

《防止種族歧視及騷擾》學校政策大綱

School Policy Framework for Prevention of Racial Discrimination and Harassment



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION



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引言

平等機會委員會（「平機會」）在2019年9月發表的《人人學得好：少數族裔教育工作小組報告》¹中，其中一項重點關注事項是為不同種族群體學生締造共融校園。若非華裔學生能恆常與華裔學生健康和自然地溝通，既對他們的學習體驗帶來正面影響，也直接有助他們學習中文。共融校園可培育學生互相了解及尊重各自的文化和傳統，從而養成國際公民的良好質素。

2. 為此，學校宜制定校本種族共融政策，為學校管理人員和教職員提供指引，提升不同種族學生之間的共融，當中防止校園種族歧視和騷擾正是達至種族共融的重要一步。
3. 本政策大綱的目的是先從防止種族歧視及騷擾入手，重點介紹預防校園種族歧視和騷擾的政策原則，協助學校啟動種族共融校園的推動工作。



¹ https://www.eoc.org.hk/EOC/upload/ResearchReport/Closing_the_Gap_Full_Report.pdf

《種族歧視條例》（第602章）


4. 《種族歧視條例》於2008年通過，目的是禁止基於種族、膚色、世系、民族或人種的歧視、騷擾及中傷行為。條例適用於多個範疇，其中一個是教育，對《種族歧視條例》附表1所列出的教育機構（包括大學、學校、補習社、幼稚園及其他教育機構）都具約束力。根據條例，學校管理人員及 / 或法團校董會在收生及學生的學習過程中作出任何種族歧視及騷擾行為，均屬違法。

5. 學校管理人員及 / 或法團校董會除了須負上上述的個人法律責任，還可能須就其僱員的違法歧視或騷擾行為負上轉承責任，即使他們不知悉或沒有批准僱員的作為亦然；但若能證明已採取「合理地切實可行的步驟」防止僱員作出有關作為，即可作為免責辯護。學校僱員包括教師、教學助理、其他職員和校工等。²直接僱員以外，承辦學校服務的提供者，例如教練、社工及導師等，亦可能被視為學校的代理人。³若代理人作出任何歧視或騷擾行為，學校管理人員及 / 或法團校董會均須負上轉承責任。

6. 學校須採取「合理地切實可行的步驟」防止種族歧視和騷擾在校內發生。由於學校規模、組織或資源等不同因素均會影響措施的合理、切實和可行性，校方應牽頭制定校本《防止種族歧視及騷擾政策》，並貫徹執行。

² 根據2020年獲修訂的《種族歧視條例》，免受種族騷擾的保障已擴闊至共同工作場所內沒有僱傭或服務提供關係的工作場使用者，包括實習人員及義工。與僱主和主事人須負上的轉承責任相似，任用實習人員或義工的人員同樣須負上轉承責任。如未有採取合理地切實可行的步驟，以防止實習人員或義工作出騷擾行為，任用該實習人員或義工的人須視為作出該作為，不論該人是否知悉或批准作出該作為。

³ 舉一個例，學校特別為一項體育賽事外聘了一名教練代表學校帶領和訓練校隊參賽。在訓練期間，該名教練對一名學生作出種族騷擾的行為。在這種情況下，該名教練可被視為學校的「代理人」，學校則可能以「主事人」的身份須為代理人的違法行為負上法律責任。



7. 任何學生對其他學生或教職員作出種族騷擾，亦屬違法。因此，學校應讓學生認識構成種族歧視和騷擾的行為，以及相關的法律。

8. 《種族歧視條例》沒有規定教育機構必須為屬於任何種族群體的學生，就假期或授課語言而作出變更，但為了照顧學生的需要，學校宜為非華語學生提供針對性的措施，協助他們學習中文作為第二語言，亦宜就某些種族群體因其身分與特定宗教有關，而為他們作出有關宗教習俗的便利安排。⁴

⁴ 在 *Watkins-Singh v Aberdare Girls High School* 一案，英國威爾斯某中學的校服規則不容許學童配戴首飾，一名14歲的錫克教女孩不獲學校批准配戴 Kara。Kara 是一隻光滑的鋼手鐲，是象徵和確認錫克教徒的種族和宗教身份的重要信物。由於校方未能提出理據，解釋為何不能就她的情況作出酌情豁免，因此法庭裁定該等校服規則影響到她的種族和宗教平等權利。



制定校本《防止種族歧視及騷擾》學校政策

9. 沒有一套政策能適用於所有情況，某些元素是任何防止種族歧視政策皆不可或缺的，以及某些範疇例如種族歧視和騷擾的法律定義則是有一定標準的。而部分細節則須視乎個別學校的需要和資源而度身訂造。例如，規模小的學校或許不可能成立專設小組處理種族歧視訴。

10. 基於學校之間存在差異，本政策大綱亦建議學校因應個別需要靈活作出變動。有些學校可能已經制定和實施了較具規格的種族平等政策，另一些卻可能仍然處於草擬階段。若屬前者，學校可視本政策大綱為檢視既定政策和衡量表現的指引。若屬後者，則可作為制定政策和規範的工具。對於不少處於以上兩者之間的學校，本政策大綱可被應用於增設欠缺元素或改善現有政策方面。

11. 以下是平機會就校本《防止種族歧視及騷擾》學校政策建議的一些基本元素：

《防止種族歧視及騷擾》學校政策大綱

1. 絕不容忍種族歧視和騷擾

- 縱使《種族歧視條例》的條文沒有涵蓋這項原則，學校應該以此為制定所有政策的基礎，並應以此衡量所有現有和新訂政策，確保不會使任何種族群體受到不公平對待。
- 應說明所有人皆有權受到尊重和得到平等對待，並指出種族歧視和騷擾是違法行為，不但可能會遭校方紀律處分，還可能須負上《種族歧視條例》下的民事法律責任。校內任何人都有權就種族歧視或騷擾提出投訴，校方應表明會致力消除和防止種族歧視和騷擾。



2. 校方的目標和責任

應清晰列明防止歧視和騷擾政策的目標，除了可讓校內各方清楚明白，更可為日後制定具體措施定下方向。

校方在防止種族歧視和騷擾的目標和責任包括但不限於下列各項：

- 確保全體學生和教職員（包括準學生及準僱員），以及其他為學校服務的人士（如義工、合約員工、服務供應商、代理人）能夠在沒有種族歧視、騷擾和敵意的安全環境下學習、工作、進行課外活動，以及提供及享用服務；
- 以有效的途徑，讓所有學生及教職員都清楚了解學校的防止種族歧視和騷擾政策，以及知道如何提出投訴；
- 為學生及教職員提供合適的培訓，提高他們對種族歧視和騷擾的認識，並培育他們尊重他人的權利和正確價值觀；
- 提供顧及投訴人感受和需要的有效投訴渠道，務求使投訴機制更容易為投訴人使用；
- 以公正、不偏不倚和保密的原則，並以嚴肅的態度處理投訴；以及
- 確保任何人不會因真誠地作出投訴而到受負面影響。



3. 全校教職員和學生的義務和責任

- 應說明全校教職員和學生有義務和責任防止和消除種族歧視，包括尊重他人的意願和感受，不會姑息任何形式的種族歧視行為，以及支持同事 / 同學採取合理行動制止種族歧視。
- 應說明任何學生 / 教職員如果目睹其他學生 / 教職員作出種族歧視或騷擾行為，或自己遭受種族歧視或騷擾，均可向處理種族歧視投訴的小組 / 教職員舉報。

4. 種族歧視和騷擾的定義

- 應以淺白易明的文字解釋何謂種族歧視和騷擾。例如，**直接種族歧視**是指某人因為你的種族對你作出較其他族裔人士為差的對待，這些行為可以包括拒絕讓你使用設施，或參加活動時向你施加比其他他人較苛刻的條件。若向所有人實施相同規則或政策，但某一種族不能符合要求，並會對該種族人士造成不合比例的負面影響，便是**間接種族歧視**。例如，規定男孩必須束短髮的要求若對錫克教的男孩帶來不合比例的負面影響，便屬間接歧視。若某人因為你的種族而向你作出不受歡迎、謾罵、羞辱或令人反感的行為，以致你感受冒犯、侮辱或威嚇，便是**種族騷擾**。例如，基於你的種族而對你作出詆毀或欺凌，屬種族騷擾。此外，基於種族的隔離措施亦會構成種族歧視。
- 《種族歧視條例》第4條訂明種族歧視的定義，第7條則訂明種族騷擾的定義。
- 《種族歧視條例》第4(3)條訂定，基於某人的種族而將該人與其他人隔離屬於**直接種族歧視**。例如，若巴基斯坦學生的學校時間表與其他種族學生的時間完全不一樣，便屬種族隔離。



<p>澄清常見的誤解</p> <ul style="list-style-type: none">● 無分種族：應說明無論是哪個種族，或無論是多數族裔或少數族裔，均可能遭受種族歧視和騷擾；《種族歧視條例》所有條文適用於香港所有人。● 有否意圖並不相干：應說明即使沒有種族歧視或騷擾的意圖，或不能證明意圖，只要行為本身符合定義，也會構成種族歧視或騷擾。因此，無論有心或無意，甚至只是嬉戲性質的行為，也可能構成種族歧視或騷擾。● 單一事件：應說明單一事件也可能構成種族歧視或騷擾。	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. 種族歧視和騷擾的例子	
<p>一般人未必易於掌握種族歧視或騷擾的法律定義，因此宜以例子說明。請參考平機會網頁的《推動種族共融及防止種族歧視：學校須知》。⁵</p>	<input type="checkbox"/>

⁵ <https://www.eoc.org.hk/zh-hk/training-and-education/teaching-resources/for-all-educators/promotion-of-racial-integration-and-prevention-of-racial-discrimination-in-schools>

6. 受害人的權利及可以採取的行動

- 應表明人人都有權就種族歧視和騷擾行為作出投訴。
- 若遭受種族歧視或騷擾，受害人可以採取以下行動：
 - 即時表明立場，尤其是在遇到種族騷擾的情況下，告訴騷擾者其行為構成騷擾，必須即時停止。
 - 以書面記錄事件的日期、時間、地點、證人及性質（騷擾者的說話和行為），以及受害人當時的反應。
 - 告訴信任的人，如教師、社工或輔導人員，並要求給予支援和建議。
 - 向校長 / 法團校董會或負責教師作正式或非正式投訴。
 - 向平機會投訴。平機會對個案作出評估後，會決定是否展開調查或調停；若調停不成功，投訴人可要求平機會給予法律協助。
 - 平機會電話：2511-8211。若有其他查詢或投訴，請瀏覽平機會網頁。⁶
 - 向教育局投訴。⁷
 - 徵詢律師意見，在法庭提出民事訴訟。
- 應說明校內的投訴程序，不會影響投訴人向平機會投訴或向區域法院提出訴訟的權利。

⁶ <https://www.eoc.org.hk/zh-hk/enquiries-and-complaints/enquiries>（查詢）及
<https://www.eoc.org.hk/zh-hk/enquiries-and-complaints/complaints/how-to-make-a-complaint>（投訴）

⁷ <https://www.edb.gov.hk/tc/contact-us/index.html>

7. 處理種族歧視和騷擾訴的原則

- **公平處理：**應公平公正、不偏不倚地處理查詢和投訴，確保投訴人和指稱騷擾者得公平對待，並且均有機會陳述自己的個案。
- **保密原則：**向所有學生和教職員保證，所有與種族歧視和騷擾有關的資料和記錄都會保密，只會按需要向處理投訴的相關人員披露。由於指稱騷擾者是個案的關鍵人物，基於自然公義的原則，學校因此有需要通知他／她有關指控的詳情。
- **避免延誤：**事件對投訴人及指稱騷擾者均會帶來壓力，校方收到投訴後應立刻處理。
- **程序的透明度：**應將有關處理種族歧視和騷擾投訴的程序載列在校本投訴政策／防止種族歧視政策內，並讓所有學生、教職員和其他工作人員知悉。如投訴涉及學生，學校應讓學生和家長／監護人／親人清楚知道有關規則及處分措施。
- **保護投訴人及證人：**投訴人及證人應受保護，以免因投訴事件而遭報復（根據《種族歧視條例》第6條，「使人受害的歧視」（報復）也是違法的歧視行為）。
- **避免利益衝突：**若負責處理查詢／投訴的教職員與投訴人或指稱騷擾者有密切關係，如親屬關係，或指稱騷擾者是校內處理種族歧視和騷擾投訴的負責人，便應把個案交由其他人處理。
- **匿名投訴：**無論投訴是否匿名，學校都可能需要進行調查。
- **展現同理心：**應本着同理心處理投訴，以及將所有資料和記錄保密，使相關人士不會受不必要的困擾。

8. 種族歧視和騷擾投訴的處理機制

- 應列出所有處理投訴的教職員姓名及聯絡方法。
- 應同時設立非正式及正式處理種族歧視和騷擾投訴的機制。若投訴人主要希望盡快採取非正式行動遏止種族歧視或騷擾行為（例如向指稱騷擾者發放清晰的信息），而不是就其個案展開調查時，便會以非正式機制處理。一般而言，非正式投訴機制適合用作處理輕微及單一的事件，而非用於較嚴重和重複的種族歧視和騷擾行為。
- 可以考慮以流程圖清楚展示處理投訴的每一步驟。
- 如投訴人或指稱騷擾者是學生，可由家長 / 監護人 / 親人陪同出席相關會面，以保障學生權益。
- 經考慮受害人的年齡及教育程度，以及遇到種族歧視或騷擾事件後所承受的心理壓力，學校應容許受害人以不同方式提出正式或非正式投訴。
- 投訴人和指稱騷擾者的會面及陳述內容均需記錄在案。
- 應擬備書面報告，向涉及事件的雙方交代調查結果、處分內容及考慮因素。
- 若任何一方不接受調查結果，應容許向校內更高層上訴，以符合自然公義的則。

9. 提出投訴的時限

- 向平機會提出投訴或提出法律訴訟均有時限。若種族歧視或騷擾的受害人有意向平機會提出投訴，須於事件發生後的12個月內提出。除非有充分的理由引致延誤投訴，平機會可不予受理。若決定在區域法院提出法律訴訟，則須於事發後兩年內提出。
- 考慮到延遲處理投訴可能對學校的調查工作及舉證造成困難，學校可考慮設定提出投訴的時限，但時限必須合理，並考慮受害人在事發後可能因焦慮和壓力而沒有即時投訴。為了避免設定時限令受害人卻步，校方可註明若有合理原因令投訴人延誤投訴，校方會酌情處理。

10. 跟進行動

- **針對員工採取的紀律處分：**應說明種族歧視和騷擾可導致的具體紀律處分，例如需要道歉、接受輔導、給予賠償、停職、解僱等，亦應說明校方可能採取的行動。例如，若事件涉及刑事罪行，校方會向警方舉報。
- **針對學生的輔導服務和其他跟進行動：**如投訴涉及學生，訓導工作應以具教育意義的訓育方式來進行，引領違規學生避免再次作出不當行為。校方應向作出騷擾行為和受到騷擾的學生提供輔導服務。此外，校方應讓學生和家長 / 監護人 / 親人清楚知道所有有關規則、紀律處分措施和支援服務。

11. 防止種族歧視和騷擾的措施

- **發布政策：**應定期向全體學生、家長／監護人和教職員發布政策，並向新入學學生及新入職教職員，包括代課老師，發布及解釋政策。
- **公開資訊，方便查閱：**於學校內聯網及學校網頁（合約服務供應商及外聘人士未必獲授權進入學校的內聯網）上載有關政策，方便學生和教職員隨時查閱。政策的通告亦應於校園當眼處張貼，讓全校師生及職員，尤其是校內沒有電腦設備的人員，知悉學校已制定防止種族歧視和騷擾政策，從何處可以拿取政策的文本，以及如何投訴。校方亦需告知合約供應商及聘用的校外團體或人士，學校不容忍種族歧視和騷擾行為，並向他們提供有關的政策資訊。
- **定期檢討：**具體規定每隔多少時間會檢討有關政策及措施，而非籠統表示會「定期」檢討。除定期檢討外，在投訴的調查完結後，應檢視有關政策及措施是否需要修訂，以有效地防止種族歧視和騷擾發生。
- **定期培訓：**就種族平等、共融和尊重多元的培訓和教育計劃，以及提升學生和教職員對防止種族歧視和騷擾的認識方面，定下具體的目標（如人數及／或時間）。
- **指定人員負責推行措施：**指定校內某些職位的教職員負責推行防止種族歧視和騷擾的各項特定措施。權責分明有助確保措施妥為推行。

12. 相關資源

- 可列出與種族歧視和騷擾有關的資訊，如平機會網頁上相關資訊的連結、由非政府組織舉辦有關種族歧視和騷擾的講座或工作坊的影片或文字記錄、新聞報道、調查和研究，以及各大學的相關網頁等。
- 可參考平機會的《種族連線》消除歧視教材套、《推動種族共融及防止種族歧視：學校須知》，以及非政府組織提供的培訓課程和相關資訊。

下一步：推廣種族共融學校政策大綱

12. 實施防止種族歧視和騷擾的政策只是達致種族共融的第一步。校方不應只着眼於避免種族歧視，還應主動尋求方法，促使不同背景和文化的學生能融和共處。因此，除了本政策大綱，平機會正擬備另一份政策大綱，以促進學校推動積極措施，建立種族共融的校園環境。該政策大綱擬稿備妥後，平機會將徵詢各主要持份者的意見，包括辦學團體、校長和教師等，並於稍後階段作出發布。

免責聲明：本政策大綱只作參考用途，不應視為法律意見。如有具體查詢，請尋求獨立法律意見或聯絡平機會。

Introduction

In the "Closing the Gap" Report of the Working Group on Education for Ethnic Minorities released by the Equal Opportunities Commission (EOC) in September 2019¹, the need for better integration in schools is identified as one of the key concerns in education for students from racially disadvantaged groups. Healthy, regular and natural interactions between non-Chinese and Chinese students not only influence their overall school experience but also directly impact their learning of the Chinese language. Better integration helps all students develop mutual respect and understanding of each other's cultures and traditions and makes them better global citizens.

2. To achieve this aim, schools are recommended to develop their own racial inclusion policies. These policies can serve as guidance for school administrators and staff to promote racial integration among students of which an important element is the prevention of racial discrimination and harassment on campus.

3. In an attempt to assist schools to kick-start the process, this Framework concerns prevention of racial discrimination and harassment and will be explained in more detail below. It defines the areas where policies are necessary and their application could further the objectives of racial inclusion.



¹ https://www.eoc.org.hk/EOC/upload/ResearchReport/Closing_the_Gap_Full_Report.pdf



Race Discrimination Ordinance (Cap. 602)


4. The Race Discrimination Ordinance (RDO), which was passed in 2008, prohibits discrimination, harassment and vilification on the grounds of race, colour, descent, national origin and ethnic origin. The RDO is applicable, among others, in the area of education, and is binding on all educational establishments in Hong Kong specified in Schedule 1 to the RDO (e.g. universities, schools, tutorial centres, kindergartens and other educational institutions). Any act of racial discrimination and harassment done by the school administrators and/or Incorporated Management Committees (IMC) in admissions and the schooling process are unlawful under the RDO.

5. Further, school administrators and/or IMC may also be vicariously liable for their employees' unlawful act of discrimination or harassment even if they have no knowledge of or did not approve the act, unless the school can show that it has taken "reasonably practicable steps" to prevent its employees from doing so. School employees include teachers, teaching assistants, administrative staff, janitors, etc.² Service providers such as coaches, social workers and tutors may also be considered agents of the school, and school administrators/IMC would carry vicarious liability for any discrimination or harassment by their agents.³

6. All school authorities should take reasonably practical steps to prevent discrimination or harassment from happening. As what constitute reasonable practicable steps depends on the relevant circumstances, which often includes the school size, composition, resources, etc., school authorities should take the lead by putting in place a School-based Policy on the Prevention of Racial Discrimination and Harassment and implementing it consistently and fairly.

² According to the amendments of the RDO enacted in 2020, workplace participants in a common workplace, including those who may not be in an employment relationship, or service provider and user relationship, such as interns and volunteers, are also protected from racial harassment under the law. Similar concept of vicarious liability also applies to the person that engaged intern/volunteer. Therefore, unless "reasonably practicable steps" have been taken, an act done by an intern in the course of an internship/a volunteer in the course of performing volunteer work is treated as an act done by the person who engaged the intern/volunteer, whether or not the act was done with the knowledge or approval of that person.

³ For example, a school engaged an external coach to represent it to lead and train the school sports team for a sports competition. The coach racially harassed a student during the training. Under this circumstances, the coach may be considered as an "agent" and the school might be vicariously liable for the unlawful act of the coach in the capacity as a "principal".



7. It is unlawful for a student to racially harass another student or a school staff member. Therefore, it is important for schools to educate their students about what contributes to racial discrimination and harassment, along with the laws covering such behaviour.

8. The RDO does not require an educational establishment to modify or make different arrangements for persons of any racial group with respect to holidays or medium of instruction. However, in order to take care of the particular needs of students, schools are highly recommended to provide targeted assistance to non-Chinese speaking students in learning Chinese as a second language and accommodations for certain racial groups that are closely associated with a particular religion to accommodate their religious practices, as long as the need for such arrangements is objective and reasonable.⁴

⁴ For example, in the case of *Watkins-Singh v Aberdare Girls High School [2008] EWHC 1865 (Admin)*, a Wales high school's uniform rules did not allow children to wear jewelry. A 14-year-old Sikh girl was not allowed to wear the Kara, a plain steel bangle. It was an important item for Sikhs to identify themselves with their race and religion. The Court ruled that the uniform rules affected her race and religious equality rights because the school could not justify its failure to make an exception to its uniform policy for her.



Developing a School-based Policy on the Prevention of Racial Discrimination and Harassment

9. There is no "one-size-fits-all" policy. Some elements are essential for any anti-discrimination policy and some areas, such as the legal definition of racial discrimination and harassment, are standardised. On the other hand, most of particulars may need to be tailor-made, subject to the needs and resources of individual schools. For instance, it may not be feasible for a small-size school to set up a dedicated team to handle racial discrimination.

10. The Framework is developed bearing in mind the wide disparity among schools and allows for flexibility depending on individual needs. At one end of the spectrum there may be schools that already have in place an advanced level of racial equality policies and implementation while at the other end there may be those that are still in the beginning stages of putting together such policies. For the former, the Framework may be taken as a means to review their own policies and measure their performance against them. For the latter, the same Framework can be used as a toolkit to develop and put in place policies and practices. Many schools may be somewhere in-between and are recommended to simply add to what they have, either by including missing elements or enhancing current policies.

11. Below are some essential elements of a School-based Policy:

School Policy Framework for Prevention of Racial Discrimination and Harassment

1. Zero tolerance for racial discrimination and harassment

- Beyond the provisions of the Race Discrimination Ordinance (RDO), this principle should form the bedrock of all policy measures by the school. All existing and new policies should be measured against this principle to ensure that they do not cause any racial group to be unfairly impacted.
- The policy should clearly state that everyone has the right to be respected and be treated equally. It should also point out that racial discrimination and harassment are unlawful and may lead to disciplinary measures by the school as well as civil liability under the RDO. Any person in the school has the right to lodge a complaint regarding an act of racial discrimination or harassment. The determination of the school to eliminate and to prevent racial discrimination and harassment should be clearly conveyed.



2. Objectives and responsibilities of the school

The objectives of the prevention of discrimination and harassment policy should be explicitly listed out so that all parties in school have a clear understanding. The objectives also set a direction for development of substantive measures.

The objectives of the prevention of racial discrimination and harassment policy and the liability of the school include but are not limited to:

- Ensuring all students and staff members (including prospective students and staff members) and other persons who provide services to school (including voluntary helpers, contract workers/service providers/agents) are able to study, work, conduct extra-curricular activities or provide/have access to services in a safe and racial-discrimination and hostility-free environment;
- Informing all students and staff members, through effective means, about the racial discrimination and harassment policy and the channels to lodge complaints;
- Providing appropriate training to students and staff members in order to raise their awareness on racial discrimination and harassment and to nurture the right and proper value of respecting others;
- Setting up effective channels for lodging complaints, which should be sensitive to the feelings and needs of complainants, in order to make the complaint handling mechanism more user-friendly;
- Handling complaints on the principles of fairness, impartiality and confidentiality, and in a serious manner; and
- Ensuring that there will be no negative repercussions for anybody for lodging a complaint in good faith.



3. Obligation and responsibility of all staff members and students

- The policy should clearly state that all staff members and students have the obligation and responsibility to prevent and eliminate racial discrimination, including respecting the will and feelings of others, refusing to tolerate any racially discriminatory behaviour, and supporting co-workers/students to take reasonable steps to stop racial discrimination.
- The policy should clearly state that any student/staff member can lodge a complaint with the panel/staff member responsible for handling racial discrimination complaints if that student/staff member witnessed any other student/staff member committing any acts of racial discrimination or harassment or was racially discriminated or harassed.

4. Definition of racial discrimination and harassment

- The policy should explain the meaning of racial discrimination and racial harassment in plain and simple language. For instance, **direct racial discrimination** means a person treated you in a less favourable manner compared to others due to your race. Such behaviour could include refusing to allow you to use a facility or imposing tougher conditions on you compared to others for participation in an activity. **Indirect racial discrimination** can take place if rules or policies are applied equally to everyone but cannot be met by persons of a certain racial group and has a disproportionate adverse effect on them. For example, a rule mandating short hair for boys would have a disproportionate adverse effect on boys of the Sikh community. **Racial harassment** occurs when someone behaves in a manner that is unwelcome, abusive, insulting or offensive because of your race which makes you feel offended, humiliated or intimidated. Using a racial slur and bullying someone due to their race are examples of racial harassment. In addition, segregation on the basis of race constitutes race discrimination.
- Section 4 of the RDO provides the definition of racial discrimination while Section 7 provides the definition of racial harassment.
- Section 4(3) provides that segregation of a person on the ground of race from other persons is **direct racial discrimination**. For example, Pakistani students would face racial segregation if they had a school timetable completely separated from that of students of other racial groups.





<p>Clarification of common myths:</p> <ul style="list-style-type: none">● Regardless of race: the policy should state that racial discrimination and harassment may occur to any person, regardless of their race or ethnicity whether they are from the majority or minority race; all provisions of the RDO are applicable to all persons in Hong Kong.● Intention is irrelevant: the policy should state that even if the act of racial discrimination or harassment is not intentional or there is no evidence to prove the intention, it amounts to racial discrimination or harassment once the act meets the definition. Hence, no matter whether the act is intentional or not, or even if it is of a playful nature, it may amount to racial discrimination or harassment.● Single incident: the policy should state that a single incident may also amount to racial discrimination or harassment.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. Examples of racial discrimination and harassment	
<p>The general public may not easily comprehend the definition of racial discrimination or harassment. Therefore, it is useful to provide examples as illustration. Please refer to the publication <i>Promotion of Racial Integration and Prevention of Racial Discrimination in Schools</i> on the EOC website.⁵</p>	<input type="checkbox"/>

⁵ <https://www.eoc.org.hk/en/training-and-education/teaching-resources/for-all-educators/promotion-of-racial-integration-and-prevention-of-racial-discrimination-in-schools>

6. Rights of victim and various actions to be taken

- Every person has a right to lodge a complaint on racial discrimination and harassment.
- When a person is racially discriminated or harassed, he/she may take the following actions:
 - Speak up at the time, especially against racial harassment. Tell the harasser that his/her act amounts to harassment and should be stopped immediately.
 - Keep a written record of the incident(s), including date(s), time, location, witnesses and nature (what the perpetrator said or did) and his/her own response.
 - Tell someone he/she trust such as a teacher, a social worker or a counsellor, and ask for support and advice.
 - Lodge a formal or informal complaint to the school principal/IMC or the teacher-in-charge.
 - Lodge a complaint with the EOC. The EOC will assess whether or not, the case would proceed to investigation and/or conciliation. In case conciliation fails, the complainant may apply for legal assistance with the EOC.

Telephone number of the EOC: 2511-8211. For enquiries and complaints, please refer to the EOC website.⁶
 - Lodge a complaint with the Education Bureau.⁷
 - Consult a lawyer, file a civil law suit against the perpetrator in the court.
- It should be clearly stated that the school's complaint handling procedure does not affect the complainant's lodging of complaint with the EOC or filing a lawsuit in the District Court.

⁶ <https://www.eoc.org.hk/en/enquiries-and-complaints/enquiries> (for enquiries) and <https://www.eoc.org.hk/en/enquiries-and-complaints/complaints/how-to-make-a-complaint> (for complaints)

⁷ <https://www.edb.gov.hk/en/contact-us/index.html>

7. Principles of handling racial discrimination and harassment complaints

- **Fairness:** enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged perpetrator are fairly treated, and both parties have a chance to present their case.
- **Confidentiality:** assurance should be given to all students and staff members that all information and records related to a racial discrimination or harassment complaint must be confidential and only disclosed to relevant staff on a need-to-know basis. Since the alleged perpetrator is a key person in the case, under the principle of natural justice, he/she should be informed about the details of the allegation.
- **Avoid delay:** complaints should be handled promptly because both the complainant and the alleged perpetrator are under pressure.
- **Transparent procedures:** schools should incorporate the handling procedures related to racial discrimination and harassment complaints in their school-based complaint policy/racial discrimination policy and make them known to all students, staff members and other workers in the school. For complaints involving students, the schools should ensure that both the students and their parents/guardians/family members understand the rules and disciplinary measures.
- **Protection to complainants and witnesses:** complainants and witnesses should be protected against victimisation (which in itself is an unlawful act of discrimination under section 6 of the RDO) because of the complaint case.
- **Avoid conflict of interest:** if the staff member who handles the enquiry / complaint case is closely related to the complainant or the alleged perpetrator (for instance, a relative), or the alleged perpetrator is the person-in-charge of handling racial discrimination and harassment complaints, the case should be handled by another person.
- **Anonymous complaint:** whether the complaints are anonymous or not, schools may need to conduct investigation.
- **Handling cases with empathy:** complaint cases should be handled confidentially and with empathy so that the related parties are not unnecessarily distressed.

8. Mechanism for handling racial discrimination and harassment complaints

- Names and contacts of all staff members who handle complaint cases should be listed out.
- Both informal and formal complaint handling mechanisms for racial discrimination and harassment complaints should be established. If the primary concern of the complainant is to stop the acts of racial discrimination or harassment as soon as possible by way of taking informal action (e.g., sending a clear message to the alleged perpetrator) instead of conducting an investigation into his/her case, the complaint will be handled informally. Generally speaking, the informal complaint handling mechanism is an appropriate way for handling minor and single incidents rather than serious and repeated acts of racial discrimination and harassment.
- Schools may consider using a flow chart to clearly indicate each step of the procedure.
- If the complainant or alleged perpetrator is a student, he/she is entitled to be accompanied by his/her parent/guardian/family member to attend the relevant interview as so to safeguard his/her rights.
- After taking into account the age, the education level of and the distress suffered by the complainant after the racial discrimination or harassment incident, the school should allow the complainant to lodge a formal or informal complaint in various ways.
- The interviews and the statements of both the complainant and the alleged perpetrator should be documented.
- A written report should be prepared and the investigation result, the punishment and the considerations should be made known to both the complainant and the alleged perpetrator.
- If either party does not accept the investigation result, as a principle of natural justice, appeals to senior level of school management should be allowed.



9. Time bar for lodging a complaint

- There is a time bar for lodging a complaint with the EOC or to take legal action. If the person who is racially discriminated or harassed intends to lodge a complaint with the EOC, he/she should take action within 12 months after the incident occurred. Otherwise, the EOC will not handle the case unless there are justifiable reasons for the delay. Any decision to take legal proceedings to the District Court should be made within 2 years after the incident occurred.
- Having considered that any delay could cause difficulty to the investigation and the collection of evidence, the school can set a time bar for lodging complaints. However, the time bar should be reasonable and should take into account that the victim may postpone lodging a complaint due to the post-incident anxiety and distress suffered by him/her. With a view to avoiding victims being discouraged by the time bar, schools may specify that delayed complaints with justifiable reasons would be handled at the school's own discretion.

10. Follow-up actions

- **Disciplinary actions taken against employees:** The policy should state the specific disciplinary measures to which acts of racial discrimination and harassment could entail and what the punitive measures could be, for instance, making an apology, attending counseling sessions, paying compensation, being suspended from work or dismissed, etc. Actions that could be taken by the school should also be stated. For instance, if the case involves criminal offences, the school will report it to the police.
- **Counseling services and other appropriate actions:** If the case involves any students, discipline directed against the student committed an act of harassment should be considered as an educative process to steer him/her towards appropriate response and counseling services could be made available for both victim and the harasser. Moreover, the students and their parents/guardians/family members should be informed of all the related regulations, disciplinary measures and support services.



11. Measures for prevention of racial discrimination and harassment

- **Promulgation of policy:** schools should promulgate the policy to all students, parents/guardians and staff members on a regular basis. The policy should be distributed and explained to all new students and staff members (including supply teachers).
- **Accessible information:** the policy should be uploaded to the school intranet and school website (contract service providers and external parties may not be authorised access to the school intranet) so that students and staff members can have access to the policy at any time. Notices of the policy should also be prominently posted on campus for all students and staff members (in particular members who have no access to computers in school) to inform them of the policy, how to get a copy, and the channels to lodge a complaint. All service providers and external parties must be aware of the school's zero-tolerance to racial discrimination and should be provided with relevant information.
- **Regular review:** the review period for the policy and measures should be specifically set at a regular interval, instead of generically saying "regular" review would be conducted. On top of the regular review exercises, policy and measures should also be reviewed after the investigation of a complaint is completed to see if any revisions are needed to effectively prevent racial discrimination and harassment.
- **Regular training:** set specific targets (such as number of people and/or period of time) for training and education programmes on racial equality, inclusion, respecting diversity and enhancing awareness on the prevention of racial discrimination and harassment for students and staff members.
- **Designate staff members to implement the measures:** selected staff members or staff positions are designated to implement specific measures for the prevention of racial discrimination and harassment. A clear delineation of responsibility can ensure proper implementation of the policy.



12. Related resources

- Information related to racial discrimination and harassment may be listed out, for instance, links to relevant on the EOC website, and the videos or articles of racial discrimination and harassment talks or workshops organised by Non-Government Organisations, news reports, researches and studies, and related websites of universities, etc.
- Schools may take notice to EOC's "All Races As One" Learning Kit on Eliminating Racial Discrimination, *Promotion of Racial Integration and Prevention of Racial Discrimination in School*, the training course and related information provided by the Non-Government Organisations

Next Stage: School Policy Framework for Promotion of Racial Inclusion

12. Implementation of anti-discrimination and anti-harassment policy serves only a starting point for the journey of racial inclusion in schools. In addition to this Framework, another guide is in the development stage for the promotion of racial inclusion which is more affirmative in nature and seeks proactive action. Beyond avoiding racial discrimination, it is imperative for schools to look for means to promote the mixing and mingling of students from all backgrounds and cultures. Inputs from major stakeholders such as sponsoring bodies, principals and teachers will be sought when the draft is ready. The EOC will release the second Framework separately and at a later stage.

Disclaimer: This Framework is provided for reference purposes only and should not be construed as legal advice. For specific enquiries, please seek independent legal advice or contact the Equal Opportunities Commission for assistance.





平等機會委員會
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