

**29 January 2009**

**Education Bureau Circular No. 2/2009**

**Amendment to the Sex Discrimination Ordinance (Cap. 480)**

[Note: This circular should be read by

- (a) Supervisors/ Heads of all schools– for necessary action; and
- (b) Heads of Sections – for information]

**SUMMARY**

This circular reminds schools of the amendments made in the definitions of “sexual harassment” under the Sex Discrimination Ordinance (Cap. 480) by which a conduct of a sexual nature that creates a hostile or intimidating environment has been extended to cover educational settings. Schools should draw the attention of staff and students to the new legal provision under the Sex Discrimination Ordinance, observe their responsibilities as employers and make necessary arrangement for compliance.

**BACKGROUND**

2. The Sex Discrimination Ordinance (SDO) has come into force since 1996. Under the SDO, sexual harassment is an unwelcome conduct of a sexual nature directed at the victim such as unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated; or any conduct of a sexual nature that creates a hostile and intimidating work environment. Notwithstanding that the SDO has prohibited sexual harassment acts in educational establishments, “a sexually hostile and intimidating work environment” did not include educational settings prior to the amendment of the SDO.

**DETAILS**

3. Consequent to the amendment to the SDO that came into effect on 3 October 2008, a sexual harassment act committed by any person that creates a hostile or intimidating environment also applies to educational settings. It is the responsibility of schools to ensure that all individuals (including all students, staff members, voluntary helpers, contract workers/ service providers/ agents) are able to study, to conduct

extra-curricular activities or work or provide services in a safe and sexually hostile-free environment. At the same time, apart from the personal liability to be borne by individuals for an unlawful act of sexual harassment, the schools, being employers of the staff concerned, may also be vicariously liable.

4. As advised by the Equal Opportunities Commission (EOC), schools are encouraged to take reasonably practicable steps to ensure that the school is free from any sexually hostile or intimidating environment and to avoid the possible vicarious liability on the employers, including developing a school policy (in written form) to eliminate sexual harassment, raising the understanding and awareness of both staff and students about sexual harassment and setting up complaint handling mechanism to resolve sexual harassment complaints.

5. Schools may refer to the relevant amended sections of the SDO<sup>1</sup> at the EOC's website (<http://www.eoc.org.hk>). EOC has developed some reference materials for schools, in the form of questions and answers, on the essential content of the school policy, measures to eliminate and prevent sexual harassment and the suggested procedures of handling sexual harassment complaints, etc. The reference materials have been posted on the EOC's website at <http://www.eoc.org.hk> and EDB homepage at <http://www.edb.gov.hk/index.aspx?nodeID=7094&langno=1> and would be updated when required.

6. To help schools understand the implications of the above amendment to the SDO, two briefing sessions would be organized in February 2009. For details and registration, schools may refer to the Training Calendar on EDB homepage (Course No. SAS 020090013).

## **ENQUIRIES**

7. For enquiries related to the SDO and handling sexual harassment matters, please call the EOC hotline at 2511 8211; for other enquiries, please contact your respective Senior School Development Officers.

Miss P L WU  
for Secretary for Education

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<sup>1</sup> Please refer to sections 2(5), 2(7), 2(8), 9, 23 and 39 of SDO for full text of the legislation related to sexual harassment.