

《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



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

《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

2023年3月

March 2023

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
EQUAL OPPORTUNITIES COMMISSION

香港黃竹坑香葉道41號16樓

6/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong

電話 Tel: 2511 8211

網址 Website: www.eoc.org.hk

傳真 Fax: 2511 8142

電訊 Email: eoc@eoc.org.hk (供一查詢 For general enquiries)

短訊查詢服務 SMS Enquiry Service: 6972566616538

(供聽障/有語言障礙人士使用 For people with hearing impairment/speech difficulties)