

## **Questions & Answers on Preventing Sexual Harassment in Schools**

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### **(A) Interpretation of Sexual Harassment**

#### **Q.1 What is meant by “sexual harassment”?**

A.1 According to the Sex Discrimination Ordinance (SDO), the legal definition of “sexual harassment” includes the following situations:

- (a) any person
  - (i) makes unwelcome sexual advances, or unwelcome request for sexual favors, to another person; or
  - (ii) engages in other unwelcome conduct of a sexual nature in relation to that other 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, either alone or together with other persons, engages in a conduct of a sexual nature which creates a hostile or intimidating environment for another person.

The SDO and the sections related to sexual harassment are applicable to both men and women. Under the SDO, it is unlawful to sexually harass persons of

the opposite sex, as well as, of the same-sex. Section 2(5) of the SDO defines sexual harassment while sections 2(7), 2(8), 9, 23 and 39 of the SDO are the related sections.

**Q.2 What is a sexually hostile or intimidating environment for students in the educational setting?**

A.2 It refers to any unwelcome conduct of a sexual nature that interferes with the performance or affects the enjoyment of students in their learning environment. The behavior does not need to be directly or consciously targeted at an individual student. Examples of this form of sexual harassment include but not limited to the display of explicit or pornographic materials, sexual banter, crude conversation, and sexually offensive jokes or activities.

**Q.3 What is not sexual harassment?**

A.3 Interaction of a sexual nature, flirtation, attraction or friendship which is invited, mutual, consensual and reciprocated is not sexual harassment.

**Q.4 In what forms does sexual harassment usually take place?**

A.4 Sexual harassment can involve physical, visual, verbal or non-verbal conduct of a sexual nature which is uninvited and unwelcome.

**Q.5 If an allegation involves only a single incident, can it amount to sexual harassment?**

A.5 The unwelcome behaviour needs not be repeated or continuous. A single incident can also amount to sexual harassment.

**(B) Examples of Sexual Harassment**

**Q.6 What are sexual harassment acts?**

A.6 The following are some examples of sexual harassment acts:

- Uninvited physical contact or gestures

- Unwelcome requests for sex
- Sexual comments or jokes
- Intrusive questions or insinuations of a sexual nature about a person's private life
- Displays of offensive or pornographic material such as posters, pinups, cartoons, graffiti or calendars
- Unwanted invitations
- Offensive communications of a sexual nature (letters, phone calls, faxes, e-mail messages, etc.)
- Staring or leering at a person or at parts of his/her body
- Unwelcome physical contact such as massaging a person without invitation or deliberately brushing up against him/her
- Touching or fiddling with a person's clothing e.g. lifting up skirts or shirts, or putting hands in a person's pocket

**Q.7 What are the scenarios of creating a hostile or intimidating environment in schools?**

A.7 The following are some scenarios of creating a hostile or intimidating environment in schools:

- Anyone uses sexually suggestive cartoons in teaching a subject not related to sex.
- During recess and/or lunch time, a group of students hanging out in the playground and rate female students who are playing/ chatting/ staying there. As a result, some of the female students avoid staying in the playground.
- In the staff room where there are both female and male colleagues, some colleagues display nude pictures as screen savers on the computer; or some like to exchange obscene jokes with each other in the presence of other colleagues of the opposite sex.
- Staff members make sexual jokes or discuss their sex lives within earshot of other staff/ students on the school premises.

- A group of students hijack classroom discussion and turn it to sexual topics. Students of the opposite sex feel offended and do not want to join the discussion.

### **(C) Liabilities**

#### **Q.8 What liability would an individual bear if he/she commits sexual harassment?**

A.8 Sexual harassment, which is an unlawful act, would entail civil liability. Some behaviour (such as indecent assault, stalking, crank calling, etc.) would also bear criminal consequences at the same time. Students and staff, voluntary helpers, contract workers/ service providers/ agents of a school are personally liable under the law for their own acts of sexual harassment. Personal liability may also be incurred if a person presses/ instructs someone to sexually harass another, or knowingly aids another in sexual harassment (e.g. joining someone in telling obscene jokes).

#### **Q.9 What is the liability of schools as employers in case sexual harassment occurs in educational settings?**

A.9 Schools must take “reasonably practicable steps” to prevent sexual harassment; otherwise, they might be held vicariously liable for the unlawful acts of sexual harassment committed by employees in the course of their employment, even if the schools are not aware of the sexual harassment incidents.

#### **Q.10 What are “reasonably practicable steps”? What steps should schools take to avoid the possible liability?**

A.10 “Reasonably practicable steps” are not defined in the SDO and are determined on a case by case basis. The situation of each school varies in terms of its scale, resources and mode of human resources management. Thus, what is reasonable for one school may not be reasonable for another one. In

principle, “reasonably practicable steps” should include formulating and promoting a policy on preventing sexual harassment, and organizing seminars and training activities to raise the awareness of students, parents, staff, voluntary helpers and contract workers/ service providers/ agents, etc. on preventing sexual harassment. In other words, apart from formulating a school policy on preventing sexual harassment, schools should develop a comprehensive complaint mechanism to handle such cases. In addition, education, training workshops and support for staff and students should be provided to promote gender equality, in order to create a gender-friendly environment and a supportive school culture to prevent sexual harassment. It is the responsibility of the school to demonstrate that preventive measures have been actively implemented to avoid liability when sexual harassment occurs.

**Q.11 What is the liability of schools in case students contravene the SDO?**

A.11 In general, a school would not be held vicariously liable for unlawful acts committed by students since they are not employees or agents of the school. Nevertheless, a school may incur direct liability under some circumstances. For example, if a complaint of sexual harassment is received alleging student(s) organize/ participate in an extra-curricular activity has/have committed an act of sexual harassment, but the school takes no remedial actions and continues to allow the students to engage in the alleged unlawful activity held on school premises, arguably the school, together with these students, are engaging in a conduct which creates a sexually hostile or intimidating environment for other students. It is a form of sexual harassment prohibited under the SDO.

**Q.12 What is the liability of schools if students are sexually harassed by an external body (say coaches in extra-curricular activities)?**

A.12 If the coach is hired or arranged to be hired by the school to carry out the extra-curricular activity as an “agent”, the school concerned would become a

“principal” under the circumstances. If no reasonably practicable steps (e.g. notify the coach either in writing or verbally that sexual harassment is prohibited and would not be tolerated) have been taken to prevent sexual harassment from occurring, the school might still be vicariously liable for the unlawful act as the principal. In this connection, once the relationship of agent and principal is established, the schools concerned should take reasonably practicable steps to prevent sexual harassment from occurring.

#### **(D) Formulation of a School Policy**

**Q.13 Should schools consult any parties/ stakeholders in formulating a school policy on preventing sexual harassment?**

A.13 To show school’s concern of and its commitment to dealing with sexual harassment, the school management committee/ incorporated management committee should consult parents, teachers and other staff when formulating a comprehensive policy with a view to making the policy open and transparent. Also, in the process of consultation, the relevant parties can have a deeper understanding of the underlying principles and importance of the school policy. The school can also enhance stakeholders’ acceptance of the policy.

**Q.14 Would the Equal Opportunities Commission (EOC)/ Education Bureau (EDB) provide any sample of school policy on sexual harassment for schools’ reference?**

A.14 As the backgrounds of schools are different, a school policy adequate for one school may not be adequate for another. Schools should formulate their school-based policy on preventing sexual harassment in accordance with our suggested framework, taking into account their specific situation (including scale, resources, mode of human resources management, etc.). Basically, a school policy must contain school’s concern of and commitment to dealing with sexual harassment, the legal and behavioural definitions of sexual

harassment, channels for lodging a complaint to school (including information of the persons/ teachers-in-charge and their contacts) or a note that the complainant may lodge a complaint directly with EOC or take legal action, a note on observing the principles of confidentiality and victimization related to complaints, a brief description on school's investigation procedures and disciplinary actions in case the complaint is established. Schools may refer to the EOC's Framework for Sexual Harassment Policies in Schools for reference ([attachment](#)).

**Q.15 How should schools implement the policy to prevent sexual harassment? What are the corresponding measures?**

A.15 After formulating the policy, schools should monitor and review the policy periodically to ensure effective implementation and provision of up to date information. Schools should also distribute and promote the policy at regular intervals. At the same time, schools should remove offensive, explicit or pornographic calendars, literature, posters and other materials from the school area, and prevent inappropriate use of computer technology, e.g. e-mail, screen savers and the Internet. Schools should also designate a coordinator to handle complaints of staff and appoint appropriate teachers (e.g. discipline/ counseling and/ or other teachers with appropriate knowledge in investigating and resolving complaints) to handle sexual harassment complaints related to students.

**(E) Promotion and Education**

**Q.16 How can schools raise the understanding and awareness of staff on sexual harassment?**

A.16 To raise the understanding and awareness of staff on sexual harassment, schools should:

- Provide the policy statement and other relevant information on sexual harassment to new staff as a standard part of induction;

- Distribute/restate the policy statement to staff for discussion/ reinforcement at staff meetings at regular intervals;
- include the procedures and guidelines for reporting/ receiving and filing of complaints in the staff handbooks and contracts with service providers;
- post notices to disseminate related information;
- conduct awareness raising sessions for general staff on sexual harassment issues and encourage the persons/ teachers appointed for handling sexual harassment complaints to receive appropriate training to enable sensitive treatment of such cases.

**Q.17 What should schools do to raise the awareness of students and their parents on sexual harassment?**

A.17 Schools should promulgate the school policy, the handling procedures and the related discipline actions on sexual harassment to students and their parents via students' orientation programmes, assemblies, briefing sessions, parent-teacher association, notices, circulars, student handbooks, intranets and seminars, etc. We encourage schools to incorporate the topic of sexual harassment into sex education programmes, class teacher periods and life education lessons/personal growth education, so as to help students develop positive values and attitudes (such as respect and care for others), teach them proper behaviour for coping with interpersonal relationships, arouse their awareness on sexual harassment and remind them to seek help when necessary.

**Q18 How can schools strengthen their work on education and discipline and counselling to prevent the occurrence of sexual harassment?**

A18 Schools should arrange counselling activities according to the personal and social developmental needs of students to develop students' positive values and attitudes, such as messages about gender equity and respect for others. When students have developed a certain level of awareness and understanding of these values and messages cognitively and emotionally, they

will be able to think critically, analyze challenging situations, solve problems, make appropriate reactions and build equal and mutually respecting relationship with others. All these help to prevent acts of sexual harassment.

## **(F) Training/ Support**

### **Q.19 What types of training activities/ support can EOC offer to raise the understanding of sexual harassment among school staff and students?**

A.19

- In order to effectively disseminate the message of preventing sexual harassment in secondary and primary schools, EOC has commissioned a professional drama group to stage drama performances in schools on this issue. Schools may contact the drama group “Forest Union” at 2404 7288 or forestunionxp@yahoo.com.hk for arranging drama performances on the topic of sexual harassment.
- EOC launches an on-line self-learning training module on sexual harassment at <http://www.eoc.org.hk:8080/shoncampus> to enhance teachers and students’ understanding of sexual harassment.
- Free talks and consultancy services are provided by EOC (Details are available at <http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=Our%20service> ).
- Apart from organizing free talks on the four anti-discrimination ordinances, EOC will provide customized fee-charging training workshops on understanding and preventing sexual harassment for school teachers and staff on request. Schools may dial 2106 2155 for further details.
- Schools may browse the EOC’s website at <http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?leaf=1&content=Sex%20Discrimination%20Ordinance%20and%20I> for further details of the above activities and the leaflets on the SDO.

**Q.20 Are there any training courses on preventing sexual harassment provided by EDB?**

A.20 EDB will organize training programmes on sex education for serving principals and teachers from time to time. Details and registration will be uploaded onto the Training Calendar on EDB homepage at <https://tcs.edb.gov.hk/tcs/publicCalendar/start.htm?deskLang=zh>

### **(G) Handling Sexual Harassment Complaints**

**Q.21 What are the rights of persons who are subjected to sexual harassment?**

A.21 If a person feels being harassed in school, he/she can complain to the school or to EOC. EOC will investigate the complaint and endeavour to settle it by conciliation. If conciliation is not successful, the complainant can apply to EOC for legal assistance.

**Q.22 What should a person do if he/she feels being sexually harassed?**

A.22 If a person feels being sexually harassed, he/she may adopt the following informal or formal approaches/ strategies:

- Speak up at the time. Tell the harasser that his/her behaviour is unwanted and has to stop.
- Tell someone he/she trusts, such as his/her teacher/ colleagues/ co-workers, for emotional support and advice.
- Keep a written record of the incidents, including the dates, time, location and witnesses and own response.
- Lodge a formal complaint to the school principal or his/her designate or the teacher-in-charge.
- Lodge a complaint with EOC and request investigation and/or conciliation.
- Report to the police and/or file a civil law suit against the harasser.

**Q.23 How should schools arrange conciliation upon receiving a complaint on sexual harassment?**

A.23 The purpose of conciliation is to help the parties involved work out a mutually acceptable resolution, eliminate misunderstanding and settle disputes with the assistance of an impartial third party. Conciliation should be voluntary. Depending on the nature of individual complaints, schools should first consider arranging conciliation. In the process of investigation and arranging conciliation, schools must keep an open and fair manner to ensure that the complainant and the alleged harasser are treated fairly.

**Q.24 What should schools pay attention to when handling sexual harassment complaints?**

A.24 The followings are the basic principles in handling sexual harassment complaints:

- The way that complaints will be handled should be documented in the school policy, or in a separate complaint procedure.
- All information and records related to a complaint of sexual harassment must be confidential and only be circulated to relevant staff on a need-to-know basis.
- Complaints should be handled promptly to ensure that they are quickly resolved.
- Complainants should be protected against victimization (which in itself is an unlawful act of discrimination under section 9 of the SDO) and all parties involved should be treated fairly.
- In the process of handling a complaint, schools should avoid causing unnecessarily further distress and humiliations for the complainant.
- Care should be taken in handling complaints so as not to cause unnecessary distress to other people involved.
- Schools should handle cases of suspected sexual harassment for students or young children in discreet. Whether the complaints are anonymous or not, schools may need to conduct investigation.

- Schools should incorporate the handling procedures related to sexual harassment complaints in their school-based complaint policy and make them known to all staff and other workers in the school. For complaints involving students, the school should ensure that both the students and parents understand the rules and disciplinary measures.

**Q.25 What are the protections under the SDO for complainants who have made or intend to make a sexual harassment complaint?**

A.25 According to section 9 of the SDO, if a person is subjected to any detriment or threat of detriment because he/she:

- has made, or intends to make, a sexual harassment complaint under the SDO
  - has furnished, or intends to furnish, information or documents in relation to a sexual harassment complaint
  - has appeared, or intends to appear as a witness in a sexual harassment proceedings
  - has reasonably asserted his/her own or another person's rights under the SDO
  - he/she may complain to the school again on the ground of victimization.
- Under the above circumstances, he/she is protected under the law.

**Q.26 What are the major procedures for handling sexual harassment complaints?**

A.26 After receiving a complaint, the school coordinator should take the following major procedures to handle the complaint:

- Activate internal procedures for dealing with complaints of sexual harassment;
- Keep all information and records related to the complaint of sexual harassment confidential;
- Inform the alleged harasser of the details of the allegation(s);

- Tell the complainant and the alleged harasser how the investigation will be conducted and who is responsible for the investigation;
- If necessary, make arrangements to avoid contact between the complainant and the alleged harasser during the investigation;
- Provide support and counseling, where necessary, including providing parents/ students/ staff with information about sexual harassment and clarifying any questions or concerns they may have, e.g., what they should do when they are sexually harassed;
- Interview the complainant; if the complainant is a student, he/she is entitled to be accompanied by their parents or relatives;
- Interview the alleged harasser; if the complainant is a student, he/she is entitled to be accompanied by their parents or relatives;
- Interview or obtain written statements from witnesses in relation to the complaint;
- Study the evidence and make decisions;
- Prepare a written report and inform the relevant parties of the investigation results in writing;
- Seek advice from EOC where necessary;
- Decide whether or not disciplinary measures or other appropriate actions should be taken.

**Q.27 How should schools adhere to the principle of “confidentiality” when handling sexual harassment complaints? Is it appropriate for schools to disclose the details of a complaint to the alleged harasser?**

A.27 All information and records related to a complaint of sexual harassment must only be disclosed to relevant parties on a need-to-know basis. Premised on the principle of natural justice and the fact that the alleged harasser is a key person in the case, it is necessary to inform him/her of the details of the complaint.

**Q.28 What can schools do if they have uncertainty in classifying the suspected case as sexual harassment or other sexually unlawful acts (such as sex abuse)?**

A.28 Schools can consult EOC or other relevant organizations (such as the Police) when they have doubt about the suspected cases. When a suspected child abuse case is found, schools should observe the principles and procedures as stipulated in the Procedural Guide for Handling Child Abuse Cases (Revised 2007) issued by the Social Welfare Department in January 2008 to safeguard the interest of the students and reduce the risk of the students' suffering from abuse. According to the Procedural Guide, if a child is suspected to be sexually abused, the school should consult the Family and Child Protective Services Unit of the Social Welfare Department or the Child Abuse Investigation Unit of the Police and follow appropriate handling procedures. For cases suspected to involve criminal offences, schools should report to the Police.

**Q.29 Is there a time limit for sexual harassment complaint? Should schools set a time limit for handling internal complaints?**

A.29 There are time limits for lodging a complaint to EOC and instigating legal proceedings. If a person who has been sexually harassed wants to lodge a complaint with EOC, he/she should do it within 12 months after the incident has taken place. Any decision to take legal proceedings to the District Court should be made within 2 years after the incident has taken place. Schools may set a reasonable time limit, taking into consideration their individual circumstances and the difficulty in conducting investigation and collecting evidence that may be caused by a delay in handling complaints.

**Q.30 Since sexual harassment is an unlawful act, is it appropriate for schools to handle sexual harassment complaints (including decision on the disciplinary measures on established complaint cases), particularly when some acts may also be amount to criminal offences?**

A.30 Schools have the responsibility to cultivate a sexual-harassment-free working and learning environment. Schools should take reasonably practicable steps to prevent unlawful acts as well as handle sexual harassment complaints properly to safeguard the interest of staff and students. Although sexual harassment is a tort, aggrieved persons may decide to lodge a complaint with EOC or take legal action directly. If the aggrieved person is sexually harassed during the course of his/her employment or in an educational setting, he/she may request the employer or the education establishment to handle the case. If the employer or the education establishment ignores the problem, they may be considered as failing to take “reasonably practicable steps” and vicariously liable for the unlawful acts. If the alleged harasser is a student, apart from taking fair and reasonable disciplinary measures set out in the school policy, more importantly, schools should provide counseling to help students get rid of improper behaviour. Schools should also note that failing to handle complaints seriously and taking disciplinary actions against the offender may be taken as tolerance of sexual harassment in schools. If the school considers that the complaint may involve criminal offences, they should report to the Police as soon as possible.

Equal Opportunities Commission and Education Bureau

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