



Preventing Sexual Harassment on Campus

Formulating Sexual Harassment Policies in Schools

I. Introduction

Background:

Following the amendment of Sex Discrimination Ordinance that came into effect on 3 October 2008, a sexual harassment act committed by any person that "creates a hostile or intimidating environment" also applies to educational settings. It is the responsibility of schools to ensure that all individuals (including all students, staff members, voluntary helpers, contract workers/service providers/agents) are able to study, to conduct extra-curricular activities, to work or to provide/have access to services in a safe and sexual harassment-free environment.

At the same time, apart from the personal liability to be borne by individuals for unlawful acts of sexual harassment, the schools, being employers of the staff concerned, may also be vicariously liable.

Once an incident of sexual harassment occurred, not only will it cause harm to the victim's mental and physical health and significantly compromise his/her academic or work performance, but also cause damage to the reputation of the school. The Equal Opportunities Commission (EOC) believes that it would be too late to redress the wrongs afterwards; instead, proactive adoption of preventive measures is the desirable approach.

The formulation of a sexual harassment policy in school reflects the school's concern on the issue and provides guidelines for handling complaints related to sexual harassment. Moreover, the development and promotion of the policy enhances the understanding of the issue by all parties in school and helps nurture the right and proper values of respecting others.

Developing school-based sexual harassment policy

Some parts of a sexual harassment policy, for instance, the legal definition of sexual harassment, are standardized. However, quite a number of particulars should 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 panel to handle complaints, or



for a special school to interview a student complainants or witnesses without the assistance of social workers or psychologists.

In addition, through the formulation process, policy-makers develop a deeper understanding of the nature of sexual harassment and hence, they will implement the anti-sexual harassment measures more proactively in future. If the stakeholders of schools, such as the student union and representatives of teachers, are engaged in the formulation process, the legitimacy of the sexual harassment policy will be enhanced. A successful implementation of the policy can be envisaged.

Although there is no “one-size-fits-all” policy, some elements are essential for a sexual harassment policy. The EOC has compiled all the important elements into a “Framework for Sexual Harassment Policies in Schools” for reference.

II. Framework for Sexual Harassment Policies in Schools

Regardless of whether a sexual harassment policy has been developed in your school or not, you may take the elements listed in this Framework as a checklist to check against the sexual harassment policy which is to be / has been adopted, and to consider whether it is required to make any further improvements.



Framework for Sexual Harassment Policies in Schools

1. Principle: zero tolerance for sexual harassment

The policy should clearly state that everyone has the right to be respected and be equally treated. It should also point out that sexual harassment is discriminatory and unlawful. Sexual harassment may lead to disciplinary measures of schools, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person in the school has a right to lodge a complaint. The determination of the school to eliminate and to prevent sexual harassment should be clearly conveyed. Sexual harassment will not be tolerated in the school.

2. Objectives and Responsibilities of the School

The objectives of sexual harassment policy should be listed out so that all parties in school have a clearly understanding of the objectives. The objectives also set a direction for future development of specific measures.

The objectives of sexual harassment policy and the liability of school include but 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 sexual hostile-free environment;
- informing all students and staff members, through effective means, the sexual harassment policy and the channels to lodge complaints;
- providing appropriate training to students and staff members in order to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others;



<ul style="list-style-type: none">• 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 and discreet manner; and• ensuring that nobody will be punished because of lodging a complaint in good faith.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
3. Obligation and Responsibility of All Staff Members and Students	
<ul style="list-style-type: none">• The policy should clearly state that all staff members and students have the obligation and responsibility to prevent and eliminate sexual harassment, including respecting the will and feelings of others, refusing to tolerate any sexual harassment behavior, and supporting co-workers/students to take reasonable steps to stop sexual harassment.• The policy should clearly state that any student / staff member can lodge a complaint with the panel / staff member responsible for handling sexual harassment complaints if that student / staff member witnessed any other student / staff member committed any sexual harassment act or was sexually harassed.	<input type="checkbox"/> <input type="checkbox"/>
4. Definition of Sexual Harassment	
<p><u>Definition:</u></p> <ul style="list-style-type: none">• The policy should explain the meaning of sexual harassment in plain and simple language. For instance, sexual harassment means a person makes an unwelcome conduct of a sexual nature to you. The unwelcome conduct includes unwelcome sexual attention, physical contact, talking about issues of a sexual nature, or making a sexual advance. It also amounts to sexual harassment if you find the environment you work or study is sexually hostile, in which you feel intimidated.• Section 2(5) of the Sex Discrimination Ordinance (SDO) provides the definition of sexual harassment. In addition, sections 2(7), 2(8), 9, 23 and 39 are provisions in relation to sexual harassment. Under the SDO, the legal definition of sexual harassment is:	<input type="checkbox"/> <input type="checkbox"/>



(a) If any person

- (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favors, to another person; or
- (ii) engages in other unwelcome conduct of a sexual nature in relation to another person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that other person would be offended, humiliated or intimidated; or

(b) any person, alone or together with other persons, engages in conduct of a sexual nature with creates a hostile or intimidating environment for another person.

Clarification of common myths:

- **Regardless of gender:** the policy should state that sexual harassment may occur to any persons, regardless of their gender; all provisions in the SDO and the school policy related to sexual harassment are applicable to both men and women as well as sexual harassment to persons of the same sex.
- **Intention is irrelevant:** the policy should state that even if the act of sexual harassment is not intentional or there is no evidence to prove the intention, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.
- **Single incident:** the policy should state that a single incident may also amount to sexual harassment.
- **Power relationship:** Although sexual harassment incidents are always related to a power relationship, i.e. the powerful harass the weak, the power relationship may not be the most important factor taken into account in determining whether an act of sexual harassment has occurred on campus. In schools, a student may harass a fellow student, or even harass a teacher. If such incidents happened, they are also acts of sexual harassment which the schools should face up to the issue and handled it in an appropriate manner.



5. Examples of Sexual Harassment	
<p>The general public may not easily master the definition of sexual harassment. Therefore, it is useful to provide examples as illustration. In respect of the examples on "sexually hostile or intimidating environment in the educational setting" and "sexual harassment acts", please refer to <i>Questions and Answers on Preventing Sexual Harassment in Schools</i> on the website of the EOC or the Education Bureau (EDB).</p>	<input type="checkbox"/>
6. Rights of victim and various actions to be taken	
<ul style="list-style-type: none">• Every person has a right to lodge a complaint on sexual harassment. <input type="checkbox"/>• When a person is sexually harassed, he/she may take the following actions: <input type="checkbox"/><ul style="list-style-type: none">■ Speak up at the time. Tell the harasser that his/her act is unwelcome and should be stopped immediately.■ Keep a written record of the incidents, including the dates, time, location, witnesses and nature (what the harasser has said or done) and his/her own response.■ Tell someone he/she trusts or a counselor, and ask for emotional support and advice.■ Lodge a formal or informal complaint to the school principal or the teacher-in-charge.■ Lodge a complaint with the EOC and request investigation or conciliation. In case conciliation fails, the complainant may request the EOC to provide legal assistance. Telephone number of the EOC: 2511-8211. For enquiries or complaints, please refer to the EOC website: http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx■ Lodge a complaint with the EDB.■ Consult a lawyer, report to the police or file a civil law suit against the harasser.• It should be clearly stated that the complaint handling procedure does not affect the complainant's lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court. <input type="checkbox"/>	



7. Principles of handling sexual harassment complaints	
<ul style="list-style-type: none">● Fairness: enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged harasser are fairly treated, and both parties have chances to present their case.	<input type="checkbox"/>
<ul style="list-style-type: none">● Confidentiality: assurance should be given to all students and staff members that all information and records related to a sexual harassment complaint must be confidential and only be disclosed to relevant staff on a need-to-know basis. Since the alleged harasser is a key person in the case, under the principle of natural justice, he/she should be informed about the details of the allegation.	<input type="checkbox"/>
<ul style="list-style-type: none">● Avoid delay: complaints should be handled promptly because both the complainant and the alleged harasser are under pressure.	<input type="checkbox"/>
<ul style="list-style-type: none">● Transparent procedures: schools should incorporate the handling procedures related to sexual harassment complaints in their school-based complaint policy/sexual harassment 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 understand the rules and disciplinary measures.	<input type="checkbox"/>
<ul style="list-style-type: none">● Protection to complainants and witnesses: complainants and witnesses should be protected against victimization (which in itself is an unlawful act of discrimination under section 9 of the SDO) because of the complaint case.	<input type="checkbox"/>
<ul style="list-style-type: none">● Avoid conflict of interest: if the staff member who handles the enquiry / complaint case is closely related to the complainant or the alleged harasser (for instance, relatives), or the alleged harasser is the person-in-charge of handling sexual harassment complaints, the case should be handled by another person.	<input type="checkbox"/>
<ul style="list-style-type: none">● Anonymous complaint: whether the complaints are anonymous or not, schools may need to conduct investigation, in particular, investigation should be conducted discreetly into any suspected sexual harassment made against students.	<input type="checkbox"/>



<ul style="list-style-type: none">● Handling cases discreetly: showing empathy to the feelings of complainants, for instance, avoiding asking the complainant to repeat his/her painful story, appointing investigators of the same sex to interview the complainant, etc. in order to ensure that the complainant would not be unnecessarily further distressed or humiliated. Complaint cases should be handled discreetly so that the other related parties would not be unnecessarily distressed.	<input type="checkbox"/>
8. Mechanism for handling sexual harassment complaints	
<ul style="list-style-type: none">● Names and contacts of all staff members who handle complaint cases should be listed out.● Both informal and formal complaint handling mechanisms for sexual harassment complaints should be established. If the primary concern of the complainant is to stop the acts of sexual harassment as soon as possible by way of taking informal action (e.g., sending a clear message to the alleged harasser) 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 sexual harassment.● Schools may consider using a flow chart to clearly indicate each step of the procedure.● If the complainant or alleged harasser 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.● If a panel is formed in school to handle the sexual harassment complaint, it should be composed of almost equal number of members of both sexes.● If necessary, the complainant and the alleged harasser should avoid contact, in particular, private contact, during the period of investigation.● If necessary, support and counseling are offered to the complainant (if the complainant is a student, support and counseling can also be offered to the student and his/her parents).	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



<ul style="list-style-type: none">• Taking into account the age, the education level of and the distress suffered by the complainant after the sexual 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 harasser 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 harasser.• If one party does not accept the investigation result, as a principle of natural justice, appeals to senior level of school management should be allowed.• Sexual harassment acts may also amount to criminal offences such as indecent assault, distribute and display indecent and obscene articles. The school may consider referring those cases to the police.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9. Time bar for lodging a complaint	
<ul style="list-style-type: none">• There is a time bar for lodging a complaint with the EOC or to take legal action. If the person who is sexually 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.	<input type="checkbox"/> <input type="checkbox"/>



10. Punishment	
<ul style="list-style-type: none"><li data-bbox="129 282 1284 600">• The policy should state the specific disciplinary measures to which sexual harassment acts could lead and what the maximum penalty is, for instance, making apologies, attending counseling sessions, paying compensation, being 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.<li data-bbox="129 622 1284 723">• If the case involves any students, the students and their parents should be informed of all the related regulations and disciplinary measures.	<input data-bbox="1350 297 1390 342" type="checkbox"/> <input data-bbox="1350 640 1390 685" type="checkbox"/>
11. Measures for prevention of sexual harassment	
<ul style="list-style-type: none"><li data-bbox="129 846 1284 1048">• Promulgation of policy: schools should promulgate the policy to all students, parents and staff members on a regular basis. The sexual harassment policy should be distributed and explained to all new students and staff members (including the supply teachers).<li data-bbox="129 1081 1284 1653">• Accessible information: the policy should be uploaded to the school intranet and school website (contract service providers and external parties may not be authorized to have access to the school intranet) so that students and staff members can have access to the policy at any time. Notices of the policy are also prominently posted on campus for all students and staff members (in particular members who have no access to computer in school) to inform them of the policy, the way to get a copy of it, and the channels to lodge a complaint. All service providers and external parties should know that there is zero-tolerance to any sexual harassment acts and should be provided with the relevant information.<li data-bbox="129 1686 1284 1843">• Regular review: the review period for the policy and measures is specifically set at a regular interval, instead of generically saying "regular" review would be conducted.	<input data-bbox="1350 862 1390 907" type="checkbox"/> <input data-bbox="1350 1099 1390 1144" type="checkbox"/> <input data-bbox="1350 1709 1390 1753" type="checkbox"/>



<ul style="list-style-type: none">● Regular training: set specific targets (such as number of people and/or regular period of time) for training and education programmes on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment for students and staff members.● Elimination of offensive articles or information: all articles that may possibly lead to sexual harassment and preventing any improper use of computer technology are cleared in order to prevent sexual harassment.● Designate staff members to implement the measures: staff members of particular positions in school are designated to implement specific measures for the prevention of sexual harassment. A clear lineation of responsibility can ensure proper implementation of the policy.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
12. Related resources	
<ul style="list-style-type: none">● Information related to sexual harassment may be listed out, for instance, links to sexual discrimination information and on-line training modules of the EOC and schools, and the videos or articles of sexual harassment talks or workshops organized by Non-Government Organisations, news reports, researches and studies on sexual harassment, and related websites of universities, etc.● References may be made to question 19 in <i>Questions & Answers on Preventing Sexual Harassment in Schools</i> on training / support. Schools may also take notice of the EOC's Sexual Harassment On-line Resource Centre and the training course and related information provided by the EDB.	<input type="checkbox"/> <input type="checkbox"/>



III. Implementation of sexual harassment policy

Developing a sexual harassment policy in schools is the first step to prevent sexual harassment. Schools should adopt other corresponding measures to implement the policy; otherwise, it will just be empty talk. The following questions may remind the school management to be aware of the progress of policy implementation in schools:

1. Has the sexual harassment policy been reviewed or amended ever since its development and promulgation?
2. When was the last review of the school sexual harassment policy conducted?
3. Do all staff members, students, supply teachers, new students and staff members know about the school sexual harassment policy?
4. When was the last training conducted for students on sexual harassment or gender equality?
5. When was the last training conducted for staff members on handling sexual harassment?
6. As a policy maker, when did you receive your last training related to sexual harassment?

— End —

Disclaimer:

This publication 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.