

THE HONG KONG ACADEMY FOR PERFORMING ARTS

Policy and Procedures on Sexual Harassment

1. Preamble

- 1.1 The Academy strictly prohibits any form of sex discrimination (including sexual harassment). This policy and procedure is a general internal guideline for the staff and students of the Academy on the particular subject of sexual harassment, regardless of their gender, ethnicity and nationality. It does not serve as an exhaustive list or statement or advice on the part of the Academy as to what act will or may be regarded by it as a breach, non-compliance or contravention of any of the statutory provisions enacted in the Sex Discrimination Ordinance (Chapter 480) (“SDO”) in the Equal Opportunities Commission (EOC) website: www.eoc.org.hk. Staff and students should not do anything that will, or have the possibility of, breach, non-compliance or contravention of any of the statutory provisions pertaining to sexual harassment, and should independently take positive act to understand the applicable laws.
- 1.2 Sexual harassment is unlawful, it is an important ethical issue for the Academy as an employer and an educational institution. Sexual harassment may adversely affect the work and reputation of the Academy and its staff and alumni as well as the learning environment of its students. The Academy is committed to a zero tolerance sexual harassment policy and will not condone any act of sexual harassment committed by its staff and students.
- 1.3 This policy applies to all staff and students of the Academy, all of whom should familiarize themselves with the policy and are encouraged to report cases of sexual harassment to the relevant authorities. Individuals found to have engaged in misconduct constituting sexual harassment will be subject to disciplinary action; in the case of staff members, up to and including summary dismissal; and in the case of students, up to and including expulsion from the Academy. Apart from the individual’s liability, the Academy, depending on whether the individual is the Academy’s staff, may also be vicariously liable.
- 1.4 All sexual harassment complaints will be handled promptly in an impartial manner in accordance with the prevailing policy and procedure for handling sexual harassment complaints.

2. Understand correctly what a Sexual Harassment is

- 2.1 Under the SDO, sexual harassment is a form of sex discrimination. Sexual harassment consists of any unwelcome sexual behavior (which includes physical contacts, gestures, spoken words such as innocuous comments, written statements, and use of images and pictures of a sexual nature, requests for sexual favours, creating sexually hostile work or study environment, etc.) in circumstances where a reasonable person would have anticipated that the harassed person would be offended, humiliated or intimidated. Sexual harassment may take place inside or outside workplace/campus, during business trips/student trips/extra-curricular activities, or during formal/informal gatherings.

- 2.2 Under the SDO, sexual harassment covers sexual harassment of both men and women. People of either sex and of any age can be sexually harassed. Sexual harassment often takes place when one person (or a group of persons) uses power inappropriately over another person (or a group of persons). However, it can also take place in situations where there is no relationship based on power, for example, among colleagues, among schoolmates, between staff and students/prospective students/applicants for employment, or any person who provides service(s) to the Academy.
- 2.3 Virtually any language, conduct or behavior with sexual connotation can be viewed as sexual harassment if it is unwelcome. Staff and students should be aware that a single incident, even if it is not intentional or there is no evidence to prove the intention, may amount to sexual harassment once the act meets the definition of sexual harassment. It is the impact of the conduct or behaviour on the recipient, not the number of incidents or the intention of the harasser which determines findings of sexual harassment.
- 2.4 Some of the examples of Sexual Harassment are:
- Implied or overt sexual proposition or other pressure for sex.
 - Comments with sexual innuendoes.
 - Insulting sounds, catcalls, wolf-whistles directed at an individual.
 - Unwelcome inquiries, communications, remarks, jokes, stories of a sexual nature in whatever form.
 - Obscene gestures.
 - Leering, ogling at a person or part of his/her body.
 - Inappropriate touching (eg. Patting, hugging, kissing, uninvited massaging, deliberately brushing against another's body, pinching) or other unwelcome physical contact.
 - Touching or interfering with a person's clothing (eg, lifting up skirts or shirts, or putting hands in a person's pocket).
 - Inappropriate remarks about a person's body, appearance, clothing, sexual relationship.
 - Persistent phone calls or sending letters, emails asking for a personal or sexual relationship.
 - Pressure to go on dates.
 - Displaying sexually obscene or suggestive pictures or written statements.

3. Publicity and Education

- 3.1 The Academy will organize training/workshops annually by inviting representatives of the EOC and other similar organizations to raise staff and students' understanding and awareness of sexual harassment.
- 3.2 This policy will be posted on the Academy's website. It will also be distributed and explained to all new staff and students of the Academy.
- 3.3 The Academy will send emails annually to all staff and students to publicize the policy; and to encourage them to come forward and report cases of sexual harassment.

3.4 The sexual harassment policy will be reviewed periodically to ensure effective implementation and provision of up-to-date information.

3.5 Staff and students are also encouraged to visit the EOC on-line self-learning training module on sexual harassment at the EOC website to enhance their understanding of sexual harassment.

4. Possible Ways of Preventing Sexual Harassment

4.1 Every member of the Academy has a responsibility to eliminate sexual harassment and unlawful discrimination. It is therefore essential for staff members and students to point out and report potential or actual offences promptly.

4.2 Whether or not a person feels sexually offended involves their own subjective feelings. You should respect the feelings of an individual and always demonstrate reasonable sensitivity in an impartial manner towards the issue of sexual harassment.

4.3 Be alert to language, gestures, behavior or environment that would place yourself in a situation that may be vulnerable to a complaint of sexual harassment or unlawful discrimination. Such as:

- Supervisors/faculty members involved in a consensual affair with a subordinate/student may give rise to perceived or actual conflict of interest and will also place themselves in situation vulnerable to a sexual harassment/unlawful discrimination complaint. A staff member should therefore at all times behave in a manner that respects the propriety of his/her official position.
- Flirtatious languages or gestures are not harassing behavior if they are welcomed and invited. However, they may be viewed as offensive conduct to some individuals and may constitute sexual harassment.
- Body contact and touching are at times necessary in teaching by demonstration during classes. However, students may feel embarrassed or offended of such acts. Teachers, even acting in good faith, should explain to the students concerned of the appropriateness and necessity of performing such acts and seek their prior consent. Teachers should refrain from such touching or making sensitive gestures if no prior consent has been obtained from the students particularly when no other person is present at the material time.

4.4 Sometimes people may not be aware that their acts are unwelcome. If you feel you are sexually offended, you should immediately speak up and discourage such acts by telling the other party that his/her behavior is offensive and unwelcome. Under normal circumstances, the other party should immediately cease such activities once they are aware that their conduct is unwelcome and may constitute sexual harassment. Whenever possible and practicable, evidence (whether in the form of audio or video) should be preserved, untampered and safely kept for possible use in future.

5. Sexual Harassment Complaints

5.1 In addition to voicing your concerns on the spot, there are usually informal and formal ways to deal with sexual harassment complaints depending on the severity of the incident and on the wish of the complainant.

5.2 To lodge a complaint, the complainant may approach the “**Designated Officer**”, preferably within three (3) months of the incident. The “**Designated Officer**” is:

- **Head of Human Resources**, when the alleged harasser is a staff member
- **Head of Student Affairs**, when the alleged harasser is a student

5.3 Informal Complaint Procedures

- Write a letter/note to the harasser. Be specific as to what was done or said by the harasser which you found offensive.
- If you do not want to confront the harasser directly, you can tell someone you trust who can provide emotional support, advice and/or lodge a complaint on your behalf. If you are a student, you can also seek student counselling service from the Student Affairs Office.
- Alternatively, you may also contact the Designated Officer, he/she will act as a conciliator/mediator to assist on the case and see whether a settlement can be reached if the parties are agreeable to taking such a course of action.
- If a settlement can be reached, the Designated Officer will prepare a report for the Deputy Director (Administration) on the incident, including the conciliation agreement signed by both parties for filing. Normally this will occur within one (1) month after the case has been settled.
- The conciliation process will normally be completed within two (2) months after receiving the complaint. If the complaint cannot be resolved, or if either party decides to stop the conciliation, the Designated Officer should refer the case to the Deputy Director (Administration) who will cause the formal Complaint procedures to be commenced upon receipt of the written complaint from the complainant as referred to in 5.4 below.

5.4 Formal Complaint Procedures

- A written complaint must be submitted to the Deputy Director (Administration). It must contain a precise account of the incident including the date(s), time(s) and place(s) of the alleged act(s), whether there was or were other person(s) present, nature of the harassment (what the harasser said and did), and the complainant’s own response(s), if any, at the time, and the name(s) and means of contact of the witness(es) (if any).

- The Deputy Director (Administration) will chair and appoint members to form an investigation panel to investigate the complaint which will normally take place within two (2) weeks upon receipt of complaint. The investigation panel shall (i) if the complainant or the alleged harasser is not a student, comprise the Deputy Director (Administration), the Designated Officer and not less than two other panel members of different genders; and (ii) if the complainant or the alleged harasser is a student, comprise the Deputy Director (Administration), the Designated Officer, not less than two other panel members of different genders and a student representative.
- During the investigation, the alleged harasser will be required to refrain from contacting the complainant and vice versa.
- The investigation result will be forwarded to the complainant, the alleged harasser and the investigation panel normally within two (2) weeks upon closing of the investigation.
- If a case of sexual harassment is established, disciplinary action will be taken against the person who is found to be in contravention of SDO. Staff disciplinary issues will be managed through the Academy's staff disciplinary procedures while student disciplinary matters will be resolved through the Student Disciplinary Committee.
- An investigation report will be submitted to the Director of the Academy normally within one (1) month upon closing of the investigation.

5.5 Two-level Appeal Procedure

5.5.1 Level 1

The complainant and the alleged harasser may appeal in writing, which should set out precisely the grounds of appeal (with or without additional or new information), to the Director of the Academy within two (2) weeks from the date of being notified of the decision made by the investigation panel. The Director of the Academy, may take such action as he may or shall deem appropriate including but not limited to:

- dismissing the appeal if he/she considers the grounds of appeal discloses no *prima facie* case for further investigation;
- interviewing (i) the complainant or alleged harasser to hear his/her grounds of appeal and (ii) or if deemed necessary, the witness(es), if any;
- convening an ad hoc panel (the number of members thereof shall not be less than the number of members in the investigation panel) which might include an external/independent party to review the decision made by the investigation panel.

The Director of the Academy, shall notify the complainant and alleged harasser in writing of the decision made normally within two (2) months upon receipt of the appeal under this Clause 5.5.1.

5.5.2 Level 2

If the complainant/alleged harasser is not satisfied with the outcome of the Level 1 appeal, he/she may lodge a final appeal in writing to the Academy Council Chairman within two (2) weeks from the date of being notified of the outcome of the Level 1 appeal. Such an appeal should set out precisely the grounds of appeal (with or without additional or new information). The Council Chairman may decide on a course of action as he may or shall deem appropriate including but not limited to:

- dismissing the appeal if he/she considers the grounds of appeal discloses no *prima facie* case for further investigation;
- interviewing (i) the complainant or alleged harasser to hear his/her grounds of appeal and (ii) if deemed necessary, the witness(es), if any.
- any other action, including referring the case to the Council and/or appointing an Appeal Committee of Council (the number of members thereof shall not be less than the number of the members in the investigation panel / ad hoc panel and the external independent party to be appointed for such purpose shall preferably not be the same external independent party referred to in 5.5.1 above) to hear and arrive at a decision of such final appeal.

The Council Chairman / Council / Appeal Committee of Council, shall notify the complainant and alleged harasser in writing of the decision made normally within three (3) months upon receipt of the appeal under this Clause 5.5.2.

The decision of the Council Chairman / Council / Appeal Committee of Council under this Clause 5.5.2 shall be final.

5.6 All complaints, informal or formal, will be handled discreetly and in such way as to cause as little embarrassment or ill-feeling as possible to the complainant. As far as possible an investigator of the same sex will be appointed to work with the complainant.

5.7 The flow charts on the complaint and two-level appeal procedures are attached in Appendix A and Appendix B respectively.

6. **Lodge a Complaint to the Equal Opportunities Commission in Hong Kong**

6.1 While it would be desirable that complaints of sexual harassment be resolved by the Academy through the internal procedures in section 5 above, the complainant has at the same time the absolutely right to report the incident to the EOC for investigation and conciliation. For enquiries or complaints, please refer to the EOC website.

7. **Time Limits**

7.1 The normal time limit to lodge a complaint to the EOC is within twelve (12) months after the incident occurred. The Academy takes a proactive approach to address and resolve these issues by encouraging individual to lodge his/her complaint as early as possible, preferably within three (3) months after the incident occurred.

- 7.2 If the informal complaint cannot be resolved within two (2) months after receiving the complaint, the Designated Officer should refer the case to Deputy Director (Administration) to proceed with formal complaint procedures.
- 7.3 The total time period for the formal investigation, from the filing of a complaint to a final decision of the investigation panel, should not normally exceed six (6) months.
- 7.4 If the complainant or alleged harasser is not satisfied with the outcome of the investigation panel, he/she may lodge an appeal in writing to the Director (Level 1) and Council Chairman (Level 2) within two (2) weeks after being notified on the decision of the investigation panel and Director respectively.
- 7.5 A written request must be submitted to the Designated Officer should the complainant decide to withdraw or terminate the complaint during the conciliation or investigation process.

8. Protection against victimization

- 8.1 Victimization is unlawful under the SDO. Complainants and witnesses should be protected against victimization. The Academy prohibits victimization or retaliation of any kind against any staff or student for reporting or providing information about discrimination or sexual harassment.
- 8.2 Some examples of victimization are:
- Singling out the victimized student in class
 - Lowering the grades of the victimized student
 - Debarring the victimized person from employment, promotion, or admission to academic programmes
 - Belittle the victimized person or demean his/her image
- 8.3 Any person who is victimized should report to the Deputy Director (Administration), who will look into the complaint. Staff members and students who are found victimizing another person are liable to disciplinary action.

9. Confidentiality

- 9.1 All parties involved in the enquiries or investigation process shall maintain confidentiality on all information that comes to their knowledge. Disclosure of information of a particular situation of sexual harassment should only be made to those persons who have a genuine need to know in order to progress with a harassment proceeding. Every person involved should respect the privacy of individuals and observe applicable laws on protection of privacy and personal information. Inappropriate disclosure of any information may make the individual liable to disciplinary action.

10. Conflict of Interest

- 10.1 No person related, whether closely or not, to the complaint or to the complainant or the alleged harasser shall take part in the conciliation/investigation process.

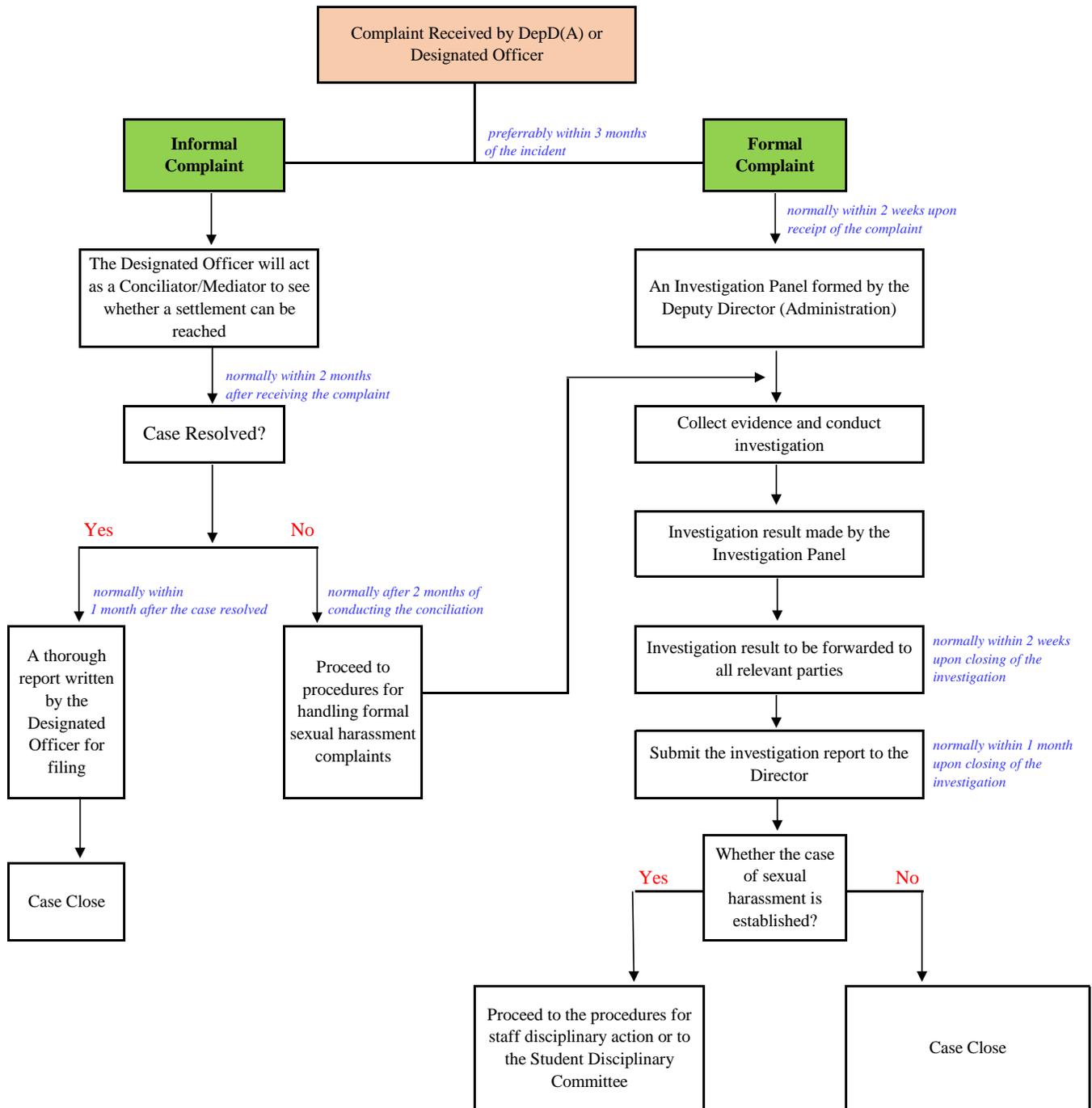
11. Enquiries

- 11.1 For further information and/or enquiries regarding the Academy's policy and procedures on sexual harassment, please contact the Head of Human Resources or the Head of Student Affairs.
- 11.2 Information pertaining to other discriminations, namely, Disability Discrimination, Family Status Discrimination and Race Discrimination is available at the EOC website www.eoc.org.hk.

12. Academy's role and member's freedom of choice

- 12.1 Members of the Academy should note that the Academy is, in this Policy and Procedure, not acting in an advisory capacity.
- 12.2 No member is bound or otherwise obliged to take the course of action set out in Clause 5 above but is absolutely free to take whatever steps and actions which he/she may think appropriate for the best of his/her interests.

Flow Chart on Handling Sexual Harassment Complaints



Flow Chart on Two-level Appeal Procedure

