

Prevention of sexual harassment in school

I. Introduction

Sexual harassment is an unlawful act which is not allowed to occur; if it occurs, everyone in school can lodge complaints, and the school is committed to eliminating and preventing sexual harassment.

II. Definition and Examples of Sexual Harassment

1. What is meant by “sexual harassment”?

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

(a) the person

- (i) makes unwelcome sexual advances, or unwelcome request for sexual favors, to that person; or
- (ii) engages in other unwelcome conduct of a sexual nature in relation to that person; in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated; or

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

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

It refers to any unwelcome sexual conduct that interferes with the performance or affects the enjoyment of students in their learning environment. The behaviour 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.

3. What are sexual harassment acts?

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

4. What are the scenarios of creating a hostile or intimidating environment in schools?

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.

5. What liability would an individual bear if he/she commits sexual harassment?

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).

6. What is the liability of schools as employers in case sexual harassment occurs in educational settings?

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.

III. Measures to prevent Sexual Harassment

1. Promotion and Education

For staff

- conduct awareness raising sessions for general staff on sexual harassment issues in staff meeting.
- include the procedures and guidelines for reporting complaints in staff handbook.
- explain the school policy on sexual harassment to new staff as a standard part of induction.
- encourage teachers, especially those responsible for sex education to attend related training.

For students

- conduct awareness raising sessions on sexual harassment issues in assemblies /form periods.
- the topic of sexual harassment is incorporated into school sex education programmes so as to teach them proper behaviour for coping with interpersonal relationships and remind them to seek help when necessary.

2. Formulation of procedures for handling sexual harassment complaints

- All staff are informed of procedures for handling suspected/reported sexual harassment complaints.

IV. Mechanism for handling sexual harassment complaints

1. A staff member/student should approach a teacher whom he/she trusts or the principal if he/she is being harassed.
2. Teacher(s) who receive such a report should inform the Principal immediately.
3. An adhoc committee will be set up consisting of
 - the Principal
 - teachers of the discipline and counselling team
 - members of the School Council (if appropriate) to investigate the case.
4. The complainant will be informed that he/she has the right to make a written complaint to Equal Opportunities Commission (EOC) (within 12 months after the incident) for investigation and conciliation.
5. When handling the complaint on sexual harassment, the adhoc committee

should observe the following principles:

- a. 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.
 - b. Complaints should be handled promptly to ensure that they are quickly resolved.
 - c. 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.
 - d. In the process of handling a complaint, unnecessarily distress and humiliations for the complainant should be avoided.
 - e. Care should be taken in handling complaints so as not to cause unnecessary distress to other people involved.
 - f. The Committee should handle cases of suspected sexual harassment for students or young children in discreet. Whether the complaints are anonymous or not, investigation should be conducted.
6. The school will provide support and counseling, where necessary, including parents/students/staff with information about sexual harassment and clarifying any questions or concerns they may have.
 7. The adhoc committee will interview the complainant and the alleged harasser as well as witnesses (if any) in relation to the complaint.
 8. The adhoc committee may seek advice from the EOC where necessary.
 9. The adhoc committee will decide whether or not disciplinary measures or other appropriate actions should be taken.
 10. The adhoc committee will prepare a written report and inform the relevant parties of the investigation results.

Adapted from Reference materials from EDB

For details: <http://www.edb.gov.hk/index.aspx?nodeID=7094&langno=1>