

# THE EDUCATION UNIVERSITY OF HONG KONG

## Equal Opportunities Policy

### Preamble

1. The University is committed to equal opportunity in academic pursuit and employment and to eliminating any form of discrimination or harassment against staff, students, and other persons who have dealings with the University, such as contract workers, service providers and applicants. Everyone, irrespective of their race, colour, sex, language, religion, political or other opinion, national or social origin, has the right to be respected and be treated fairly. Mutual respect and fair treatment are conducive to the creation of diverse and harmonious learning and working environment. While recognising that promotion of diversity and equal opportunities can enable staff and students to achieve their full potential, we take proactive steps to advocate an equal opportunities campus.
2. The University has zero tolerance for discrimination and harassment. We require all its employees, especially those who hold pedagogic, supervisory or evaluative responsibility, to strictly observe professional conduct at all times and declare conflict of interest where appropriate. They have to take all necessary steps to ensure that any member, employee or student of the University, or any other person who has dealings with the University is not subject to discrimination or harassment.
3. The University's Equal Opportunities Policy ("the Policy") prohibits the following discriminatory acts in activities conducted in the protected areas namely employment, education and provision of goods, services and facilities ("prohibited discriminatory acts"). Please note that the prohibited discriminatory acts are unlawful and may incur civil liability and even criminal consequences. The prohibited discriminatory acts under the anti-discrimination ordinances are:
  - (a) Sex Discrimination Ordinance ("SDO"): sex discrimination, marital status discrimination, pregnancy discrimination, breastfeeding discrimination, sexual harassment, breastfeeding harassment and victimisation;
  - (b) Disability Discrimination Ordinance ("DDO"): disability discrimination, disability harassment, vilification and victimisation;
  - (c) Family Status Discrimination Ordinance ("FSDO"): family status discrimination and victimisation;
  - (d) Race Discrimination Ordinance ("RDO"): racial discrimination, racial harassment, vilification and victimisation.

The policy also covers complaints concerning sexual orientation harassment in addition to the 4 anti-discrimination ordinances. Other discriminations and harassments that are not covered under the Policy (for example, discrimination on the ground of age, religion, nationality, social origin and political inclination) will be handled under the staff/student grievance procedures.

(For the avoidance of doubt, activities outside campus and/or normal office /lecture hours such as business/study trips are considered as work/teaching-related.)

4. Definitions and examples of the prohibited discriminatory acts are set out in **Appendix**

I. In determining whether certain conduct constitutes a prohibited discriminatory act, the entire record and the totality of circumstances will be considered.

5. The University has established the Complaint Procedures set out below for dealing with complaints of the prohibited discriminatory acts and for providing proper redress. The complaints will be taken seriously and handled effectively and promptly in strict confidence.
6. The Policy applies to both staff and students of the University. Any staff member or student who is found to have contravened the Policy may be subject to disciplinary action (including dismissal for staff and expulsion for students). Where appropriate, the University may refer the matter to the law enforcement agencies. For complaints against persons who have dealings with the University (e.g. cases on sexual/breastfeeding/disability/racial harassment by workplace participants such as contract workers, interns, volunteers, or service users), the University may take appropriate actions, such as case handling making reference to the Policy or referring the case to relevant organisation.
7. The Policy is without prejudice to all statutory rights of the Complainant. The Complainant may, if s/he considers appropriate, lodge a complaint directly with the Equal Opportunities Commission or institute civil proceedings in the District Court of Hong Kong. Where the allegation is a serious one and appears to constitute a criminal act, the case may be referred to a law enforcement agency. If a case is being referred to a law enforcement agency, the University may (but shall not be required to) suspend the internal investigation until the case is concluded by the law enforcement agency.
8. The Equal Opportunities and Disability Access Officer (“EODAO”) of the University is responsible for promoting the awareness of equal opportunities issues in the campus, with the support from the Human Resources Office, the Student Affairs Office and other relevant offices.

### **Complaint Procedures**

9. The EODAO is the first point of contact for any complaint relating to the prohibited discriminatory acts set out in paragraph 3. EODAO will facilitate informal resolution and/or conduct preliminary inquiry as prescribed by the following procedures. However, if the EODAO is a complainant or respondent to the complaint, the complaint shall be reported to the Vice President (Administration). In such case, the role of EODAO below will be replaced by Vice President (Administration) or his/her delegate.
10. If a Complainant (e.g. a staff member, student or other person having dealings with the University) believes that s/he has been subject to any prohibited discriminatory act, s/he may, within 90 calendar days from the time s/he knew or should have known of the alleged act(s), approach the EODAO for informal resolution or file a formal complaint in accordance with the procedures below (if the Complainant does not wish to attempt informal resolution). The time limit is set because any delay may hinder the investigation. Prompt redress could also help maintain a discrimination and harassment-free environment. Complaints that are lodged beyond the 90-day limit may be handled at the University’s discretion on a case-by-case basis depending on the facts and seriousness of the allegations.

11. Generally, the University will not respond to anonymous complaints. However, if the University considers it appropriate, it may take appropriate actions depending on the seriousness of the allegation.

### **Informal Resolution (Optional)**

12. When the Complainant approaches the EODAO for informal resolution, the EODAO, where appropriate, shall inform the Complainant of the complaint procedures, understand the facts and nature of the complaint and offer proper assistance including counselling to the individual concerned. The EODAO will communicate with the Respondent the allegations made in the complaint and will, where appropriate, take appropriate preventive or remedial measures to address the situation, *e.g.*, pointing out to the relevant individual that his/her behaviour/action/arrangement may be deemed inappropriate and should stop. Such informal action is particularly useful where a party may not realise that his/her certain behaviour/action/arrangement may not be appropriate. The EODAO will clarify or confirm the case information and try to resolve the disputes between the Complainant and the Respondent informally, normally within 15 working days after receipt of the complaint.
13. All incidents of suspected prohibited discriminatory act should be treated with utmost sensitivity and strictest confidentiality. If the complaint can be resolved informally, the EODAO shall record the resolution in writing. If the complaint cannot be resolved through informal means (in this regard, the EODAO shall inform both parties that the complaint cannot be resolved informally), or if the Complainant is requesting for a formal investigation, s/he may file a formal complaint within 30 calendar days from the notification of the unsuccessful informal resolution, or 90 calendar days from the time s/he knew or should have known of the alleged act(s), whichever is the later.

### **Formal Complaint**

#### ***Stage 1: Filing a Formal Complaint***

14. If a complaint cannot be resolved informally and/or the Complainant would like the University to initiate an investigation into an alleged prohibited discriminatory act, s/he should file a formal complaint by completing the Complaint Form. The completed Complaint Form should be sent to the EODAO (if EODAO is involved in the alleged case of prohibited discriminatory act, the completed Complaint Form should be sent to the Vice President (Administration)). The Complaint Form is available on the Intranet or upon request.
15. If the Complainant/Respondent is the Vice President, the informal/formal complaint should be sent to the President who may consult the Chairman of the Staffing Committee to conduct an informal resolution, mediation or inquiry. If the Complainant/Respondent is the President, the informal/formal complaint should be sent to the Chairman of Council who may ask the Chairman of the Staffing Committee to conduct an informal resolution, mediation or inquiry by the Equal Opportunities Complaint Committee.
16. On receiving a formal complaint, the EODAO shall:

- (a) from then on become the main point of contact for the Complainant;
- (b) inform the Complainant of the complaint procedures;
- (c) ascertain whether the Complainant wishes to resolve the complaint informally (if the parties have not attempted resolving the disputes by way of informal resolution);
- (d) ascertain whether the Complainant wishes to attempt mediation;
- (e) ascertain that the Complainant understands and agrees to the declaration s/he made in the Complaint Form; and
- (f) inform the Respondent of the complaint within 7 working days after confirming the above.

***Stage 2: Mediation (Optional)***

17. Mediation occurs if both parties agree to mediate. Mediation is a confidential dispute-resolution process whereby an independent and neutral third party acts as a mediator to facilitate communication and interaction between the parties involved, help them work through the issues and achieve mutually-agreed resolution in due compliance with the law and the policies and procedures of the University. Before proceeding to the following formal complaint procedures, the parties involved are encouraged to attempt mediation conducted by an accredited mediator or an internal staff member as agreed by the parties. The mediator shall not have direct interest in the case. Mediation is without prejudice to the parties' legal rights or remedies.
18. If the Complainant wishes to attempt mediation, the Respondent will be requested to confirm whether to attempt mediation within 7 working days from date of notice of complaint. The mediation normally completes within 30 calendar days from the date of first mediation meeting. If the parties can resolve the dispute during the Mediation, the parties involved may enter into a legally binding agreement to record the terms of the agreement. If the dispute cannot be resolved by mediation or either party decides to withdraw from the mediation, the University will proceed with the internal investigation. Both the Complainant and the Respondent may agree to attempt mediation again at a later stage.
19. Free mediation service will be engaged as far as possible. However, if no free mediation service is available, the mediation cost will be equally shared by the Complainant and the Respondent.

***Stage 3: Preliminary Inquiry by EODAO***

20. For complaints other than those which the Vice President or the President is the Complainant or the Respondent, the EODAO shall undertake a preliminary inquiry into the complaint in order to determine whether there is any ground for the complaint and whether there is *prima facie* evidence showing that the Respondent may have engaged in the alleged prohibited act. The purpose of the preliminary inquiry is to screen out any unfounded allegation. The preliminary inquiry may include confidential interviews with such persons identified by the Complainant and the Respondent as the EODAO may consider it appropriate, but the EODAO is not expected to engage in a full-scale inquiry or extensive hearing of the witnesses.
21. The EODAO shall submit a written report of the preliminary inquiry to President/Vice President (line manager of the Respondent), normally within 30 calendar days of receipt

of the formal complaint or completion of the mediation which is unsuccessful (whichever is the later), setting out the allegations made, a brief summary of the evidence collected during the preliminary inquiry, and the recommendation on whether or not to proceed with a full-scale investigation into the alleged act.

22. Upon receipt of the preliminary enquiry report from the EODAO, the President/Vice President shall, as s/he considers it appropriate, decide and take appropriate action which may include the following:
  - (a) referring the complaint to the Equal Opportunities Complaint Committee for a full-scale investigation;
  - (b) referring the complaint to a law enforcement agency;
  - (c) dismissing the complaint; or
  - (d) other appropriate actions to resolve the complaint.
23. In the event that the President/Vice President decides to dismiss the complaint, both the Complainant and the Respondent will be informed of the decision and reasons.

***Stage 4: Inquiry by the Equal Opportunities Complaint Committee***

24. The Equal Opportunities Complaint Committee (“the Committee”) shall be formed in accordance with the provisions as set out in **Appendix II**. Other than to the extent set out in the Policy, the Committee shall have the power to determine and regulate:
  - (a) the procedures to be followed in connection with its investigation;
  - (b) the procedures to be followed in conducting any meeting or inquiry of the Committee; and
  - (c) the conduct of all persons at any meeting or inquiry of the Committee.
25. The Committee shall carry out the investigation as soon as practicable, inform the Respondent of the inquiry and alleged act(s) together with a copy of the Complainant’s written complaint (if it has not already been provided to the Respondent).
26. Both parties shall be informed by the Secretary of the Committee (“the Secretary”) of the membership of the Committee, the date, time and venue of the inquiry in writing. The Respondent may, if s/he wishes, submit a written statement to the Committee via the Secretary in response to the allegation(s) being investigated, at least 5 working days before the date of the inquiry. A copy of the statement by the Respondent shall be provided to the Complainant by the Secretary as soon as possible upon receipt. The Committee may proceed with the inquiry even if the Respondent does not submit the written statement to the Committee.
27. The Complainant and the Respondent shall each have the right of (but shall not be required to):
  - (a) appearing before the Committee;
  - (b) presenting evidence to the Committee;
  - (c) calling witness(es) or requesting the Committee to do so on his/her behalf; and
  - (d) bringing a colleague/fellow student, who does not have the right to speak on his/her behalf, when appearing before the Committee.

28. The Committee shall interview the Complainant, the Respondent, and where appropriate, witness(es) proposed by either of them. In addition, the Committee may call such other witness(es) and examine such other evidence as it may deem appropriate. The Complainant and the Respondent should provide all relevant evidence to the Committee.
29. If any of the parties concerned does not appear at the inquiry, the Committee may proceed with the inquiry and make such findings and recommendations as it thinks fit.
30. Depending on case complexity, the Committee should normally complete the investigation within 90 calendar days from the date of its first meeting. Upon conclusion of the investigation, the Committee shall determine if the complaint is established and the recommended course(s) of action, and prepare an interim investigation report.
31. The Secretary shall, within 10 working days after signing of interim investigation report by the Committee members, inform both the Complainant and the Respondent in writing of the investigation result and recommended course(s) of action under consideration. A copy of the interim investigation report of the Committee (excluding information already available to the parties and information protected by law, such as the names/personal information of third parties), will also be sent to both the Complainant and the Respondent.
32. Within 10 working days from the date of the receipt of the interim investigation report, the Complainant and the Respondent may submit new evidence and other information and material relevant to the case to the Committee via the Secretary for its consideration. The Committee may conduct further inquiry or take other actions as it considers it appropriate before concluding the investigation.
33. The Secretary shall inform both the Complainant and the Respondent in writing by providing a copy of the final report (the "Final Report") (excluding information already available to the parties and information protected by law, such as the names/personal information of third parties). Save for cases where the President and the Vice President is the Complainant or the Respondent, the President/Vice President will be provided with a copy of the Final Report.
34. If it is determined that a prohibited discriminatory act has been committed and that the conduct of a staff member or student of the University warrants disciplinary action, the Committee shall refer the case to the relevant disciplinary authority, *i.e.* either the Disciplinary Committee for staff or the Student Disciplinary Committee for student. A copy of the Final Report will be provided to the relevant disciplinary committee.

### **Appeal**

35. The Complainant and the Respondent may lodge an appeal in writing against the decision of the Committee solely on the ground of any procedural irregularity, within 20 working days upon receipt of the Final Report, to the Chairman of the Staff Appeal Sub-committee of the Staffing Committee if the Respondent is a staff member (other than the President or the Vice President), or to the Chairman of the Students' Appeal Committee if the Respondent is a student. If the Respondent is the President or Vice President, the appeal shall be lodged with the Chairman of Council. An appeal will be allowed only where the

appellant can demonstrate to the satisfaction of the relevant appeal authority that there is a procedural irregularity in handling the complaint of prohibited discriminatory acts. If the appeal is allowed, the appeal authority shall decide whether to adopt the findings and recommendations of the Committee, and the appropriate course of action as soon as practicable and normally within 30 calendar days after receipt of the appeal. The decision of the appeal authority will be final. The parties concerned will be informed of the decision in writing as soon as practicable.

### **Procedures**

36. A flow chart summarizing the procedures of handling complaints of prohibited discriminatory acts under the Policy is at **Appendix III**. Matter to be dealt with or having been dealt with under the Policy will not form ground of complaint under other redress mechanisms, such as Staff Grievance Procedures and Student Complaints/Grievances.

### **Time Limits**

37. While each party referred to in the Policy is expected to take all reasonable steps to comply with the time limits specified in the Policy, a failure to comply with one or more time limits (unless a material and culpable failure) will not in itself render the Policy and any decisions made under the Policy void or voidable. The University may exercise its discretion to extent the time limit under exceptional circumstances.

### **Confidentiality**

38. All parties involved shall observe a strict code of confidentiality and comply with the Personal Data (Privacy) Ordinance and other laws. Subject to conditions of the Policy, the records will not be revealed to any person unless otherwise permitted under the Personal Data (Privacy) Ordinance or as required by law. Unauthorized disclosure of any information or documents pertaining to the complaint and/or handling of the complaint shall be liable to disciplinary action and/or legal action.

### **Non-victimisation and Non-reprisal for Lodging Complaint of Discriminatory Act**

39. 'Victimisation' is an unlawful act. Victimisation occurs when a person treats another person ("the victimised person") less favourably than in those circumstances s/he treats or would treat other persons, and does so by reason that the victimised person has lodged (or intends to lodge) a complaint or appeared (or intends to appear) as a witness in a complaint investigation process. Please refer to **Appendix I** for more details.
40. No staff member or student of the University, or any other person who has dealings with the University shall be subject to victimisation or reprisal for lodging a complaint in good faith or appearing as a witness under the Policy. However, any staff members or students lodging complaints which are false and not made in good faith; or who intentionally provide false information in the complaint investigation process are liable to disciplinary action.

### **Review**

41. The University will review the Policy periodically and may introduce revisions as and

when deemed appropriate.

### **Publicity and Education**

42. The Policy will be promulgated to members of the University community and incorporated in the Staff Handbook and the Student Handbook. Staff and students will be reminded of the Policy from time to time. Attention of workplace participants such as employees of contract service providers, interns and volunteers will also be drawn to the Policy for compliance purposes.
43. Publicity and educational programmes in the form of briefing sessions, seminars or workshops will be organized by the Human Resources Office for staff and by the Student Affairs Office for students to help promote the Policy, on an on-going basis, to enhance their awareness of the issues relating to discrimination/harassment/vilification/victimisation and to reinforce the Policy. Publicity materials will be distributed to departments and offices, new appointees and students during induction or orientation programmes. Equal Opportunities Coordinators in the Faculties/Offices will help promote equal opportunities.