

**Shun Tak Fraternal Association Leung Kau Kui College**  
**Policy Against Sexual Harassment**

**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.

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).

**Objectives and Responsibilities of the School**

- 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;
- 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.

## **Obligation and Responsibility of All Staff Members and Students**

- 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.
- 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.

## **Definition of Sexual Harassment**

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.

## **Rights of victim and various actions to be taken**

- Every person has a right to lodge a complaint on sexual harassment.
- When a person is sexually harassed, he/she may take the following actions:
  - 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.
- 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.

### **Principles of handling sexual harassment complaints**

- **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.
- **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.
- **Avoid delay:** complaints should be handled promptly because both the complainant and the alleged harasser are under pressure.
- **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.
- **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.
- **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.
- **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.
- **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.

### **Mechanism for handling sexual harassment complaints**

Both informal and formal complaint handling mechanisms for sexual harassment complaints are established in the school.

#### **Informal complaint handling mechanisms**

- 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.
- The informal complaint mechanism is only applicable to complaining a staff below the rank of vice-principal. If the alleged harasser is the principal or one of the vice-principals, formal complaint mechanism should be adopted.
- When a person is sexually harassed, he/she may seek help from the vice-principal confidentially. All complaints should be dealt with confidentially and no records would be made or reported to any other person in the school, unless the complainant agrees to disclose such information.
- Informal complaints would not lead to any investigations or disciplinary actions, but it can facilitate the complainant to resolve the problem himself/herself.
- If the complainant considers that the sexual harassment is a criminal offence (e.g. Sexual Assault), he/she may seek help from the vice-principal. Where necessary, the vice-principal will assist him/her to lodge a complaint with the police or the EOC.

#### **Formal complaint handling mechanisms**

- When it is not possible to resolve problems immediately and satisfactorily via informal means, the complainant may wish to lodge a formal complaint to the principal. If the alleged harasser is the principal, the complainant may lodge a formal complaint to the Incorporated Management Committee (IMC).
- For each allegation/complaint, an investigation team will be appointed by the IMC / principal to conduct mediation or investigation. The primary purpose of the mediation and complaint investigation processes is to deal with the complaint fairly and expeditiously. The team should be composed of almost equal number of members of both sexes, and at least one member of the team should be of the rank of vice-principal or above.
- In the mediation, complaint investigation and appeal processes, files pertaining to a

case shall be kept confidential. However, if there is a criminal investigation or criminal proceedings in court, the school may need to provide necessary information contained in the files. The school may also need to disclose some information to third parties (e.g. in reporting a crime) when there is clearly a risk that the harassing behaviour has created or will create significant harm to the complainant or other persons and where the school needs to intervene because of its own potential liability for failing to do so.

- The interviews and the statements of both the complainant and the alleged harasser should be documented.
- 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 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).
- 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.

### **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 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.

### **Punishment**

- If it is determined that an act of sexual harassment has been committed and the conduct of a staff member or student of the school warrants possible disciplinary action, the school is entitled to invoke the relevant disciplinary procedures and take appropriate disciplinary action against the staff member or student concerned.
- The disciplinary actions applicable to staff members include warning, withholding an annual increment, suspending duties and dismissal; while the disciplinary actions applicable to students include demerit, suspension from class, suspension from school

and expulsion.

- If the case involves any students, the students and their parents should be informed of all the related regulations and disciplinary measures.
- If the case involves criminal offences, the school should report it to the police.

### **Measures for prevention of sexual harassment**

- **Promulgation of policy:** the school should promulgate the policy to all students, parents and staff members on a regular basis (in September every year). The sexual harassment policy should be distributed and explained to all new students and staff members (including the supply teachers).
- **Accessible information:** the policy should be uploaded 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 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.
- **Regular review:** the policy should be reviewed thoroughly once every three years by the board of coordinators and then endorsed by the IMC.
- **Regular training:** a whole school activity should be held at least once in every three years for training and educating teachers and students on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment. Besides, teachers should be trained to handle sexual harassment complaints.
- **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.

### **Related resources**

- Q&As on Preventing Sexual Harassment in Schools  
[http://www.edb.gov.hk/attachment/en/sch-admin/admin/about-sch/sch-sexual-harassment-prevention/Q%20and%20A\\_E%2013-11-2013.pdf](http://www.edb.gov.hk/attachment/en/sch-admin/admin/about-sch/sch-sexual-harassment-prevention/Q%20and%20A_E%2013-11-2013.pdf)
- The EOC's Framework for Sexual Harassment Policies in Schools  
<http://www.eoc.org.hk/eoc/upload/2013116155023361433.pdf>