

Policy on Equal Opportunities

A) OUHK's Position on Equal Opportunities

1. It is unlawful for a member, employee or student of the University to harass, discriminate against, vilify or victimize another member, employee or student of the University, or any other person who has dealings with the University, on the grounds of sex, marital status, pregnancy, family status*, disability* or race* of that person. The University will not tolerate any unlawful acts of harassment*, discrimination*, vilification* or victimization* and it will uphold this principle in all of its operations.
2. The University, and members and employees of the University who hold supervisory positions, will take all necessary steps in order 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 any unlawful acts of harassment, discrimination, vilification or victimization in their employment* or in their educational experience*.
3. The University will promote equal opportunities in employment and education.
4. The University will make reasonable accommodations* for staff, students, student applicants and job applicants with disabilities in order to provide equal opportunities in employment and education unless such changes impose unjustifiable hardship* on the University.
5. The University adopts in their entirety the Codes of Practice issued by the Equal Opportunities Commission (EOC) under the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO).
6. Members, employees and students of the University should observe the requirements of the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance (RDO) as stipulated in the Codes of Practice issued by the EOC. They may be personally liable for acts committed by them.
7. Members, employees and students of the University can be proactive in helping to eliminate unlawful acts of harassment, discrimination, vilification or victimization by becoming familiar with the subjects, through a sensitivity towards the issues and by ensuring that standards of conduct for themselves do not cause offence.
8. The University will periodically review the equal opportunities policy in consultation with the relevant stakeholders.

*[*Please refer to the section "Definitions" for explanation of the terms.]*

B) Definitions

1. Disability

Disability includes physical, mental, sensory, neurological or learning disabilities and the presence of some disease-causing organisms in the body (for example HIV). It also includes the malfunction, malformation or disfigurement of a part of a person's body; or a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgments or that results in disturbed behaviour. Disability includes a disability that presently exists; previously existed but no longer exists; may exist in the future; or is imputed to a person.

2. Disability Discrimination

2.1 *Disability discrimination* against a person includes discrimination against him or her

- i) on the ground of the disability of his or her associate (e.g. carer or relative),
- ii) because of the fact that that person is accompanied by, or possesses a palliative or therapeutic device or auxiliary aid, or any matter related to this fact, or
- iii) because of the fact that that person is accompanied by an interpreter, a reader, an assistant or a carer, or any matter related to this fact.

2.2 *Exceptions*

2.2.1 Disability discrimination by an employer in recruiting for a job, or in providing opportunities for promotion or transfer to, or training for, a job is not unlawful where:

- i) absence of disability is a genuine occupational qualification for the job; or
- ii) a person with a disability is unable to perform the inherent requirements of a job; or
- iii) a person with a disability requires services or facilities that are not required by a person without a disability in order to carry out the inherent requirements of a job, and the provision of which would impose unjustifiable hardship on the employer.

2.2.2 The following circumstances are not regarded as unlawful when an educational establishment

- i) refuses or fails to accept a person's application for admission as a student due to his or her disability where that person if admitted, would require services or facilities that are not required by students without the disability, and the provision of which would impose unjustifiable hardship on the educational establishment;
- ii) discriminates against a person with a disability under the circumstances that
 - the person is not reasonably capable of performing the actions or activities reasonably required by the educational establishment in relation to its students;
 - the students who participate, or are to participate, in those actions or activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to those actions or activities and relative to each other.

3. Disability Harassment

Disability harassment means unwelcome conduct towards a person in relation to his or her disability, or towards a person on the ground of the disability of his or her associate, in circumstances where a reasonable person would have anticipated that the harassed person would be offended, humiliated or intimidated.

4. **Disability Vilification**

Disability vilification means “any activity in public” to incite hatred towards, serious contempt for, or severe ridicule of, a person or persons with a disability. **Serious disability vilification** occurs when such activity involves threatening physical harm to a person with a disability, his/her property or premises, or the property or premises he/she has access to. Inciting others to behave in this way also amounts to **serious disability vilification**. **Serious disability vilification** is a criminal offence.

5. **Discrimination**

5.1 **Direct discrimination** means treating a person less favourably than another person in comparable circumstances, because of a person’s sex, marital status, pregnancy, family status, disability or race.

5.2 **Indirect discrimination** consists of applying the same treatment as between the sexes, persons with different marital status, persons who are pregnant or not, persons with or without family status, or persons with a disability and persons without a disability, or persons of different races, but is in practice discriminatory in its effect.

6. **Educational Experience**

Aspects of an individual’s **educational experience** include but are not limited to admission to a course or programme, grades, letters of recommendation, assignment, honours, research opportunities, scholarships, grants, career development, employment opportunities, use of facilities, probation, termination, and classroom conditions.

7. **Employment**

Aspects of an individual’s **employment** include but are not limited to hiring, re-appointment, crossing of efficiency bar, promotion, termination, redundancy, reassignment, transfer, pay, pay adjustments, performance management, rewards, fringe benefits, work load, opportunities, training and staff development, and working conditions.

Apart from contract of service, other categories of **employment** include service in relation to **employment** agencies, engagement as a contract worker or commission agent, and memberships in workers’ or employers’ organizations.

8. **Family Status**

Family status in relation to a person means the status of having responsibility for the care of an immediate family member. An immediate family member is a person who is related by blood, marriage, adoption or affinity.

9. **Harassment**

Harassment means unwelcome conduct towards a person in circumstances where a reasonable person would have anticipated that the harassed person would be offended, humiliated or intimidated. Unlawful acts of harassment refer to **disability harassment**, **sexual harassment** and **racial harassment**.

Apart from a member, employee or student of the University, the protection will also cover consignment workers, volunteers and interns.

10. **Race**

Race, in relation to a person, means the race, colour, descent or national or ethnic origin of that person, and includes a race, colour, descent, national or ethnic origin that is imputed to the person. Racial Group means a group of persons defined by reference to race, colour, descent or national or ethnic origin, and

references to a person's racial group refer to any racial group into which the person falls or is imputed to fall.

11. **Racial Harassment**

Racial harassment occurs if a person engages in an unwelcome, abusive, insulting or offensive behaviour because of another person's or his/her *associate's race, which makes him feel threatened, humiliated or embarrassed. Racial harassment can be in any form—physical, visual, verbal or non-verbal—and even a single incident may constitute racial harassment. It also occurs if a person creates a racially hostile environment for another person because of his/her or his/her *associate's race. Racial harassment is unlawful under the law.

**Associate – includes a spouse of a person; another person who is living with the person on a genuine domestic basis; a relative of the person; a carer of the person; or another person who is in a business, sporting or recreational relationship with the person.*

12. **Reasonable Accommodations**

Reasonable accommodations are measures or actions taken in order to provide equal opportunities in employment and education such as adjustment in procedures, provision of aids, facilities or services to meet the individual needs of persons with disabilities. A detailed assessment may be required in order to determine what accommodations are necessary and each case needs to be considered with regard to its own circumstances.

The types of adjustment provided by an employer for its staff and job applicants with disabilities may include

- i) changes or adjustments to the recruitment and selection procedures;
- ii) modifications to work premises;
- iii) changes to job design, work schedule or other work practices;
- iv) provision and modification of equipment, and
- v) provision of training and other assistance.

In the aspect of education, adjustments in the admission process, design of curriculum and assessment methods, provision of services and facilities, etc. may be considered in order to meet the individual needs of students or student applicants with disabilities.

13. **Sexual Harassment**

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended in the eyes of a reasonable person.

Sexual harassment can take different forms and may include gestures, physical or visual contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile or intimidating environment.

For example, **sexual harassment** will be constituted when

- i) the recipient has reasonable ground to believe that any aspect of an individual's employment or educational experience is made conditional on submission to such conduct, either explicitly or implicitly; or
- ii) that employment or education decisions affecting an individual are based on rejection of such conduct; or
- iii) such conduct has the purpose or effect of
 - unreasonably interfering with an individual's work performance or educational experience, or

- creating an intimidating, hostile, or offensive working or learning environment.

In determining whether conduct constitutes *sexual harassment*, the entire record and the totality of circumstances will be considered.

14. **Unjustifiable Hardship**

The DDO exempts employers and educational establishments from liability in the provision of reasonable accommodations in cases where they would create or impose an *unjustifiable hardship*. Relevant circumstances in determining what constitutes *unjustifiable hardship* include:

- i) the reasonableness of any accommodation to be made to a person with a disability;
- ii) the nature of the benefit or detriment likely to accrue or be suffered by any person concerned;
- iii) the actual effect of the disability of a person concerned; and
- iv) the financial circumstances and the estimated amount of expenditure (including recurrent expenditure) required to be made.

In each case of proving *unjustifiable hardship*, the responsibility always rests with the employer or the educational establishment.

15. **Victimization**

Victimization arises where a person (the discriminator) treats another person (the person victimized) less favourably than other persons in comparable circumstances because the person victimized or a third person has done or intends to do, or is suspected to have done or to intend to do, the following:

- i) bringing proceedings against the discriminator or any other person under the SDO, DDO, FSDO and RDO;
- ii) giving evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the SDO, DDO, FSDO and RDO;
- iii) otherwise doing anything under or by reference to the SDO, DDO, FSDO and RDO in relation to the discriminator or any other person, or
- iv) alleging that the discriminator or any other person has committed an act which is unlawful under the SDO, DDO, FSDO and RDO.

16. **Vilification**

Vilification means “any activity in public” to incite hatred towards, serious contempt for, or severe ridicule of a person. Unlawful acts of vilification refer to *disability vilification, serious disability vilification, racial vilification and serious racial vilification*.

C) Proceedings on Complaints of Harassment, Discrimination, Vilification or Victimization

1. If staff members, job applicants, students or student applicants feel that they have experienced harassment, discrimination, vilification or victimization within the University, they may initiate the following proceedings and are encouraged to do so as soon as possible after the alleged incidents. It will be useful for the complainants to maintain relevant written records in order to support themselves in the proceedings. Both formal and informal proceedings are available. Apart from invoking the following internal procedures, the complainant may lodge a complaint directly with the Equal Opportunities Commission (which normally handles complaints made within 12 months when the acts were committed) or take action in the District Court (which normally considers claims made within 24 months when the acts were committed).
2. If the complainant feels that the action complained of appears to constitute a criminal offence and decides to report to the police, he/she will be advised to report the matter to the President first.
3. The President will appoint an Equal Opportunities Officer as a contact person to receive harassment, discrimination, vilification or victimization claims and to report the cases to the Chairperson of the Committee on Equal Opportunities for appropriate action. Monitoring of compliance with these guidelines shall be the responsibility of the Committee on Equal Opportunities.
4. All complaints will be dealt with promptly, confidentially and impartially. All relevant persons are encouraged to support their fellow colleagues, students or other members of the University in the process of counteracting unlawful acts of harassment, discrimination, vilification or victimization. They could do so by being a witness or through other appropriate means.
5. **Informal Proceedings**
 - 5.1 Informal process may be useful when the party concerned does not realize that certain behaviour is offensive to the recipient and it may enable prompt action to be taken to stop the unwelcome behaviour at the earliest possible stage. If a person feels he/she has been harassed, discriminated against, vilified or victimized, the person may first seek an informal resolution. Informal resolution includes private conciliation and mediation. No public sanction or written records are involved.
 - 5.2 Informal resolution procedures may include talking directly with the respondent or seeking an advocate such as a Dean/Director/Unit Head, a Course Coordinator, or another supervisor with whom the complainant feels comfortable. This person may provide advice and support to the complainant and serve as an informal mediator between the complainant and the respondent. If appropriate, the complainant should discuss the case with the respondent in an attempt to reach an informal resolution of the situation.
 - 5.3 At this stage, the Equal Opportunities Officer (EOO) may be involved as a source of information regarding general procedures for both informal and formal resolutions.
 - 5.4 When private conciliation or mediation fails to resolve a situation involving harassment, discrimination, vilification or victimization, or if the complainant believes that only a formal complaint can provide resolution, he/she may file a complaint in accordance with the formal proceedings. If in the judgement of the advocate/mediator, the action complained of appears to be of a serious nature, he/she should advise the complainant to initiate the formal proceedings.
 - 5.5 All parties involved in private conciliation or mediation shall keep confidential all information which comes to their knowledge during the process. Any person found to have breached confidentiality of the process will be subject to disciplinary action.

6. Formal Proceedings

6.1 Filing a complaint

6.1.1 The complainant may file a written complaint that will form the basis for further action. The EOO will solicit from the complainant information regarding witnesses to the claimed misconduct, and any other evidence of the alleged harassment, discrimination, vilification or victimization.

6.1.2 No one will be penalized for lodging a complaint, provided such reports are made in good faith. If at any point the complaint is found to be malicious, disciplinary action may be taken against the complainant.

6.2 Records

6.2.1 All activities with respect to the formal complaint procedures will have written records which will be kept by the EOO.

6.2.2 All records are confidential. Information in the records will not be made available to parties not directly handling or affected by the case, unless so required by law. Any person found to have breached confidentiality of the process will be subject to disciplinary action.

6.3 Establishing merits

6.3.1 The EOO will determine whether or not there is any merit to the complaint within one month of the date of receiving the written complaint. He/She will make a preliminary investigation of the allegations made by the complainant, which shall include confidential interviews with all parties identified by the complainant as witnesses to the alleged harassment, discrimination, vilification or victimization.

6.3.2 Based on this investigation, the EOO will consult the Chairperson of the Committee on Equal Opportunities on any appropriate follow-up action, i.e. not to proceed with the case, resolve the matter through mediation, or proceed with disciplinary procedures.

6.4 Application of disciplinary procedures and penalties

6.4.1 If the University decides to proceed with the case, then appropriate formal disciplinary procedures will be applied. The University may impose penalties on any student, staff or administrative body found guilty of harassment, discrimination, vilification or victimization pursuant to the University's authority over disciplinary action.

6.4.2 Subject to the consent of the complainant, the University may report the case to the police, if it considers the case to be a criminal offence.

6.5 Appeal

- 6.5.1 If it is decided not to proceed with the complaint, the EOO will explain to the complainant the basis for the decision. If the complainant is not satisfied with the explanation, he/she may appeal to the President.
- 6.5.2 To initiate the appeal, the complainant must provide a written statement of appeal. The EOO will forward the statement to the President along with his/her written explanation of the decision not to proceed with the application of disciplinary procedures.
- 6.5.3 If the President decides that the appeal is in favour of the complainant, he shall direct the EOO to proceed with the disciplinary procedures.

6.6 Conflict of Interest

- 6.6.1 Where conflict of interest arises between the official duties and the private interest of any officer administering the proceedings, the University shall appoint another officer to handle the complaint.

For enquiries, you may contact the Equal Opportunities Officer at:

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