

# **Leaflet "Fundamentals of Appointment Procedures - the Statutory Equal Opportunities Mandate**

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## **The Equal Opportunities Officer**

Wilhelmstrasse 19

Tel.: 07071/29-74958

E-mail: [gleichstellungsbuero@uni-tuebingen.de](mailto:gleichstellungsbuero@uni-tuebingen.de)

[www.uni-tuebingen.de/gleichstellungsbeauftragte](http://www.uni-tuebingen.de/gleichstellungsbeauftragte)

This leaflet is intended for all university members involved in the preparation and implementation of appointment procedures. It supplements the guidelines for appointment procedures; concrete and binding procedures can be found there. The Equal Opportunities Office is happy to receive suggestions and criticism regarding the content.

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### **1. Legal basis of the Equality Mandate**

Article 3 of the Basic Law states: *(2) Men and women have equal rights. The state shall promote the actual implementation of equal rights for women and men and shall work towards the elimination of existing disadvantages.*

The state and all public bodies have a positive duty to act. It is directed towards appropriate promotion to compensate for structural and individual disadvantages. Positive measures for the advancement of women are permissible if individual aspects of justice are preserved.

*(3) No one may be discriminated against or given preferential treatment because of their sex, descent, race, language, home country and origin, faith, religious or political views. No one may be disadvantaged because of their disability.*

This requirement is violated if selection decisions are biased. No 'typical' social characteristic may be a connecting factor for different treatment unless it is necessary to differentiate precisely for reasons of justice and the realization of actual equality. Factual differentiations in favor of equality are permissible if they do not entrench inequality.

The General Equal Treatment Act (AGG) regarding positive action measures in §5 states the following: *"Notwithstanding the grounds specified in §§ 8 to 10 and in § 20, a difference in treatment is also permissible if suitable and appropriate measures are taken to prevent or compensate for existing disadvantages due to a ground specified in § 1".*

*Differentiation according to one of the characteristics are accordingly permissible if they actually eliminate or reduce factual inequalities existing in social reality."*

## 2. Tender and Selection

The call for applications already sets the course for the future. Therefore, care must be taken that the text of the advertisement does not implicitly prevent qualified female academics from applying. Very differentiated information on the requirements profile of the professorship severely restricts the circle of applicants. For this reason, the equal opportunities plan of the University of Tübingen in its currently valid version provides:

*"The faculties - with the cooperation of their Faculty Equal Opportunities Officers - shall ensure that excessively narrow advertisement criteria do not restrict the number of potential applicants for a professorship too much from the outset."*

The broader the advertisement, the greater the chances of attracting many applicants, although it must still contain clear criteria on the requirements profile to be able to justify the selection in a legally sound manner.

The comparison of the proportion of female applicants in appointment procedures at the University of Tübingen with the proportion of women in completed appointment procedures nationwide and the proportion of women in junior professorships show that the University of Tübingen is not yet making optimal use of the potential of potential female applicants for professorships, which is now available and continues to increase. Therefore, increased attention must be paid to the screening phase and the active approach of female applicants in appointment procedures.

The aim is to identify as many suitable female scientists as possible who would have a real chance in the procedure. On the one hand, this is intended to expand the pool of applicants to increase the chance of attracting the best female and male scientists to the University of Tübingen. On the other hand, a competitive appointment strategy is also pursued under the premise that female academics will apply more frequently for a professorship due to a targeted approach.

The faculties therefore obtain a well-founded overview of the potential field of applications before the text of the call for applications is adopted.

Since the amendment of the LHG in January 2021, the responsibility for the active recruitment of women lies with the appointment committee. This committee is therefore formed to screen the potential field of female candidates and ensures the fit between the screening and the advertisement. Furthermore, it has the task of preparing active recruitment measures to achieve a sufficiently high proportion of women in the applications. If it becomes apparent during the screening process that a planned advertisement does not reach enough potential female candidates on the market, it should be revised. The aim of the active approach is to achieve a proportion of applications from women at each selection step that at least corresponds to the cascade model. The cascade model defines subject-related targets for the proportion of women at each academic career level by the proportion of women at the qualification level directly below. The specific data can be found in the Equal Opportunities Office, on its homepage or from the Equal Opportunities Representative.

## 3. Appointment of the Equal Opportunities Officer to the Appeals Commission

The participation of the Equal Opportunities Officer in appointment procedures is regulated in § 4 paragraph (4) of the State University Act:

*"The Equal Opportunities Officer shall be a member of the Senate pursuant to Section 19 as well as of the appointment committees pursuant to Section 48(3) and the selection committees pursuant to Section 51(6) by virtue of her office; she may also be represented on the appointment and selection committees by a member to be appointed by her or by a member of the university to be appointed by her, without prejudice to Section 10(6), first sentence."*

Thus, the Equal Opportunities Officer is not an elected member of the appointment committee, but a **member of the appointment committee by law** i.e. she does not have to be proposed by the faculties

or appointed by the rectorate. The university's Equal Opportunities Officer decides whether she accompanies a procedure herself or delegates this task to a representative and then informs the Dean's Office and the Central Administration of her decision.

There must be **no personal identity** between the gender equality officer and the woman who is the expert. This prohibition of personal union also applies to the external expert and the student member. Other personal unions are possible but require the written consent of the Equal Opportunities Officer.

Since the Equal Opportunities Officer is a member of the Appointments Committee by virtue of her office and is not an elected member, the person who holds this office as a substitute can be changed during the procedure without a **by-election** being necessary. However, a change of substitution due to difficulties in finding an appointment and only for one meeting is not intended.

#### 4. Tasks and Rights of the Equal Opportunities Commissioner in Appointment Procedures

The Equal Opportunities Officer is **responsible for** monitoring compliance with the constitutional requirement of equal opportunities and for exerting an effective influence on the decision-making process in the collegial bodies of higher education institutions through consultations, proposals, and suitable initiatives. It supports the appointments commission throughout the entire procedure to create real equality of opportunity for applicants.

There are four **dimensions that lead to the underrepresentation of women**:

Firstly, literature points to a persistent subject-specific and hierarchy-related **unequal distribution of access opportunities for women** to the academic career path. In short, women's involvement in informal networks is often less pronounced in male-dominated fields. This reduces career opportunities. Even the citation frequency of publications by female authors often shows a gender bias. Therefore, the comparison of scientific CVs and achievements of men and women must be handled gender sensitive.

Secondly, there are **gender differences** in our society **when it comes to assessing the scientific performance of female and male applicants**. We all tend to judge women's achievements more critically than men's, or in other words: what men do, seems to be more brilliant to us, even if it is comparable or even the same as what women do. There are quite a few impressive studies on this. Therefore, all members of the commission must constantly and critically check their own assessment for possible prejudices. It is the task of the equal opportunities representative to support them in this. Thirdly, there is a **"self-selection"** in the application behavior of women. They often only apply for an advertisement when a very high fit to the advertisement criteria is assumed. This situation is to be countered by the Active Approach.

Finally, it is also important to compensate for disadvantages that female applicants have suffered in their academic career due to care work: **'Family periods' are to be** considered appropriately when assessing performance. In principle, this also applies to male applicants, but it should be borne in mind that even in families where men take on part of the care work, women in very many cases bear a significantly larger share of it (see also recommendations of the Equal Opportunities Officer on the homepage).

Accordingly, additional care work during the **Corona pandemic 2020/2021** and other unavoidable delays in the scientific careers of applicants caused by the pandemic should be taken into account appropriately. (See also the recommendations of the Equal Opportunities Officer on the homepage).

Two principles are essential:

1. Applicants must not be **disadvantaged or favored because of their gender**. It is a matter of ensuring that the qualifications of female and male applicants are observed and assessed as objectively as possible.

2. The Equal Opportunities Officer may not come into **conflicts of loyalty** with subject representatives or her own subject interests. If this cannot be ruled out in a specific case, the Equal Opportunities Officer must point this out and her task must be performed by another, independent person.

The Equal Opportunities Officer (or her representative) has **unrestricted right to inspect the application documents**. In doing so, she observes - like all other members of the commission - the confidentiality of the application documents and the deliberations in the appointment committee and is also bound to secrecy.

She shall be invited and informed in the **same way as an elected member of the appointment committee**. Violations of this are to be considered gross procedural errors and may result in adjournment or re-consultation, as decisions without the participation of the Equal Opportunities Officer are unlawful.

For this reason, the University of Tübingen's Equal Opportunities Plan in its currently valid version provides:

*"The scheduling of the procedure is done in consultation with the equal opportunities representative, since as an office member she must explicitly agree to each selection step and accordingly be present at all meetings."*

The Equal Opportunities Officer also has the **right to speak and make motions** like any other member of the Commission, i.e. she can speak freely on all topics. She may and must also argue professionally, as gender-specific discrimination often takes place by means of the evaluation and/or weighting of the professional qualifications of the applicants.

The Equal Opportunities Officer may, if necessary, contest in writing resolutions in which they are unable to participate due to a lack of voting or being informed too late about the date of the meeting and may demand that the Chairperson of the Commission reconsult her or him.

The Equal Opportunities Officer, like the elected members, has full **voting rights** in the Appeals Commission.. If the Equal Opportunities Officer or her deputy is a professor, her vote also counts as a professorial vote.

Irrespective of the exercise of her voting right, the Equal Opportunities Officer must, in accordance with the Senate's principles for the appointment of professors, expressly declare **after each selection step** during the procedure whether the decision taken by the appointment committee is in conformity with the principle of equal opportunities is in conformity with the principle of equal opportunities. In doing so, it shall have up to three working days to consider the matter; a substitute may consult with the university's Equal Opportunities Officer during this time.

The selection steps in question are mostly:

- Pre-selection of the shortlisted candidates
- Selection of those to be invited
- Selection of those applicants on whom external expert opinions are sought
- Creation of the list order.

## Determination and application of the selection criteria

The selection and evaluation criteria deserve special attention throughout the procedure. When discussing the criteria from the advertisement text for the pre-selection of applicants in the first meeting of the appointment committee care must be taken to ensure that:

- the criteria are selective, valid and plausible,
- the criteria apply equally to all applicants, and
- an extension or operationalization of criteria as well as the introduction of additional auxiliary criteria are well justified and do not take place after candidates have already been excluded or do not lead to a one-sided disadvantage of candidates

Exclusion and rejection criteria are to be discussed in detail. No formal exclusion criteria are, for example, **age** or a habilitation procedure that has not yet been completed or is missing, provided that a qualification of equal rank is available. Other criteria unrelated to the subject, such as winnability considerations, also does not play a role at this stage; they are part of the appointment negotiation. The exclusion of applicants may only be justified on professional grounds.

## Age limits

§ Section 48 of the State Budget Code (Landeshaushaltsordnung) regulates the age limits for tenure in Baden-Württemberg and, also those for professors (see also Guidelines for Appointment Procedures).

Insofar as the assumption of civil servant status has been delayed due to the care of a child who has not reached the age of majority or due to the assumption of care responsibilities, the age limit shall be increased by two years for each case of care and nursing.

In general, it is possible to establish a salaried employment relationship for a professorship at any time, should it no longer be possible to become a civil servant for reasons of age. However, due to the additional employer's contribution to social security, there are greater limits on future personal salaries than in the case of civil service employment.

## Part-time professorships

One position can be filled by two part-time professors in salaried employment. In the past, the Ministry of Science, Research and the Arts has already approved a call for applications in which the possibility of splitting a professorship was mentioned. In this context, it merely pointed out that in the case of a split, two civil servant relationships cannot be established. Both positions can only be created as salaried employees.

§ Section 153 of the State Civil Servants Act provides for the **possibility of part-time employment without preconditions**. Civil servants may be granted part-time employment up to a requested duration upon application and without special preconditions, provided that official interests do not conflict with this. The working time may be reduced to half of the regular working time. If necessary, the part of the contract that becomes vacant may be given to an employee for a limited period of time.

## 5. Statement of the Equal Opportunities Officer

After the last meeting of the appointment committee the central equal opportunities officer prepares a **written statement on** the procedure and the outcome of the procedure.

If the Equal Opportunities Officer is represented, this representation shall inform her of the course of the proceedings. The **protocol sheet** provided to her by the Equal Opportunities Office should be used for this purpose. The Equal Opportunities Officer then prepares and signs her statement on this basis.

The Land Higher Education Act stipulates in § 48 paragraph 3 that the appointment proposal of the appointment committee requires the approval of the Faculty Council. The appointment proposal is thus discussed by the Faculty Council; if necessary, the Equal Opportunities Officer explains a dissenting opinion on the appointment proposal to the Faculty Council.

The appointment proposal is justified in the **faculty report**. This will also include documentation on active recruitment as an appendix to show whether, when and how active recruitment was undertaken and with what results. If the documentation should be incomplete, the Equal Opportunities Officer or the Rectorate may request appropriate evidence.

For writing the statement, the faculty report should be submitted to the Equal Opportunities Office **at least two weeks before the decision is taken to the Senate**. The statement is part of the appointment file, i.e. it becomes the basis for the deliberations in the senate and the decision-making in the rectorate. In the Senate, there is once again the possibility of the Equal Opportunities Officer to explain a dissenting opinion.

A **dissenting opinion** of the Equal Opportunities Officer must - unless the rectorate remedies the named deficiency by its resolution - be **submitted to the Ministry of Science** together with the external expert opinions.