the case of Executive Board involvement

1. If one or more members of the Executive Board is or are involved in the complaint as complainant or accused, where there is mention of 'Executive Board' in this procedure should be read as 'Supervisory Board'.

APPENDIX 1. DEFINITIONS

Undesirable behaviour is defined as:

Unwanted, sexually tinted attention, expressed in verbal, physical or other non-verbal behaviour, which could purposely or unintendedly have the result of:

- a. creating an unpleasant or hostile work or study situation; and/or
- b. a disruption of work or study performance for the person subjected to the behaviour; and/or
- c. the person subjected to the behaviour being obstructed or impaired in the full and equal enjoyment of work or study facilities, benefits or opportunities; and/or
- d. causing the full and equal enjoyment of work or study facilities to be made subject to conditions.

Bullying is defined as all forms of intimidating behaviour of a structural nature, by one or more employees/students directed against an employee/student or a group of employees/students who cannot or do not defend themselves against this behaviour. (repetition/no one-off behaviour).

- a. This may intentionally or unintentionally result in:
 - a. An unpleasant, intimidating or hostile work or study situation; and/or
- b. A disruption of work or study performance occurs in the person who is subjected to the behaviour: and/or
- c. The person who is subjected to the conduct being hindered or disadvantaged in the full and equal enjoyment of work or study facilities, benefits or opportunities; and/or
- d. The full and equal enjoyment of employment or study facilities is made conditional.

Sexual intimidation is defined as:

Unwanted, sexually tinted advances, requests for sexual favours or other verbal, physical or non-verbal behaviour of a sexual nature, which could purposely or unintendedly have the result of:

- a. creating an unpleasant, intimidating or hostile work or study situation; and/or
- b. a disruption of work or study performance for the person subjected to the behaviour; and/or
- c. the person subjected to the behaviour being obstructed or impaired in the full and equal enjoyment of work or study facilities, benefits or opportunities; and/or
- d. causing the full and equal enjoyment of work or study facilities to be made subject to conditions.

Verbal intimidation is defined as:

Incidents in which a staff member or student is seriously harassed, threatened, attacked or insultingly discriminated against, verbally

or in writing, under conditions related directly to carrying out one's work or studies.

This concerns acts that aim to:

- a. damage the work or study performance of a staff member or student; and/or
- b. create an intimidating, hostile or unpleasant work or study environment, which can seriously damage the work or study performance of a staff member or student; and/or
- c. clearly create an intimidating, hostile or unpleasant work or study environment.

Aggression and violence are defined as:

Incidents in which a staff member or student is psychologically or physically harassed, threatened or attacked, under conditions directly related to carrying out one's work or studies.

This concerns acts that aim to:

- a. damage the work or study performance of a staff member or student; and/or
- b. create an intimidating, hostile or unpleasant work or study environment, which can seriously damage the work or study performance of a staff member or student; and/or
- c. clearly create an intimidating, hostile or unpleasant work or study environment; and/or
- d. causing the full and equal enjoyment of work or study facilities to be made subject to conditions.

APPENDIX 2. PROTOCOL REGARDING THE CONFIDENTIAL ADVISER

1. Appointment of confidential adviser

- The Executive Board will appoint at least two internal confidential advisers.
- The internal confidential advisers will be Academie employees.
- The student counsellor can be appointed as confidential adviser for students.
- He/she/they will carry out the role of confidential adviser alongside their regular position in the Academie.
- For any hours spent on the role of confidential adviser, this person will receive an allowance, unless this role is part of their position within the organisation (student counsellor).
- The following cannot be appointed as confidential adviser: members of the Supervisory Board, the secretary and members of the Executive Board.
- In the appointment of confidential advisers, efforts will be made to achieve an equal balance between male, female and non-binary confidential advisers.
- For new appointments, the Executive Board will consult current confidential advisers and the department in which the prospective confidential adviser works.
- The appointment is for a four-year term. Reappointment for a new term is possible.
- The Executive Board is responsible for arranging the facilities that the confidential advisers need for their work.
- The Executive Board will publicise the existence of the confidential adviser and how he/she/they can be contacted.

2. Position of confidential adviser

- The confidential adviser is independent and has a duty of confidentiality.
- The confidential adviser will observe the greatest possible care in their work.
- The confidential adviser will serve as the point of contact in the event of suspicion of or complaints relating to undesirable behaviour or an undesirable situation, sexual harassment and other transgressive behaviour. These complaints can be submitted to the confidential adviser directly.
- The confidential adviser will take no action without first obtaining the complainant's consent.
- The confidential adviser supporting the complainant will not be available to assist the defendant.
- The defendant can be supported by another confidential adviser within the organisation.

3. Duties of the confidential adviser

- Dealing with, assisting and supporting those persons reporting undesirable behaviour or undesirable situations, sexual harassment and other transgressive behaviour.
- Finding an appropriate way of ending the undesirable behaviour or undesirable situation, taking account of the objectives and wishes of the complainant.
- Consulting with the complainant on possibilities for an informal solution, for example by means of mediation between the complainant and the defendant, where this is appropriate.
- Providing advice and support if desired to a complainant submitting a formal complaint to the complaints committee.
- Making the complainant aware of the possibility of and assisting this person in making a report to the police and legal authorities, in the case of a criminal offence (assault or rape).
- If necessary and desired, referring the person involved to specialist support agencies.

4. Powers of the confidential adviser

The confidential adviser has the authority to:

- consult other confidential advisers;
- support the complainant in submitting a complaint;
- gain access to all of the Academie's faculties and departments and conduct interviews with students and employees and elicit information;
- gain access to relevant documentation, such as sick leave records;
- provide or arrange after-care for the complainant;
- notify the Executive Board and directorates about (structural) issues that may facilitate undesirable behaviour in the Academie and provide advice on rules of conduct and preventive policy.

5. Recusal

A confidential adviser can recuse themselves if:

- he/she/they have a job related to or personal involvement with the complainant or the defendant. In this case, a referral will be made to another confidential adviser;
- he/she/they can no longer or cannot be reasonably expected to act as the complainant's confidential adviser.

6. Relationship between confidential adviser and Executive Board

- If the confidential adviser receives evidence only, but not specific complaints, he/she/they can bring this to the attention of the Executive Board.
- The confidential adviser will provide advice, on request or otherwise, to the competent authorities.
- If a report concerns a sexual offence against a minor, the confidential adviser will always notify the Executive Board of this because of the statutory obligation to report it to the police and the confidential educational inspector (vertrouwensinspecteur).

7. Accountability and report

- Confidential advisers will make notes on their work and conversations with complainants for their own use only.
- On an annual basis, the confidential advisers will issue a joint report to the Executive Board (secretary to the board) on the number, nature and scope of the cases being processed and already dealt with as well as the results of mediation.
- The Executive Board will ensure that the annual report includes the number, nature and scope of the cases being processed and already dealt with as well as the results of mediation.

WORKING PROCEDURE FOR THE CONFIDENTIAL ADVISER

1. A confidential adviser assists a complainant/reporter or defendant and provides support in putting the complaint to the Executive Board or Complaints Committee.
2. If a member of the Academie community (who is involved in a case) contacts the confidential adviser, he/she/they will be heard by the confidential adviser at the latest within 14 days after contact has been made. This meeting will at least involve discussion of the following:
 - In as concrete and factual terms as possible, what was the situation to which the report or complaint refers?
 - Does it involve a report or complaint about alleged undesirable behaviour?
 - Why does the person involved consider the case to be important?
 - What action does the person involved wish to take with regard to his/her/their dissatisfaction or complaint?
3. The confidential adviser will make notes or a report of the conversations for their own use. These notes/this report will be confidential and access must not be provided to the defendant or the competent authorities, unless the complainant has consented to this.

4. Having obtained the consent of the complainant/reporter, the confidential adviser explores whether a solution can be found through mediation.
5. With the complainant/reporter, the confidential adviser will explore whether the event provides grounds for submitting a complaint to the Complaints Committee, if this has not already happened.
6. If desired, the confidential adviser will assist the complainant in the ongoing procedure (e.g. In formulating the complaint or submitting it to the Complaints Committee) and will also, if desired, provide support in reporting it to the police or legal authorities.
7. Insofar as this is necessary or desirable, the confidential adviser will refer the complainant/reporter to other bodies specialising in support and after-care.
8. If a complaint or report involves intimidation/sexual harassment, the confidential adviser will consult with at least one of the other confidential advisers on the course of action to be pursued. The confidential adviser will first ask the complainant for consent before discussing the case with the other confidential advisers.