

# **ECF Saint Too Canaan College**

## **Policy Against Sexual Harassment**

### **1 Background and Policy Statement**

- 1.1 The School is committed to ensuring a safe, positive and pleasant environment for students and staff. We do not in any way condone, nor tolerate, any form of sexual harassment.
- 1.2 By clearly stating the School's stance on sexual harassment and putting an appropriate procedure in place, the School aims to cultivate a sense of justice, fairness and openness in the School community in relation to gender equality and the furtherance of mutual respect.
- 1.3 This policy sets out the mechanism for dealing with allegations or complaints of sexual harassment and for providing proper redress if and when harassment occurs.

### **2 Legal Definition of Sexual Harassment**

- 2.1 According to Section 2(5) of the Sex Discrimination Ordinance (Cap. 480, LHK) ("the Ordinance"):
  - a. "A person (howsoever described) sexually harasses a woman if -
    - i. makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or
    - ii. engages in other unwelcome conduct of a sexual nature in relation to her. In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she 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 her."
- 2.2 It should be noted that Section 2(8) of the Ordinance covers sexual harassment of both men and women, and the above definition shall have effect regarding sexual harassment of men with such modifications as are necessary;
- 2.3 Section 23 of the Ordinance further provides that various forms of sexual harassment in the field of employment are unlawful. This will cover a fellow staff member, a contract worker, a commission agent or any person who is seeking to be employed by the School;
- 2.4 Section 39 of the Ordinance applies specifically to educational establishments. In the context of the School, it is unlawful for an employee of the School to sexually harass a person who is a student or a prospective student of the School. In addition, it is unlawful for a student or prospective student of the School to sexually harass any fellow student or prospective student of the School; or to sexually harass any staff of the School.

### 3 Examples of Sexual Harassment

3.1 Sexual harassment includes unwelcome sexual advances, unwelcome requests for sexual favours and other conduct of a sexual nature including physical acts and verbal comments as a result of which a reasonable person would anticipate that the subject of attention would be offended, humiliated or intimidated. Any sex-related language, action or physical contact that is unwelcome may constitute sexual harassment. An intimidating, hostile or offensive working or learning environment will also constitute sexual harassment. Sexual harassment can be through spoken words, emails, letters, phone calls, or the like. Sexual harassment does not have to be intentional or aimed at any particular subject and may be explicit or implicit. Sexual harassment may occur between persons of the same sex or opposite sex. A single incident may be sufficient to constitute sexual harassment.

3.2 The following behaviour is illustrative of, but not limited to, what may be regarded as sexual harassment:

3.2.1 **Unwelcome sexual advances:** e.g. persistent requests for dates, leering or lewd gestures, touching, grabbing or deliberately brushing up against another person;

3.2.2 **Unwelcome requests for sexual favours (Misuse of authority):** e.g. explicit or implicit suggestions that sexual co-operation or the toleration of sexual advances may further a person's career or affect a person's academic results;

3.2.3 **Unwelcome verbal, non-verbal or physical conduct of a sexual nature:** e.g. sexually derogatory or stereotypical remarks; questioning regarding a person's marital status or sex life; and

3.2.4 **Conduct of a sexual nature that creates a hostile or intimidating environment:** e.g. sexual or obscene remarks around the workplace / classrooms / hostels or displaying sexist or other sexually offensive pictures or posters.

### 4 The Mechanism for Handling Complaints

4.1 Any staff member or student of the School who (a) has been sexually harassed by another staff member or student; (b) has witnessed an act of sexual harassment committed by another staff member or student of the School; or (c) has been expressly authorized by a victim to act on his / her behalf of lodging the complaint, can seek for subsequent conciliation or investigation processes through the School's complaint mechanism;

4.2 Where a complaint had been made but the complainant has declined to participate in the normal procedures or a complaint is brought anonymously or brought by third parties not directly involved in the case, the School shall review the case to determine whether a further inquiry into the underlying circumstances is justified. The review shall be conducted jointly by the

Vice-Principal and the Panel Convenor who have full authority to determine whether to conduct a further inquiry;

4.3 For each allegation or complaint, a team of at least two panelists will be appointed by the Principal to conduct conciliation or investigation. The primary purpose of the conciliation and complaint investigation processes is to deal with the complaint fairly and expeditiously;

4.4 In conciliation, complaint investigation and appeal processes, every reasonable effort shall be made to ensure confidentiality and to protect the privacy of all parties in accordance with existing School policies and applicable laws;

4.5 For an allegation that potentially discloses the commission of a criminal offence, the School has the right to report the case to the police for handling;

4.6 When both parties involved in the complaint are students, the School will handle the cases with existing School's complaint mechanism.

## **5 Complaint Investigation Procedure (1): Conciliation**

5.1 Conciliation is a voluntary process, and will be conducted by the Investigation Panel only where both the complainant and the complainee agree to conciliation. No legal rights or remedies are forfeited by entering into conciliation. If the conciliation fails to reach a settlement, the complainant can continue to enforce his / her rights. If a settlement has been reached during the conciliation, the parties may enter into a legally binding agreement to record the terms of the settlement;

5.2 The maximum time for the conduct of conciliation is 40 working days from the receipt of a complaint. The time limit for conciliation may be extended by the Panel Convenor on reasonable grounds and with the agreement of both parties. If the dispute is not resolved by conciliation within this period or either party decides to stop the conciliation, the complainant may pursue the case through formal investigation. In such a case, a written complaint should be filed with the Investigation Panel.

## **6 Complaint Investigation Procedure (2): Investigation**

6.1 Upon receipt of a written complaint, the Investigation Panel will conduct a full and impartial investigation. At least two panelists of different gender shall be appointed by the Principal to investigate a complaint. Under special circumstances, as deemed necessary by the Panel Convenor, a non-staff School Management Committee member or an external member may be invited to join the Investigation Team to assist the process and secure the confidence of the parties;

6.2 The Investigation Panel will submit a written fact-finding report to the Principal. The fact-finding report shall consist of the following:

6.2.1 A statement of the issues under review;

- 6.2.2 The allegation(s) made by the complainant;
  - 6.2.3 The evidence in support of the allegation(s);
  - 6.2.4 The response of the person of whom complaint is made to the allegation(s);
  - 6.2.5 The evidence against the allegation(s);
  - 6.2.6 The finding of facts following the investigation;
  - 6.2.7 A determination as to whether the complaint(s) is established, and recommended course(s) of action.
- 6.3 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. If the School considers that it is appropriate to do so, it may on its own initiative or upon the complainant's written request bypass the conciliation or investigation processes and proceed with disciplinary procedures directly.

## **7 Complaint Investigation Procedure (3): Appeal**

- 7.1 The complainee shall submit his / her written appeal to the Principal within 15 working days after being notified of the decision;
- 7.2 Upon receipt of an appeal, the Principal will establish an Appeal Panel to review the fact-finding report. The Appeal Panel should include a panel of three members who have not had any prior involvement in the case;
- 7.3 The Appeal Panel will review the fact-finding report, take into account the written appeal stated in the complainant and complainee's written submission, and have meetings with the complainant and complainee;
- 7.4 The Appeal Panel will submit the fact-finding report to the Principal;
- 7.5 The decision of the Principal is final and will be conveyed in writing to the complainant and the complainee. The School is entitled to invoke formal disciplinary procedures and take appropriate disciplinary action if a case of sexual harassment is established.

## **8 Policy Review and Further Enquiries**

- 8.1 This policy is implemented in June 2016;
- 8.2 Enquiries about this policy should be directed to the School Administrative Officer.

Date: 22-6-16  
Revision: 1

**ECF Saint Too Canaan College**  
**Ad Hoc Panel for Handling Cases of Sexual Harassment**

- 1 The Ad Hoc Panel shall consist of:
  - 1.1 Teaching staff members of both genders who are of good standing, preferably of different ranks, with one panelist appointed as the Convenor;
  - 1.2 Under special circumstances, as deemed necessary by the Panel Convenor, the following persons may be invited:
    - 1.2.1 A non-staff School Manager to be nominated by the School Management Committee;
    - 1.2.2 External members to be nominated by the School Management Committee.
  
- 2 The responsibilities of the Ad Hoc Panel include:
  - 2.1 Informing the complainant that his identity will be disclosed to the complainee;
  - 2.2 Informing the individual seeking an investigation that a written complaint will be required for further action;
  - 2.3 Informing individuals that they are provided with applicable law for reference;
  - 2.4 Informing individuals of available options which include but are not limited to conciliation and complaint investigation by the School, and their right to lodge complaints with Equal Opportunities Commission and to take court action;
  - 2.5 If the complainee has lodged the complaint with Equal Opportunities Commission, the School will consider whether or not the investigation will continue;
  - 2.6 If a sexual harassment complaint is under criminal investigation, the School will suspend its investigation process and provide assistance to the police;
  - 2.7 Informing all parties involved or alleged to be involved in a complaint that a report will be produced for and submitted to the Principal;
  - 2.8 All records of complaints and reports will be kept by the School.

References

- 1 Committee Against Sexual Harassment, CUHK
- 2 Gender Discrimination Committee, HKUST
- 3 Equal Opportunity Unit, HKU