

Reference Materials:

Develop an Anti-Sexual Harassment Policy for Your School

1. Introduction

Sexual harassment is an issue that every sector of society faces, schools are no exception to this challenge. The social and economic costs of sexual harassment are tremendous. Apart from sexual harassment being a personal liability, the school, being the employer of the staff concerned, may also be vicariously liable. The Equal Opportunities Commission (EOC), therefore, believes that taking a proactive approach, such as creating a clear guideline to prevent and address sexual harassment is more effective. In addition, it can help to shape a safe, open and accountable organisational culture.

Under the Sex Discrimination Ordinance (SDO), it is the responsibility of schools to provide their students, staff, volunteers, interns, contract workers, service providers and agents with a sexual harassment-free work and study environment.

Although some parts of an anti-sexual harassment (ASH) policy, for example, the legal definition of sexual harassment, are standardised, many particulars should be tailor-made, subject to the needs and resources of individual schools. Through the development process, staff who draft the policy will be able to acquire a deeper understanding of sexual harassment. Ideally, engaging stakeholders such as the student union and teacher representatives during drafting would also enhance the legitimacy of the policy

While there is no “one-size-fits-all” policy, the EOC has compiled below some key elements your school should consider including in your ASH policies.

2. Framework for an Anti-Sexual Harassment Policy

Regardless of the shape and size of the ASH policy in your school, the checklist below can assist you in evaluating and making further improvements.

(a) Principle: Zero Tolerance for Sexual Harassment

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| <ul style="list-style-type: none"> • Your 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 in your school, 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 file a complaint. The determination of the school to eliminate and prevent sexual harassment should be conveyed. Sexual harassment will not be tolerated in the school. | <input type="checkbox"/> |
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(b) Legal Definition of Sexual Harassment

<ul style="list-style-type: none">Your policy should explain the meaning of sexual harassment in plain and simple language. For instance, sexual harassment means a person makes 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 that person finds his / her work or study environment sexually hostile or intimidating.	<input type="checkbox"/>
<ul style="list-style-type: none">Section 2(5) of the Sex Discrimination Ordinance (SDO) defines of sexual harassment. In addition, sections 2(7), 2(8), 9, 23, 23A, 24, 39, 39A and 40 are also provisions concerning sexual harassment. Spell out the specific provisions that relate to your school. Under the SDO, the legal definition of sexual harassment is:<ul style="list-style-type: none">a) If any person<ul style="list-style-type: none">(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, 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; orb) The person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.	<input type="checkbox"/>
<ul style="list-style-type: none">The SDO renders sexual harassment unlawful in education, employment, and provision of goods, facilities or services.	<input type="checkbox"/>
<ul style="list-style-type: none">The amendments of SDO in the year 2020 expand the scope of protection to prohibit sexual harassment between workplace participants at a place where they both work or attend. Section 23A(2) stipulates that a workplace participant means: an employee, an employer, a contract worker, the principal of a contract worker or a commission agent, a commission agent, a partner in a firm, an intern, or a volunteer.	<input type="checkbox"/>



(c) Clarification of Common Myths

<ul style="list-style-type: none">• Regardless of gender: Your 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 persons of the same sex.	<input type="checkbox"/>
<ul style="list-style-type: none">• Intention is irrelevant: Your 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.	<input type="checkbox"/>
<ul style="list-style-type: none">• Single incident: Your policy should state that a single incident may also amount to sexual harassment.	<input type="checkbox"/>
<ul style="list-style-type: none">• Power relationship: Although sexual harassment incidents are usually related to a power relationship, i.e. the powerful harasses the weak. It is also possible for a person weaker in power harasses a more powerful person, e.g. a student harasses a teacher, or a student harasses a fellow student. Under such circumstances, the act amounts to unlawful sexual harassment should be addressed and handled by the school in a proper manner.	<input type="checkbox"/>

(d) Examples of Sexual Harassment

<ul style="list-style-type: none">• It may not be easy for the general public to grasp the legal definition of sexual harassment. Therefore, it is useful for your policy to provide examples to illustrate the concept in the guideline. References are available on the EOC's website, COMPASS – the EOC's ASH Resource Platform: https://www.eoc.org.hk/COMPASS/en/faq-for-schools-and-educators/.	<input type="checkbox"/>
<ul style="list-style-type: none">• As long as the relationship between perpetrators and victims is within the applicable fields under the SDO (e.g. between teachers and students), sexual harassment is unlawful regardless of the social settings, including face-to-face and online environments. For example, making sexually suggestive jokes by means of text messages and questioning a person's sex life in person.	<input type="checkbox"/>



(e) Objectives and Responsibilities of Your School

The objectives of an ASH policy should be listed so that all school parties have a clear understanding of the objectives. The objectives also set a direction for the future development of specific measures.

The objectives of an ASH policy and the liability of school include but are not limited to:

<ul style="list-style-type: none">Ensuring all students and staff (including prospective students and staff) and other persons who provide services to school (including volunteers, interns, contract workers, service providers and agents) can study, work, conduct extra-curricular activities or provide/have access to services in a safe and sexually hostile-free environment.	<input type="checkbox"/>
<ul style="list-style-type: none">Informing all students and staff, through effective means, the ASH policy and the channels to file complaints.	<input type="checkbox"/>
<ul style="list-style-type: none">Providing appropriate training to students and staff to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others.	<input type="checkbox"/>
<ul style="list-style-type: none">Setting up effective and user-friendly channels for filing complaints, which should be sensitive to the circumstances and needs of complainants.	<input type="checkbox"/>
<ul style="list-style-type: none">Handling complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner.	<input type="checkbox"/>
<ul style="list-style-type: none">Ensuring that nobody will be punished because of filing a complaint in good faith.	<input type="checkbox"/>

(f) Obligation and Responsibilities of All Staff and Students

<ul style="list-style-type: none">Your policy should clearly state that all staff and students are obliged and responsible for preventing and eliminating sexual harassment, including respecting the will and feelings of others, refusing to tolerate any sexual harassment behaviour, and supporting co-workers/students to take reasonable steps to stop sexual harassment.	<input type="checkbox"/>
<ul style="list-style-type: none">Your policy should clearly state that any student/staff can file a complaint with the panel/staff responsible for handling sexual harassment complaints if that student/staff witnessed any other student/staff had committed any sexually harassing act or was sexually harassed. Both the complainant and the witness are protected under the SDO (please refer to items (g) and (h)).	<input type="checkbox"/>



(g) Rights of Victims and Actions to be Taken

<ul style="list-style-type: none">• Every person has the right to file a sexual harassment complaint.	<input type="checkbox"/>
<ul style="list-style-type: none">• When a person is sexually harassed, your policy should advise the person to take the following action(s):<ul style="list-style-type: none">○ Speak up. Tell the harasser that his/her act is unwelcome and should stop immediately.○ Keep a written record of the incident, including the date, time, location, witnesses and nature (what the harasser has said or done), and his/her own response.○ Tell someone he/she trusts and ask for emotional support and advice.○ File a formal or informal complaint to the school principal or the teacher-in-charge.○ File a complaint with the EOC. In case conciliation fails, the complainant may seek legal assistance from the EOC. Complaints can be submitted to the EOC in various ways: https://www.eoc.org.hk/en/enquiries-and-complaints/complaints/how-to-make-a-complaint.○ File a complaint with the EDB.○ Consult a lawyer, report to the police (if the acts may amount to criminal offences) or file a civil law suit in the District Court.	<input type="checkbox"/>
<ul style="list-style-type: none">• Your policy should clearly state that the internal complaint handling procedure does not affect the complainant's filing complaints with the EOC, reporting to the police or filing a lawsuit in the District Court.	<input type="checkbox"/>

(h) Protection and Support to Complainants and Bystanders

<ul style="list-style-type: none">• Complainants and witnesses should be informed about their rights and victimisation under the Sex Discrimination Ordinance and the type of support they will possibly receive from your school.	<input type="checkbox"/>
<ul style="list-style-type: none">• Your school should include bystander intervention strategies as part of a comprehensive policy, for instance, bystander intervention training in the ASH training or briefing, to address misconduct and provide bystanders with the tools they need to support the complainants. The implementation and normalisation of bystander intervention strategies will also send an important message to complainants that they are not alone and to harassers that they will be watched.	<input type="checkbox"/>



3. 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: Assure all students and staff that all information and records related to a sexual harassment complaint will be kept confidential and only be disclosed to relevant staff on a need-to-know basis. Under the principle of natural justice, the alleged harasser 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 from the sexual harassment complaint case.	<input type="checkbox"/>
<ul style="list-style-type: none">• Transparent procedures: Your school 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, volunteers, interns, service users and other workers in the school. For complaints involving students, the schools should ensure that 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 victimisation e.g., being treated less favourably, including being retaliated (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 who handles the enquiry/complaint case is closely related to the complainant or the alleged harasser (for instance, being 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 make enquiries or to conduct investigations. If the anonymous complaint involves a minor or a person with disability, the decision to follow up with the complaint or not should be made more carefully.	<input type="checkbox"/>
<ul style="list-style-type: none">• Avoid further distressing the complainant: Empathise the complainants by making appropriate administrative adjustments. For instance, documenting information thoroughly to avoid asking the complainant to repeat the unpleasant experience to different parties, respecting the complainant's preference in appointing investigators of the same sex to conduct the interview, etc. Complaint cases should be handled discreetly to avoid distressing other related parties.	<input type="checkbox"/>



4. Mechanism for Handling Sexual Harassment Complaints

<ul style="list-style-type: none">Names and contact details of persons who handle complaints should be listed and published.	<input type="checkbox"/>
<ul style="list-style-type: none">Both informal and formal complaint handling mechanisms for sexual harassment should be established.	<input type="checkbox"/>
<ul style="list-style-type: none">Before deciding on using formal or informal handling mechanisms to resolve the conflict, the complainant should be informed of the difference in purposes, procedures and possible results.	<input type="checkbox"/>
<ul style="list-style-type: none">The complainant should be allowed to ask the designated person to handle the complaint using the formal handling mechanism when he/she finds the informal process has failed to effectively resolve the issue.	<input type="checkbox"/>
<ul style="list-style-type: none">Sexual harassment acts may also amount to criminal offences such as indecent assault, distribution or display of indecent and obscene articles. The school may consider referring those cases to the police.	<input type="checkbox"/>
<ul style="list-style-type: none">If necessary, support including but not limited to rearrangement of duties or leave and psychological support services provided by the school or third parties to the complainant.	<input type="checkbox"/>
<ul style="list-style-type: none">Age, education level, potential disability status, and communication barriers of the complainant should be taken into consideration. Due to the psychological and physical trauma the sexual harassment incident might have caused the complainant, the school should allow the complainant to file a complaint through either a formal or informal channel.	<input type="checkbox"/>
<ul style="list-style-type: none">If a case proceeds to conciliation, the person to be in charge of the conciliation process should be agreed by both the complainant and the alleged harasser. The mutually agreed settlement agreement, for instance, the need for making apologies and paying compensation, should be documented.	<input type="checkbox"/>
<ul style="list-style-type: none">Your school may consider using a flow chart to clearly indicate each step of the procedure for both the complainant and the person(s) handling complaints.	<input type="checkbox"/>



<ul style="list-style-type: none">If necessary, your school should offer psychological support to the complainant (if the complainant is a student, support can also be offered to both the student and his/her parents).	<input type="checkbox"/>
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(a) Informal Handling Mechanism

<ul style="list-style-type: none">This complaint mechanism is suitable for handling single or relatively minor sexual harassment incidents. It is a quicker way to solve a problem. It focuses on resolving the conflict and stopping the act of alleged sexual harassment and it does not involve an investigation.	<input type="checkbox"/>
<ul style="list-style-type: none">An informal mechanism may include the complainant seeking the advice from the designated person(s) handling sexual harassment complaints and then dealing with the situation himself or herself with the advice given. The complainant may also ask the designated person(s) to speak to the harasser(s) for them. The person-in-charge of complaint handling may talk to the other party about the matter, ask the other party to stop doing the act, and reaffirm the agency's policy on zero-tolerance of sexual harassment.	<input type="checkbox"/>
<ul style="list-style-type: none">Downside of this handling mechanism is that it is harder to monitor complaints process and outcome may be lost unless documented. The power dynamics between the parties may also affect the effectiveness of this mechanism. In addition, the alleged harasser may also feel that they have been treated unfairly as they have no chance to put the record straight.	<input type="checkbox"/>

(b) Formal Handling Mechanism

<ul style="list-style-type: none">This handling mechanism is for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the conflict between the two parties cannot be resolved using an informal mechanism.	<input type="checkbox"/>
<ul style="list-style-type: none">A formal mechanism involves an investigation. The complainant will be formally interviewed. The alleged harasser will be informed about the complaint and be given the opportunity to respond to the allegation. Witnesses, if any, may also be interviewed. It also involves making a finding on the balance of probabilities, for example, is it more likely than not that sexual harassment has occurred.	<input type="checkbox"/>
<ul style="list-style-type: none">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.	<input type="checkbox"/>
<ul style="list-style-type: none">If a panel is formed to handle the sexual harassment complaint, it should be composed of an almost equal number of members of both sexes.	<input type="checkbox"/>
<ul style="list-style-type: none">The interviews and the statements of both the complainant and the alleged harasser should be documented under formal handling process.	<input type="checkbox"/>



<ul style="list-style-type: none">• If necessary, arrangements should be made to avoid the complainant and the alleged harasser from getting into unnecessary contact, in particular, private contact, during the period of investigation.	<input type="checkbox"/>
<ul style="list-style-type: none">• A written report should be prepared to give a written account of the investigation outcome, disciplinary actions (if any) and the considerations behind both the complainant and the alleged harasser.	<input type="checkbox"/>
<ul style="list-style-type: none">• If one party does not accept the investigation result, as a principle of natural justice, appeals to the senior level of school management should be allowed.	<input type="checkbox"/>

5. Time Bar for Filing a Complaint

<ul style="list-style-type: none">• Having considered that any delay might cause difficulty to the investigation and the collection of information, your school can set a time bar for filing complaints. However, the time bar should be reasonable and also take into account that the victim may postpone filing 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, your school may specify that delayed complaints with justifiable reasons would be handled at the school's own discretion.	<input type="checkbox"/>
<ul style="list-style-type: none">• Inform the complainant that if he/she intends to file 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 24 months after the incident occurred.	<input type="checkbox"/>

6. Disciplinary Action

<ul style="list-style-type: none">• Your policy should state the specific disciplinary measures to which sexual harassment acts could lead and what the maximum penalty is, for instance, verbal or written warning, attending counselling sessions/ASH training, being dismissed or expelled, etc. Actions that may be taken by your school should also be stated. For example, if the case involves criminal offences, your school will report it to the police. On top of the aforementioned disciplinary action, the two parties may include other terms in their mutually agreed settlement agreement after conciliation (if they choose to settle the matter through conciliation), for instance, making apologies and paying compensation.	<input type="checkbox"/>
<ul style="list-style-type: none">• If the case involves any students, the students and their parents should be informed of all the related regulations and disciplinary measures.	<input type="checkbox"/>



7. Measures to Prevent Sexual Harassment

<ul style="list-style-type: none">• Promulgation of policy: Your school should promulgate the policy to all students, parents and staff on a regular basis. The ASH policy should be distributed and explained to all new students, staff, volunteers, interns, contract service providers, etc.	<input type="checkbox"/>
<ul style="list-style-type: none">• Accessible information: Your policy should be uploaded to both the school's intranet and internet websites so that students and staff, as well as external parties such as contract service providers and volunteers, 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 (especially members who have no access to a computer in school) to inform them of the policy, the way to get a copy of it, and the channels to file a complaint. All service providers and external parties should know that the school has zero-tolerance for any sexual harassment acts and should be provided with the relevant information.	<input type="checkbox"/>
<ul style="list-style-type: none">• Regular review: It is better to mention a specific review period for the policy and measures, for example, once a year. In addition, review the policy after each investigation of a complaint case to see if a revision is needed. Last but not least, further study your school environment to understand if there are any unwritten ways in which the school operates that may create a sexually hostile environment, and make changes to avoid potential problems occurring.	<input type="checkbox"/>
<ul style="list-style-type: none">• Regular training: Set specific targets (such as, during orientation for every new joiner, every year for existing students and staff) for circulating the policy, providing training and education programmes on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment for management, employees, students, volunteers, contract service providers, etc. and also arranging relevant persons to receive training on how to handle sexual harassment complaints.	<input type="checkbox"/>
<ul style="list-style-type: none">• Elimination of offensive articles or information: Your school should clear all articles that may possibly lead to sexual harassment and prevent any improper use of computer technology or social media in school, in order to prevent sexual harassment.	<input type="checkbox"/>
<ul style="list-style-type: none">• Designate staff to implement the measures: Employees of particular positions in schools 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"/>



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| <ul style="list-style-type: none">• Development of Code of Ethics: Your school should develop a Code of Ethics which includes information on ASH for all employees and workers. | <input type="checkbox"/> |
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8. Related Resources

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| <ul style="list-style-type: none">• Your school may list information related to sexual harassment in the policy, for instance, COMPASS – the EOC's ASH Resource Platform (https://www.eoc.org.hk/COMPASS), related articles, etc. | <input type="checkbox"/> |
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9. Guiding Questions for Implementing an Anti-Sexual Harassment Policy for Your School

Developing an ASH policy for your school is the first step to preventing sexual harassment. Your school should adopt other corresponding measures to implement the policy; otherwise, it will merely be an empty talk. The following questions may remind you about tracking the progress of policy implementation:

- a) Has the sexual harassment policy been reviewed or amended ever since its development and promulgation?
- b) When did your school conduct the last review on its ASH policy?
- c) Do all the new and existing staff, students, supply teachers, interns, volunteers and other related workers know about your school's ASH policy?
- d) When was the last time your school offered an ASH and/or gender equality training for the students and staff?
- e) When was the last time your school arranged a training session for staff on handling sexual harassment?
- f) As a policymaker, when did you receive your last ASH training?

— End —

Disclaimer

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