

## **Rosaryhill Secondary School**

### **Prevention of Sexual Harassment Policy**

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## **Introduction**

Sexual harassment in any form is discriminatory and unlawful behaviour, and it will not be tolerated in the school community. Any behaviour determined to be sexual harassment will result in appropriate disciplinary action, and it may entail civil and even criminal liability. The School hereby reaffirms the commitment to eliminate and prevent sexual harassment and to provide an environment where 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.

The formulation of this Prevention of Sexual Harassment Policy in the School reflects the School's concern on the issue, and provides guidelines for handling complaints related to sexual harassment such as the effective channels for lodging complaints, the handling of complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner, and the commitment that nobody will be punished because of lodging a complaint in good faith.

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 behaviour, and supporting co-workers/students to take reasonable steps to stop sexual harassment. It is envisaged that the development and promotion of the policy enhances the understanding of the issue by all parties in the School and helps nurture the right and proper values of respecting others.

### **What is Sexual Harassment and its legal consequences?**

Sexual harassment means a person makes an unwelcome conduct of a sexual nature to another person. Unwelcome conduct may include unwelcome sexual attention, physical contact, talking about issues of a sexual nature, or making a sexual advance. It also amounts to sexual harassment if one finds the environment of work or study is sexually hostile, in which one feels intimidated.

Sexual harassment, which is an unlawful act, would entail civil liability. Some behavior (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 the 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).

#### *Legal definition in Hong Kong*

In Hong Kong, section 2(5) of the Sex Discrimination Ordinance (SDO) provides the definition of sexual harassment, while sections 2(7), 2(8), 9, 23 and 39 of the SDO are the related sections. 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.

Under section 2(5) of SDO, the legal definition of sexual harassment is:

- (a) If any person
- (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
  - (ii) engages in other unwelcome conduct of a sexual nature in relation to another 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, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.

*Sexually hostile or intimidating environment*

A sexually hostile or intimidating environment for students in the school setting refers to any unwelcome conduct of a sexual nature that interferes with the performance or affects the enjoyment of students in their learning environment or of school employees in their working environment. The school setting includes both the school campus and venues where learning or other activities organized by the school take place. The behaviour does not need to be directly or consciously targeted at an individual.

Examples of creating a hostile or intimidating environment in the School include but not limited to the display of explicit or pornographic materials, sexual banter, crude conversation, and sexually offensive jokes or activities.

*Sexual harassment acts*

Sexual harassment can involve physical, visual, verbal or non-verbal conduct of a sexual nature which is unsolicited and unwelcome. Examples of such sexual harassment acts include but not limited to:

- Uninvited physical contact or gestures such as intentional touching, hugging, kissing, pinching, brushing against another's body, touching or fiddling with a person's clothing, impeding or blocking movement, assault, coercing sexual intercourse
- 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 sexually suggestive objects or images that is visible to another person
- Unwelcome invitations of a sexual nature
- Offensive communications of a sexual nature (letters, phone calls, faxes, e-mail messages, social media posts or messages etc.)
- Staring or leering at a person or at parts of his/her body

Sexual harassment also includes continuing to discuss sexually-related social issues after being informed directly that the topic is unwelcome, and using sexually-related behaviour to control or influence the career prospect or work environment of staff or to interfere with the performance or enjoyment of students in their learning environment.

**A single incident can amount to sexual harassment.** Even if the act of sexual harassment is not intentional or there is no evidence to prove the intention, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.

Although sexual harassment incidents are usually related to a power relationship, i.e. the powerful harass the weak, the power relationship may not be the most important factor taken into account in determining whether an act of sexual harassment has occurred on campus. In schools, a student may harass a fellow student, or even harass a teacher. If such incidents happened, they are also acts of sexual harassment which the school will face up to the issue and handle it in an appropriate manner.

## **Part 2**

### **Measures to Prevent Sexual Harassment at Rosaryhill School**

The Principal, as supported by Deputy Principals and/or Office Heads of appropriate gender appointed by Principal are primarily responsible for implementing appropriate measures.

To raise the understanding and awareness of sexual harassment, and to promote and provide education on preventing sexual harassment, the following measures are implemented:

- (1) Staff related -
  - (i) Include the School Policy on Prevention of Sexual Harassment (including the complaint handling procedures) in the Staff Handbook and school intranet for staff reference and distribute related documents to new and temporary staff as part of the induction;
  - (ii) Post notices to disseminate related and updated information;
  - (iii) Encourage teachers to attend training programmes on sex education organized by EDB
- (2) Students related -
  - (i) Upload the School Policy on Prevention of Sexual Harassment (including the complaint handling procedures) on the School Webpage for students' information;
  - (ii) Incorporate the topic of sexual harassment into sex education programmes so as to help students develop positive values and attitudes, especially with respect to coping with interpersonal relationships, arouse their awareness of sexual harassment and remind them to seek help when necessary
- (3) Notify other parties who have dealings with the school
  - (i) Upload the School Policy on Prevention of Sexual Harassment (including the complaint handling procedures) on the School webpage for public perusal;
  - (ii) Issue circular to parents at the beginning of every school year, inviting them to pursue the School Policy on Prevention of Sexual Harassment (including the complaint handling procedures) on the school webpage; and
  - (iii) Issue service providers, voluntary workers and other staff in writing the school's stance and policy on sexual harassment.
- (4) 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.

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

Every person has a right to lodge a complaint on sexual harassment. When a person feels being sexually harassed, he/she may consider taking 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 counsellor, and ask for emotional support and advice.
- Lodge a complaint to the School within three months of the occurrence of the incident and request investigation and conciliation
- Lodge a complaint with the EOC within the time bar 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 lawsuit against the harasser.

### **Time bar of lodging complaint or taking legal action**

- Any delay in lodging a complaint may cause difficulty to the investigation and the collection of evidence
- The School has set a time bar of three months for lodging complaints. However, taking into consideration that the victim may postpone lodging a complaint due to the post-incident anxiety and distress suffered by him/her, and may be discouraged by the time bar, the School would handle delayed complaints with justifiable reasons at discretion
- If a 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

## **Disciplinary Measures**

Any employee or student found to have violated this policy shall be subject to appropriate disciplinary action, including:

- (a) Issuing a statement of apology
- (b) Demerits
- (c) Warnings
- (d) Reprimand
- (e) Suspension from school
- (f) Expulsion from school
- (g) Termination of contract
- (h) Activation of the procedure for handling staff misconduct or disciplinary matters; and
- (i) Reporting to the Police - Sexual harassment acts may also amount to criminal offences such as indecent assault, distribute and display indecent and obscene articles, stalking or crank calling etc. The School will consider referring those cases to the Police

If any investigation reveals that sexual harassment has occurred, the harasser may also be held legally liable (civil and even criminal) for his or her actions under the anti-discrimination laws or in separate legal actions.

## **Sexual harassment complaints**

### ***Lodging a complaint***

Every person has a right to lodge a complaint on sexual harassment. This applies to any person who feels being sexually harassed, as well as any student / staff member who has witnessed any other student / staff member committed any sexual harassment act or was sexually harassed.

Any complaint related to sexual harassment in the School setting can be made either in written form or orally. Taking into account the age, the education level of and the distress suffered by the complainant after the sexual harassment incident, the School would allow the complainant to lodge a formal or informal complaint in various ways.

If the complainant is a member of staff, he/she can forward the complaint to the Principal directly, or via one of the Deputy Principals, or any Office Heads.

If the complainant is a student, he/she can forward the complaint to the Principal directly or via the class or subject teacher, social worker or one of the Deputy Principals or any Office Heads.

If the accused person is the Principal or one of the Deputy Principals, the complainant can forward the complaint to the Supervisor.

Any complaint lodged directly to the School does not affect the complainant lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court.

## ***Guidelines on Handling Complaints relating to Sexual Harassment***

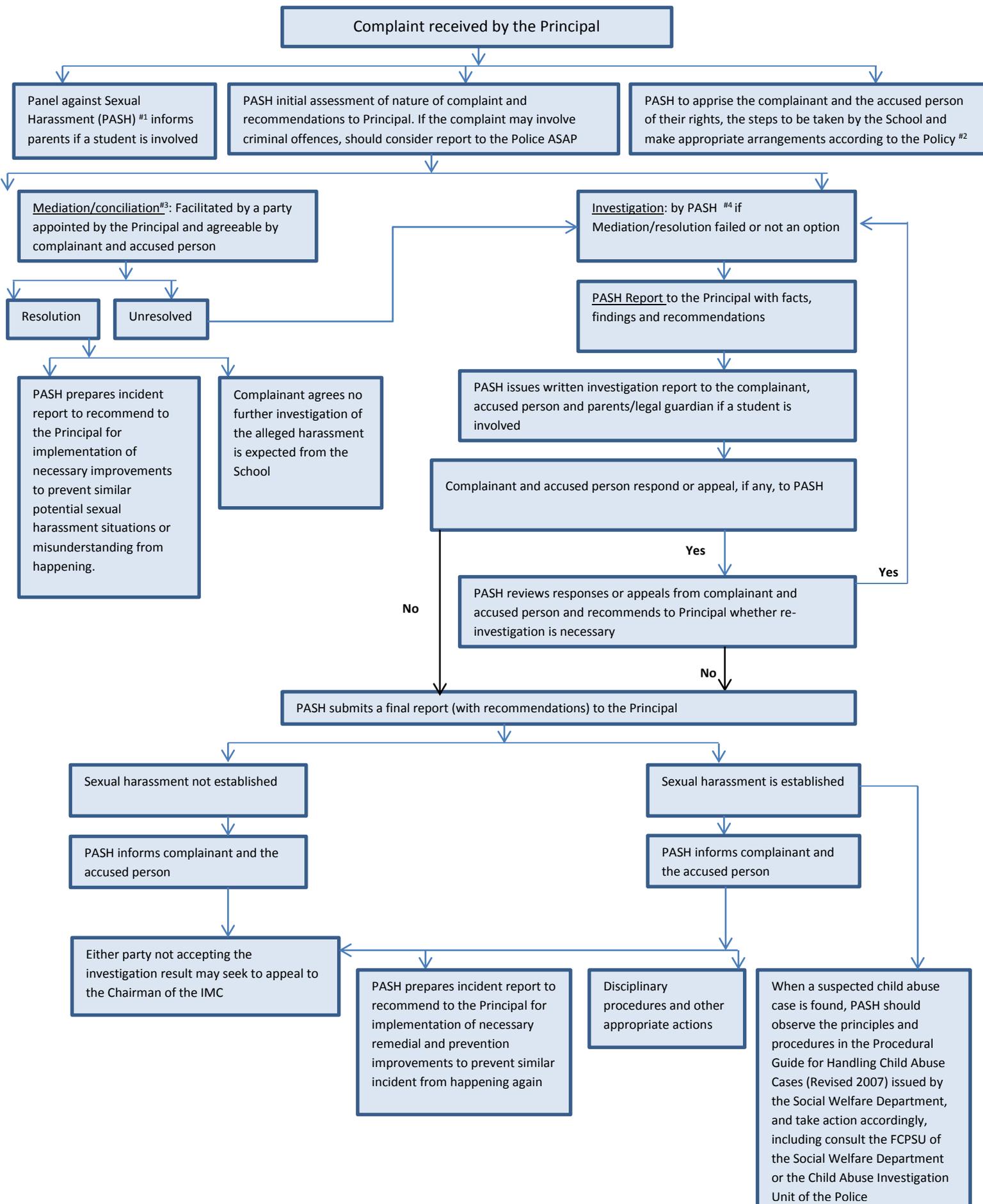
Where the primary concern of the complainant is to stop the acts of sexual harassment as soon as possible by way of taking informal action (e.g., sending a clear message to the accused person) instead of conducting an investigation into his/her case, the complaint will be handled informally. Generally 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 School is committed to ensuring that all complaints will be handled according to the following principles:

- **Fairness:**
  - Enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the accused person are fairly treated and both parties have chances to present their case. In no circumstance will lodging a reasonable complaint adversely affect the appraisal performance/assessment of the complainant or put him/her to any other form of detriment.
  - For complaints involving students, the School must ensure that the student concerned is entitled to be accompanied by his/her parents, legal guardian or designated adult in an interview as so to safeguard his/her rights
  - For complaints involving students, both the students and their parents would be apprised of the rules and disciplinary measures.
- **Confidentiality:**
  - 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. The importance of confidentiality will be stressed to all those interviewed and everyone will be strictly required not to discuss the complaint with colleagues, friends or peers. Breach of confidentiality may give rise to disciplinary action.
  - Since the accused person 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 would be handled promptly because both the complainant and the accused person are under pressure. Where possible, investigations will be completed within four weeks of the complaint being made.
- **Protection to complainants and witnesses:**
  - Complainants and witnesses would be protected against victimization (which in itself is an unlawful act of discrimination under section 9 of the SDO) because of the complaint case. The School will seek to ensure that the complainant and any person assisting in investigating such a complaint are not in any way penalized whether directly or indirectly for bringing a complaint and the situation will be monitored to ensure that the harassment has stopped. Any complaint of retaliation will be promptly investigated and punished if established.

- Any complaint that is unfounded and not made in good faith, for example a malicious complaint, will be treated as an offence liable to disciplinary action.
  - Wherever possible, reasonable consideration will be given to ensure that the complainant and the accused person are not required to work together or attend the same class whilst the complaint is under investigation.
  - The complainant and the accused person would be advised to avoid contact, in particular, private contact, during the period of investigation
- Avoid conflict of interest: the complaint case should not be handled by a person that may give rise to an actual or potential conflict of interests. The following are some examples of these relationships that should be avoided:
    - Handling by any person who is closely related to the complainant or the accused person personally
    - Handling by the accused person
    - Handling by a subordinate of the accused person
    - Handling by a subordinate of the complainant
  - Anonymous complaint: whether the complaints are anonymous or not, the School may need to conduct investigation, in particular, investigation should be conducted into any suspected sexual harassment made against students or young children.
  - Handling cases discreetly: The School is mindful in 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.
  - Documentation: The investigation will focus on the facts of the complaint. The interviews and the statements of both the complainant and the accused person must be documented and kept confidential at all stages of the investigation.

## Mechanism for handling sexual harassment complaints



## Notes

1. Composition of the Panel Against Sexual Harassment (PASH) :
  - Deputy Principal (Student Development);
  - Head of Student and School Affairs Office;
  - Head of Student Support Office;
  - An Office Head of appropriate gender to be appointed by Principal;
  - Discipline Team Head and/or Counselling Team Head (To handle cases that involve students)
2. Appropriate arrangements to be taken by PASH upon receipt of the complaint according to the Policy should include:
  - (a) Inform the complainant and the accused person of his/her rights and responsibilities:
    - (i) Any complaint lodged directly to the School does not affect the complainant lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court.
    - (ii) He/she may consult a lawyer, report to the police or file a civil lawsuit against the harasser
    - (iii) For complaints involving students, the School would ensure that the student concerned is entitled to be accompanied by his/her parents, legal guardian or designated adult in an interview as so to safeguard his/her rights
    - (iv) For complaints involving students, both the students and their parents would be apprised of the rules and disciplinary measures.
    - (v) The importance of confidentiality will be stressed to all those interviewed and everyone will be strictly required not to discuss the complaint with colleagues, friends or peers.
  - (b) Since the accused person is a key person in the case, under the principle of natural justice, he/she would be informed about the details of the allegation.
  - (c) Wherever possible, reasonable consideration will be given to ensure that the complainant and the accused person are not required to work together or attend the same class whilst the complaint is under investigation.
  - (d) The complainant and the accused person would be advised to avoid contact, in particular, private contact, during the period of investigation
  - (e) Tell the complainant and the accused person how the investigation will be conducted and who is responsible for the investigation;
  - (f) If necessary, support and counselling are offered to the complainant (if the complainant is a student, support and counselling can also be offered to the student and his/her parents).
3. Mediation/conciliation

The purpose of conciliation is to help the parties involved work out a mutually acceptable resolution, eliminate misunderstanding and settle disputes with the assistance of an impartial third party. Conciliation should be voluntary. Depending on the nature of individual complaints, the School may first consider arranging conciliation. In the process

of investigation and arranging conciliation, the school must keep an open and fair manner to ensure that the complainant and the accused person are treated fairly.

4. Typically, an investigation would include the following:
  - a. Interview the complainant; if the complainant is a student, he/she is entitled to be accompanied by their parents or relatives;
  - b. Interview the accused person; if the complainant is a student, he/she is entitled to be accompanied by their parents or relatives;
  - c. Interview or obtain written statements from witnesses in relation to the complaint;
  - d. Study the evidence and make decisions;
  - e. Prepare a written report and inform the relevant parties of the investigation results in writing;
  - f. Seek advice from EOC where necessary;
  - g. Decide whether or not disciplinary measures or other appropriate actions should be taken.

#### **Other related resources**

EOC on-line self-learning training module on sexual harassment  
<http://www.eoc.org.hk:8080/shoncampus/en/tls/otm/index.jsp>