

Regulation for complaints and reports of undesirable behaviour

Adopted by the Executive Board on 13 December 2021, following:

- advice from the Representation Council issued on 8 July 2021
- approval of the Undesirable Behaviour Complaints Committee on Paragraphs I and III on 24 October 2021
- approval of the Supervisory Board on 6 December 2021
- consultation of confidential advisers in 2021

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Introduction

The Executive Board of ArtEZ University of the Arts has adopted Regulations on complaints about undesirable behaviour, partly by virtue of Article U-1 of the CLA for Higher Professional Education 2020 [cao-hbo], as well as Article 17(2), of the management and administrative regulations, after advice from the Representation Council, approval from the Complaints Committee for Undesirable Behaviour and consultation with the confidential advisers,

whereas:

- ArtEZ as an employer by virtue of Section 3(2) of the Working Conditions Act pursues a policy within the general working conditions policy aimed at preventing and, if that is not possible, limiting psychosocial work stress,
- the staff member of ArtEZ who has experienced undesirable behaviour can, pursuant to Article U-1 of the cao-hbo 2020, turn to a confidential adviser and submit a complaint about intimidation and aggression to a committee set up by ArtEZ for this purpose,
- the aforementioned policy is also aimed at former members of staff, students and former students and the aforementioned facilities are also open to them,
- ArtEZ explicitly states in its students' charter that it strives to ensure an inclusive and safe learning and working environment for all members of the ArtEZ community,

and takes into account the applicable codes of conduct of ArtEZ as well as the Higher Education and Research Act, the Equal Treatment Act and other equal treatment legislation.

In these regulations the terms below have the stated meaning:

a. undesirable behaviour: undesirable or improper behaviour according to generally acceptable standards that is perceived as inappropriate, objectionable, hurtful or threatening and is therefore unacceptable. More specifically, the following constitute forms of undesirable behaviour:

- sexual harassment: unwanted sexual advances, requests for sexual favours or other verbal, non-verbal or physical behaviour of a sexual nature,
- aggression and violence: harassment, bullying, threats or attacks aimed at causing mental or physical harm,
- discrimination: deliberately making offensive statements verbally, in writing or by means of images, about a person or persons on account of their race, nationality, religion, beliefs, sex, sexual orientation, political conviction or disability, or making any unlawful distinction based on these factors.

The following also constitute undesirable behaviour as described above if:

- accepting such conduct is implicitly or explicitly set as a condition for a person's employment or study,
- such behaviour or a person's reaction to such behaviour for the basis for decisions that affect this person's work or studies,
- such behaviour has the purpose or effect of impairing someone's performance at work or in their studies and/or of creating an intimidating, hostile or unpleasant work or study environment.

The above description of undesirable behaviour explicitly does not include decisions or actions of a manager in the context of his managerial position,

b. a complaint: a complaint regarding undesirable behaviour to the Complaints Committee for Undesirable Behaviour,

c. a report: a report of undesirable behaviour to a confidential adviser,

d. the complainant: a student, former student, member of staff or former member of staff who has

submitted a complaint regarding undesirable behaviour to the Complaints Committee for Undesirable Behaviour,

e. the accused: the person about whose behaviour a complaint has been submitted to the Complaints Committee for Undesirable Behaviour,

f. the Complaints Committee: the Complaints Committee for Undesirable Behaviour.

I Complaints of undesirable behaviour

Article 1. Establishment and composition of the Complaints Committee

1. The Executive Board establishes a Complaints Committee for Undesirable Behaviour.
2. The Complaints Committee is composed of the chair, the deputy chair, two members and two deputy members. The chair and deputy chair are nominated by the Executive Board, one member and one deputy member by the Representation Council and one member and one deputy member jointly by the Executive Board and the Representation Council.
3. The chair and the members, including their deputies, are appointed by the Executive Board for a maximum term of four years. They are immediately eligible for reappointment.
4. When nominating and appointing, an equal distribution of women and men shall be taken into account as far as possible. Furthermore, the composition of the Complaints Committee is such that it has sufficient expertise in the psycho-social and legal fields. The chair, deputy chair, members and deputy members shall be of impeccable character.
5. The chair and deputy chair do not have an employment contract with ArtEZ. The member and the deputy member nominated for appointment by the Representation Council are employed by or enrolled as a student at ArtEZ. The member and the deputy member jointly nominated for appointment by the Representation Council and the Executive Board are employed by ArtEZ.
6. Members of the Supervisory Board, the Executive Board, the Representation Council and the management boards as well as confidential advisers of ArtEZ may not be chairs, deputy chairs, members or deputy members of the Complaints Committee.
7. The Executive Board will dismiss the chair, deputy chair, member or deputy member of the Complaints Committee if their term of appointment has expired, at their own request, or if the person in question loses any capacity that formed the basis for their appointment.
8. The chair, deputy chair, members and deputy members are functionally independent.
9. The Complaints Committee is supported by a secretary appointed for this purpose by the Executive Board. The secretary is functionally independent in the performance of his duties, if the secretary is employed by ArtEZ.

Article 2. Submitting a complaint

1. A student, member of staff, former student or former member of staff who has personally experienced undesirable behaviour by a student enrolled at ArtEZ or a member of staff of ArtEZ, both at the time of the experience and at the time of submitting the complaint may submit a complaint to the Complaints Committee as soon as possible, but no later than five years after the experience. In the above, 'member of staff' is also understood to be a member of the Executive Board in office. If the complaint is submitted by a former student or former member of staff, the complaint is only admissible if the former student who submits the complaint did not leave ArtEZ as a student more than one year ago and the former member of staff who submits the complaint ceased being contractually connected to ArtEZ less than one year ago.
2. A complaint can be submitted jointly by several students, members of staff, former students and/or former members of staff. The provisions in these regulations regarding a complainant apply to each of them.
3. The complaint shall be sent by post to: ArtEZ Klachtencommissie, Postbus 49, 6800 AA Arnhem, or by email to: klachtenloket@artez.nl, with the subject line being: Undesirable behaviour complaint. The complaint will be forwarded to the secretary of the Complaints Committee by return of post.
4. The complaint shall contain the name, address and email address of the complainant. The complaint shall also state the date on which it was sent. If sent in writing, the complaint is also

signed. The complaint description must include:

- a description of the undesirable behaviour,
- the name and position of the accused within ArtEZ,
- an indication, as specific as possible, of the period in which and the place where the undesirable behaviour took place,
- the steps taken by the complainant in the matter and the results,
- any written documents relating to the matter.

5. The Complaints Committee may declare a complaint inadmissible if the conditions of Article 2(1) and (4) have not been met. The complainant will be given the opportunity to correct a remediable defect within a period to be determined by the Complaints Committee. The Complaints Committee may instruct its chair to assess admissibility on its behalf.

6. The complainant may withdraw a complaint at any time. In this case, the complaint proceedings by the Complaints Committee will be terminated immediately. If the complaint is withdrawn during the hearing within the meaning of Article 3(1) of these regulations, the Complaints Committee will draw up a brief report of the hearing in which the withdrawal is recorded. This report will be sent to the parties with a copy to the Executive Board.

7. The complainant and the accused may be assisted in the proceedings before the Complaints Committee by an adviser of their own choice.

Article 3. Complaint proceedings

1. Once the Complaints Committee has received a complaint, it shall assess whether the complaint is manifestly admissible. If so, it shall send a copy of the complaint to the accused. The accused shall be given the opportunity to submit a statement of defence. If the chair of the Complaints Committee considers it necessary, the complainant may respond. In this case, the accused may respond to the response of the complainant. After the exchange of documents, the Complaints Committee will invite the complainant and the accused to a closed hearing.

2. The Complaints Committee will hear the complainant and the accused separately, if the complainant and/or the accused so wishes and if the chair of the Complaints Committee believes that there are good reasons for this.

3. The complainant and the accused are entitled to inspect the documents relating to the complaint.

4. The Complaints Committee shall obtain such further information as it deems necessary. To that end, it may interview witnesses and other persons concerned who may provide information on the circumstances of the behaviour about which a complaint was submitted. The Complaints Committee will give the Executive Board of ArtEZ the opportunity to provide the Complaints Committee with factual information about the background to the complaint case that it considers relevant. The Complaints Committee will advise the complainant and the accused of this information.

Article 4. Inability to attend, request to be excused, and objection

1. Should the chair or one of the members be unable to attend, the deputy chair or the deputy of the member unable to attend shall take the place of the member unable to attend. If the deputy member is also unable to attend, the other deputy member shall take his place.

2. The chair and the individual members of the Complaints Committee, including a deputy, may request to be excused or may be objected to by the complainant or accused at any time during the proceedings, if:

- the chair or member of the Complaints Committee is functionally involved in the case and/or
- there is a family, business or other relationship between the chair or member of the Complaints Committee and either the complainant, the accused or a person involved in the case, and/or
- the chair or the member of the Complaints Committee has otherwise created the impression of not being impartial.

3. Should the chair or one of the members request to be excused, the deputy chair or the deputy of the member requesting to be excused shall take his place. If the deputy member also requests to be excused, the other deputy member shall take his place.

4. If the chair or a member of the Complaints Committee is objected to, the complaint

proceedings will be suspended. If the person objected to accepts the objection, his deputy shall take his place. If the person objected to does not accept the objection, the objection request shall be submitted to the panel of the Complaints Committee that hears the objection.

5. The panel hearing the objection consists of a chair and two members. The chair of the Complaints Committee shall appoint himself/herself or his/her deputy as chair of the objection panel, insofar as the chair has not been involved in the complaint proceedings. The chair of the Complaints Committee shall also appoint two members of the objection panel from among the members and deputy members of the Complaints Committee, in so far as they have not been involved in the complaint proceedings.

6. The objection panel shall be provided with all documents it deems necessary for the consideration of the objection. The objection panel shall give the person who has submitted the objection and the person being objected to the opportunity to be heard in closed session. The objection panel shall then decide as soon as possible whether the objection is upheld.

7. If the objection is rejected, the complaint proceedings before the Complaints Committee will be resumed at the same stage of the investigation. If an objection is upheld, the deputy chair or deputy member shall take the place of the chair or member objected to. The Complaints Committee shall decide whether to reopen the complaint proceedings or resume the proceedings at the same stage.

8. In case of abuse, the objection panel may decide not to consider a subsequent objection. This shall be noted in the decision of the objection panel.

Article 5. Ruling and advisory opinion

1. In its ruling, the Complaints Committee will:

- declare the complaint inadmissible;
- declare the complaint unfounded,
- uphold the complaint, or
- declare the complaint partially justified.

The ruling will also include the grounds on which it is based.

2. If the Complaints Committee considers the complaint inadmissible, it will notify the complainant of its ruling.

3. If the Complaints Committee considers the complaint unfounded or upholds it, it will notify the complainant, the accused and the Executive Board of its ruling.

4. The Complaints Committee shall advise the Executive Board on taking measures which the Executive Board is competent to take. The Complaints Committee will inform the complainant and the accused of its opinion separately.

5. The following will be used as a guideline for any measure advised by the Complaints Commission:

- for students: Article 7.57h of the Higher Education and Research Act and the measures for violation of the house rules set out in ArtEZ's Student Charter,
- for members of staff: the disciplinary measures set out in the cao-hbo.

6. Shortly after the hearing, the Complaints Committee may inform the complainant, the accused and the Executive Board of the operative part of the ruling without stating the grounds on which it is based. This notification does not count as the ruling referred to in Article 5(1).

Article 6. Decision

1. The Executive Board will take a decision within three weeks after receipt of the ruling of the Complaints Committee as referred to in Article 5(3) and, if applicable, the advisory opinion from the Complaints Committee as referred to in Article 5(4).

2. If circumstances arise that in the opinion of the Executive Board cannot be postponed, it may decide on interim measures before the Complaints Committee has issued its ruling. After the Complaints Committee has issued its ruling and possibly an advisory opinion, the Executive Board will take a decision on any measures to be taken that replaces the earlier decision on the interim measures. This decision may involve rehabilitation.

3. The Executive Board will only deviate from the ruling and the advisory opinion of the Complaints Committee by means of a reasoned decision.

4. The Executive Board will notify the complainant, the accused and the Complaints Committee of its decision.

5. If a complaint has been filed against a member of the Executive Board, the Complaints Committee will inform the Supervisory Board and the Executive Board; the Supervisory Board will have the powers granted to the Executive Board in Article 3(4), Article 5(4), and Article 6(1-4), and the Executive Board will not have these powers; in Article 2(6), and Article 5(3) and (6), Executive Board shall read Supervisory Board and Executive Board; and in Article 9(1), Executive Board shall read Supervisory Board.

Article 7. Review

1. The complainant and the accused may request that the Complaints Committee review a ruling and/or advisory opinion on the grounds of relevant facts or circumstances that have since come to light which, had they previously been known, might have led to a different ruling and/or advisory opinion.
2. The option of requesting a review will lapse one year after the Complaints Committee has issued its ruling.

Article 8. Appeal

If the accused is a student, an appeal against a decision of the Executive Board taken in relation to him/her can be lodged with the Higher Education Appeals Tribunal within a period of six weeks. A staff member against whom a disciplinary measure has been taken may lodge an appeal with the HBO Appeals Committee of the Stichting Onderwijsgeschillen.

Article 9. Archiving

1. The secretary of the Complaints Committee keeps a file on each complaint, consisting of the report on the complaint proceedings, as well as the decision of the Executive Board.
2. Only the Complaints Committee has access to the files. A person concerned is entitled to inspect a file insofar as it relates to him/her, at the discretion of the secretary.
3. The Secretary shall destroy a file five years after the last action in a proceeding.

Article 10. Accountability and reporting

1. The Complaints Committee shall annually prepare an report on its findings and activities in the previous calendar year, even if there have been no complaints. This report will be presented to the Executive Board.
2. The Complaints Committee shall ensure that the confidentiality of its work is not compromised by this report.

Article 11. Remuneration

1. The chair and deputy chair are remunerated on the basis of a rate agreed with the Executive Board.
2. The members and deputy members shall receive appropriate remuneration for each complaint heard or be given the opportunity to hear the complaint during working hours.
3. The Executive Board shall draw up further regulations concerning remuneration.

Article 12. Confidentiality

1. All persons involved in complaint proceedings are bound to confidentiality, even after the proceedings have ended.
2. Anyone in possession of documents relating to the complaint is obliged to regard them as strictly confidential and to treat them accordingly.
3. Any person who takes possession of documents as referred to in Paragraph 2 of this article and is not authorised to take cognisance of these documents is obliged to immediately transfer these to the secretary of the Complaints Committee, in such a way that this person no longer has possession of the documents.
4. Failure of a member of staff to comply with the provisions in Paragraphs 1 to 3 of this article will be regarded as a dereliction of duty within the meaning of the cao-hbo.
5. A student's failure to comply with the provisions of the first up to and including the third paragraph of this article is regarded as a violation of the house rules that are laid down in ArtEZ's Student Charter.

II Reporting undesirable behaviour

Article 13. Appointment of confidential advisers

1. The Executive Board shall appoint at least one confidential adviser for students and at least one confidential adviser for members of staff. When nominating and appointing confidential advisers, an equal distribution of women and men shall be taken into account as far as possible.
2. A confidential adviser is not employed by ArtEZ. The confidential adviser does not have to account for the counselling he provides to an individual student, member of staff, former student or former member of staff.

Article 14. Report

A student, staff member, former student or former staff member who has personally experienced undesirable behaviour in his studies or work situation, or who has witnessed undesirable behaviour towards another student or member of staff can report this to a confidential adviser.

Article 15. Duties and powers of confidential advisers

1. The duties and powers of a confidential adviser include:
 - supporting, counselling and advising a student, member of staff, former student or former member of staff who has experienced or been accused of undesirable behaviour,
 - consulting with the Head of Student Affairs, the Head of Human Resources/Personnel & Organisation and/or the Executive Board,
 - annually drawing up a report of his findings and activities during the previous calendar year, even if there have been no reports, whereby the confidential adviser shall ensure that the confidential nature of his work is not harmed by the report. This report will be presented to the Executive Board,
 - advising the Executive Board on its policy on undesirable behaviour, on request or otherwise, on the basis of his findings.
2. A confidential adviser who counsels a student, member of staff, former student or former member of staff can in no case also counsel another student, member of staff, former student or former member of staff in the same matter. In principle, a confidential adviser counsels the student, member of staff, former student or former member of staff who reports to him/her first. If necessary, an additional confidential adviser shall be engaged to ensure the integrity of counselling of those affected by an issue.

Article 16. Confidentiality

A confidential adviser is bound to confidentiality and will not discuss with anyone else what a student, member of staff, former student or former member of staff has told the confidential adviser, unless they have given written or digital permission or if there is an emergency situation in which someone's life is in danger. In the latter case, a confidential adviser may act in accordance with the Protocol on breaking secrecy/confidentiality and/or integrity of the National Association of Confidential Advisers [Landelijke Vereniging van Vertrouwenspersonen].

Article 17. Remuneration

The confidential advisers are remunerated on the basis of a rate agreed with the Executive Board.

III General provisions

Article 18. Accessibility and protection

1. The Executive Board will ensure that students, members of staff, former students and former members of staff can turn to the Complaints Committee or a confidential adviser free of charge and without any major obstacles, in accordance with the provisions of Article 2(1).

2. The Executive Board will ensure that students, staff members, former students and former staff members can learn about the possibility to consult the Complaints Committee and a confidential adviser.
3. The Executive Board will ensure to the greatest extent possible that the position and interests of no one involved in ArtEZ is harmed as a result of their being or having been involved in any way in complaint proceedings by the Complaints Committee, whether as a complainant, accused, committee chair or member, witness, expert or otherwise, unless the person involved has not acted in good faith.
4. The previous paragraph also applies to a confidential adviser or a student or member of staff who has made a report to a confidential adviser.

Article 19. Unforeseen circumstances

1. If any circumstances arise concerning matters stipulated in Articles 2-5, 7, 9, 10 and 12, but are not covered by the regulations, the Complaints Committee will decide.
2. If circumstances arise in relation to matters referred to in Articles 14, 15 and 16 but which are not covered by the regulations, the confidential adviser to whom a student, member of staff, former student or former member of staff has made a report will decide.
3. If circumstances arise concerning other matters not covered by the regulations, the Executive Board will decide.

Article 20. Final provisions

1. These regulations replace the Rules of Procedure of the ArtEZ Complaints Committee for Undesirable Behaviour and the Regulations of the Complaints Committee for Undesirable Behaviour.
2. The Executive Board may amend these regulations. Insofar as the amendment concerns part I (Complaints of undesirable behaviour), the approval of the Complaints Committee is required. Insofar as the amendment concerns part II (Reporting undesirable behaviour), consultation of the confidential advisers is required. Insofar as the amendment concerns part III (General provisions), the approval of the Complaints Committee and consultation of the confidential advisers is required. Insofar as the amendment concerns the size, nomination, composition, term of office or accessibility of the Complaints Committee, or the accessibility of the confidential advisers or the protection of those involved in proceedings before the Complaints Committee or the confidential advisers, the advice of the Representation Council is required.