

TSUEN WAN PUBLIC HO CHUEN YIU MEMORIAL COLLEGE

POLICY STATEMENT ON SEXUAL HARASSMENT

GENERAL STATEMENT

The School acts to ensure dignity at work and study. Sexual harassment violates the rights, dignity and reputation of the individual, undermines the environment necessary for the advancement of learning, and will not be tolerated.

I. DEFINITION

A person sexually harasses another person if

- (a) the person :
 - (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - (ii) engages in other unwelcome conduct of a sexual nature in relation to the other person (including making a statement of a sexual nature to that person, whether the statement is made orally or in writing),

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other 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 sexually hostile or intimidating work environment for the other person.

The entire record and the totality of circumstances will be considered in determining whether a case constitutes sexual harassment. Some examples of conduct/behaviour which may possibly constitute sexual harassment are set out in Appendix 1 for reference.

II. INFORMAL RESOLUTION

- (a) The earlier sexual harassment is dealt with, the better the chance that it will not lead to a confrontation that is potentially damaging for both parties concerned. When a person feels sexually harassed, he or she may first try to seek an informal resolution. Informal resolution procedures are designed to put a stop to the harassment through private conciliation rather than public sanctions.
- (b) Frequently, all that is needed may be talking directly to the accused, or where necessary, involving a mediator who could be one's supervisor, Vice Principal or Principal (for staff) or who could be a teacher or a counsellor (for students).

These persons, when approached by the complainant, should talk to the complainant and try to establish all the facts of the case. They could provide advice to the complainant on the options available. If the complaint appears to have merit, they could serve as an informal mediator between the complainant and the accused. Sometimes, all that is needed is an explanation that the behaviour is damaging or hurtful, followed by an apology. It is advisable to bring, where possible, the two parties concerned to agree on the future standards of behaviour and conduct, and to point out the consequences of any further harassment.

- (c) Supervisory personnel have the responsibility to ensure that the workplace and educational environment are free of sexual harassment. Whenever behaviour that could constitute sexual harassment is observed, supervisors should not condone it by ignoring it. When such behaviour is known to a supervisor, he or she should counsel the individuals involved in an attempt to reach an informal resolution of the situation.
- (d) All incidents of harassment should be treated with the utmost sensitivity and confidentiality. Where matters cannot be dealt with through informal means, or if the individual concerned believes that only a formal complaint can provide relief, he/she may file a complaint in accordance with the formal complaint procedures. However, in case the allegation of harassment involves severe bodily harm, or may constitute a criminal act, the complainant should be advised to report the case to the police.

III. FORMAL COMPLAINT PROCEDURES

- (a) **Filing a Complaint**

Any individual complaining of sexual harassment may initiate a formal complaint by writing to the Committee on Handling Sexual Harassment via the Principal. All complaints will be taken seriously and processed quickly with appropriate confidentiality, sensitivity and discretion. The Committee is expected to be set up within two weeks of the receipt of a formal complaint. The membership and terms of reference of the Committee are detailed in Appendix 2.
- (b) **Investigation and Fact-finding**

As soon as the Committee is set up, an investigation team made up of two members of the Committee shall conduct a preliminary investigation of the case, which shall include confidential interviews with all persons identified by the complainant as witnesses to the alleged sexual harassment.

(c) Resolution by Mediation

- (i) The investigation team shall offer to facilitate mediation of the dispute in the first instance. It will meet with the person or persons whose behaviour is alleged to constitute sexual harassment to discuss the accusation, the evidence supporting it, and the procedures being followed to address the complaint.
- (ii) If grounds for the complaint are found to exist, the team will propose a settlement with a view to providing a remedy for the complainant. The emphasis in constructing a remedy should be on eliminating the behaviour that is the basis for the complaint, and restoring to the complainant any benefits that were withheld as a result of rejection of this behaviour.
- (iii) If the accused refuses to agree to the proposed remedy; or denies the accusation of sexual harassment, or if the complainant is not satisfied with the outcome of the investigation, the investigation team will refer the case to the Committee and a formal hearing of the case will be conducted.
- (iv) The mediation process should normally take no more than 30 calendar days from the date of set up of the Committee.

(d) Formal Hearing by the Committee

- (i) The Committee should conduct a formal hearing within one month after mediation fails in resolving the complaint. The hearing process is intended to provide a reasonable degree of confidentiality for both the accused and the complainant without the formality of a legal proceeding. The emphasis is on reaching an early resolution in a fair and even-handed manner. Depending on the complexity of each case, it is expected that the formal hearing will normally be completed in two months' time.
- (ii) Both the complainant and the accused shall have the right of:
 - appearing before the Committee;
 - presenting evidence to the Committee;
 - calling witnesses (or requesting the Panel to do so on his/her behalf);
 - and
 - bringing with him/her a colleague/fellow student, who may provide personal support to him/her but shall not speak on his/her behalf, when appearing before the Committee. Each party, and any accompanying colleague/student, shall be reminded of the confidential nature of the proceedings, and the obligation to maintain confidentiality. As the formal hearing procedures are not legal proceedings, legal representation on behalf of either party shall not be allowed.

- (iii) The Committee shall hear testimony from the complainant and the accused, and any witnesses proposed by either of them. In addition, it may call such other witnesses and examine such other evidence as it may deem appropriate.
- (iv) The complainant and the accused shall be given an opportunity to respond to any information or evidence which is brought to the attention of the Panel by either party, or by any third party, during the course of the hearing, and which appears to call for response, clarification or confirmation.

(e) The Committee's Report

On the basis of the hearing, the Committee will submit a report to the Principal within two months of the start of the formal hearing. If the Committee concludes that sexual harassment has occurred, it shall recommend an appropriate remedial action, which could be either one or more of the following actions:

- (i) the accused shall cease the behaviour that is the basis for the complaint;
- (ii) the accused shall refrain from further contact with the complainant, to which end the Committee may recommend that the accused or the complainant be reassigned;
- (iii) the accused shall undergo counselling or treatment; and/or
- (iv) the School shall initiate disciplinary proceedings against the accused.

The complainant and the accused will be informed in writing of the recommendations of the Committee and the decisions of the Principal within two weeks of the making of a recommendation by the Committee.

(f) Appeal

- (i) The complainant and the accused, after being informed of the findings and recommendation of the Committee, may within 30 days, lodge an appeal against the decision of the Committee to the Principal, who may :
 - confirm the decision and remedy ordered by the Committee;
 - confirm the decision, but modify the remedy ordered by the Committee;
 - ask the same Committee to be re-convened to consider the appeal; or
 - ask another Committee to be formed from the staff to re-consider the case.
- (ii) The decision of the Principal shall be final within the School.

- (g) Record

Any activity within the formal complaint procedures will be documented and put on record. The reason for this is to file the case on record in case a complaint comes up against the same person, or if the same victim complains against somebody else.

IV. PROTECTION OF VICTIMS/COMPLAINANTS OF SEXUAL HARASSMENT

- (a) All complaints of sexual harassment will be received with the utmost confidentiality. The School will not tolerate any act or threatened act of intimidation of any kind, whether physical or verbal, being made to the victims/complainants, the accused, the witnesses, or other parties related to the complaints.
- (b) In case of any reported act or threatened act of intimidation made to the victims/complainants, the accused, the witnesses, or other parties related to the complaints, the Committee will carry out a full investigation into the reported act or threatened act of intimidation and, if such act was found to be substantiated, will deal with the matter of intimidation in an appropriate manner including, as and when necessary, the possibility of reporting the matter to the Police.

V. CASES OF FALSE REPORTING OF SEXUAL HARASSMENT

- (a) If the Committee, after due enquiry into a complaint of sexual harassment, decides that the complaint has been made in bad faith or that it is found to be groundless, the Committee would refer the case of false reporting to the Principal, for consideration of the taking of disciplinary action against the complainant.
- (b) Apart from the possibility of taking disciplinary action against the complainant of a false report, the Committee will recommend a full written apology to be made by the complainant to the person wrongfully accused of sexual harassment.

VI. If a complaint is made against the Principal under these Procedures, the powers of the Principal shall be exercised by the Chairperson of Disciplinary Committee of IMC.

VII. The School will keep the above policy and procedures under constant review and staff and students will be consulted during such reviews.

VIII. The internal School procedures do not affect the right to lodge a complaint directly with the Equal Opportunities Commission (EOC) or to take civil action in the District Court of Hong Kong or to make a complaint to the police or other investigating agency.

IX. In case of discrepancies between the English version and Chinese versions, the Chinese version shall prevail.

Examples of Conduct/Behaviour which may Constitute Sexual Harassment

In determining whether any conduct/behaviour constitutes sexual harassment, the entire record and the totality of circumstances will be considered. In general, unsolicited sexual advances, requests for sexual favours, and other verbal, nonverbal, or physical conduct of a sexual nature which are unwelcome by the recipient may constitute sexual harassment when:

- (a) the recipient has reasonable grounds to believe that any aspect of an individual's employment or education experience is made conditional on submission to such conduct, either explicitly or implicitly;
- (b) the employment or education decisions affecting an individual are based on rejection of such conduct; or
- (c) such conduct has the purpose or effect of
 - (i) unreasonably interfering with an individual's work performance or educational experience; or
 - (ii) creating an intimidating, hostile, or offensive working or learning environment.

Aspects of Employment - Aspects of an individual's employment include but are not limited to hiring, retention, substantiation of appointment, crossing of salary bar, promotion, termination, reassignment, salary increase, pay, fringe benefits, workload, opportunities, training and development and working conditions.

Aspects of Educational Experience - Aspects of an individual's educational experience include but are not limited to admission to a class or programme, grades, letters of recommendation, homework, honours, research opportunities, scholarships, use of facilities, probation, termination and classroom conditions.

Some examples of conduct/behaviour which may possibly constitute sexual harassment are set out below for reference :

- (a) Unwelcome sexual advances — e.g. touching, grabbing or deliberately brushing up against another person;
- (b) Unwelcome requests for sexual favours in exchange for preferential treatment — e.g. suggestions that sexual co-operation or the toleration of sexual advances may further an employee's career or help improve a student's academic grades, etc.;
- (c) Unwelcome verbal, non-verbal or physical conduct of a sexual nature — e.g. sexually derogatory or stereotypical remarks or visual presentation in the work place or in the classroom; persistent questioning about a person's sex life; and
- (d) Conduct of a sexual nature that creates a hostile or intimidating environment for work or study — e.g. sexual or obscene jokes, displaying sexist or other sexually offensive pictures or posters

Committee on Handling Sexual Harassment

Membership

To be made up of at least three members appointed by the Principal from amongst the staff. One of them acts as a Convenor.

Terms of Reference

1. To receive a formal written complaint on a matter relating to potential sexual harassment.
2. To conduct investigation and mediation on receipt of the complaint through an investigation team made up of two members.
3. To conduct a formal hearing on the complaint in the event that it cannot be resolved through mediation.
4. To report and make recommendations on the complaint case to the Principal.
5. To maintain a record of the complaint received and handled.