

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 8 June 2001**

**Legal Service Division Report on
Code of Practice on Education under
the Disability Discrimination Ordinance (Cap. 487) (G.N. 3310)
Gazetted on 1 June 2001**

Date of Tabling in LegCo : 6 June 2001

Amendment to be made by : 4 July 2001 (or 11 July 2001 if extended by resolution)

Under section 65 of the Disability Discrimination Ordinance (Cap. 487) ("the DDO"), the Equal Opportunities Commission ("the EOC") may issue codes of practice for the elimination of discrimination, the promotion of equality of opportunity between persons with a disability and persons without a disability generally, and the elimination of harassment and vilification. To assist educational establishments in fulfilling the requirements of the DDO and to enable persons with disabilities, their parents and associates to understand their rights under the DDO, the EOC issues a code of practice ("the Code") in the education field.

2. The Introduction (paragraphs 1 to 4) to the Code explains the purpose of the Code, application of the Code and certain important definitions in the DDO.

3. The Code also elaborates on implications of the DDO on education (paragraphs 5 to 10). Paragraph 5 explains the general liability of employers and principals for unlawful discriminatory acts of his employees, contract workers and agents (as the case may be) against persons with disabilities. Paragraph 6 of the Code explains and gives examples in relation to discrimination in access to education (section 24 of the DDO) and harassment in education (section 37 of the DDO). Paragraph 7 of the Code explains and gives examples in relation to discrimination in providing access to or allowing the use of any facilities on the premises in educational establishments (section 25 of the DDO). Paragraph 8 of the Code explains and gives examples in relation to discrimination in provision of goods, services and facilities in educational establishments (section 26 of the DDO). Paragraph 9 of the Code explains the meaning of infectious diseases as defined under the DDO and explains

the circumstances in which a person may be regarded as discriminating against another person who is suffering from infectious diseases (section 61 of the DDO). Paragraph 10 of the Code explains that certain special measures taken, for example to ensure that persons with a disability have equal opportunities with other persons in circumstances in relation to which a provision is made by the DDO, are not unlawful (section 50 of the DDO).

4. The Code also contains practical guidelines for educational establishments to observe (paragraphs 11 to 20). The practical guidelines encourage the educational establishments to formulate policy on equal opportunities. The practical guidelines also explain factors that the educational establishments shall take into account to meet the needs of persons with disabilities in the course of provision of education in relation to, such as procedures for student admission, design of curriculum and access to premises.

5. The Code also specifies the respective roles and responsibilities of the Government, educational establishments, the staff of the educational establishments, students and their parents in promoting equal opportunities in the education process (paragraphs 21 to 25).

6. The Code applies to educational establishments listed in Appendix A to the Code.

7. A failure on the part of a person to observe the Code does not render him liable in any proceedings. But in any proceedings under the DDO, relevant provisions of the Code shall be admissible in evidence for the determination of any questions arising from the proceedings.

8. Members may wish to note that the scrutiny period of and amendment procedure for the Code are substantially the same as those for subsidiary legislation gazetted under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

9. The Code will come into effect upon the expiration of 28 days after the LegCo sitting at which it was so laid, or upon the expiration of the period extended for scrutiny, or in the case where the LegCo passes a resolution amending the Code, upon the expiration of the day next preceding the day of the publication in the Gazette of such resolution.

10. The EOC briefed the LegCo Education Panel at its meeting held on 19 March 2001 about the Code. While members supported the Code in principle, they expressed concern that schools might be unable to meet the statutory requirements because of their physical and financial constraints in meeting the special needs of students with disabilities. Members were of the view that the Administration must provide all the necessary manpower and resources support to every school admitting students with disabilities.

11. The Legal Service Division has raised some drafting points about the Code with the EOC. We will further report to members once we have received the reply from the EOC.

Encl

Prepared by

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(Attn : Mr Frederick Tong)

Dear Mr Tong,

**Code of Practice on Education under
the Disability Discrimination Ordinance(Cap. 487) (G.N. 3310)**

We are scrutinising the legal and drafting aspects of the Code.

In the course of our scrutiny, it is noted that some parts of the Chinese text do not strictly follow the English text, for example paragraphs 1.1 and 1.2 of the Code. However, it is appreciated that the Code is not a piece of legislation and it is prepared for easy reading by the public. Therefore, as we have spoken on phone, a degree of flexibility should be given to the Chinese translation so long as it does not distort the meaning of the English text or deviate from the meaning of certain technical terms used in the Disability Discrimination Ordinance (Cap. 487) ("the DDO"). On this premise, we have marked up our comments on the attached copies of the English and Chinese versions of Code for your consideration.

We would be grateful if you could also confirm whether the pre-conditions under section 65(2) and(3) of the DDO for issuing the Code have been complied with.

In the light of the time limit for amendment provided for in section 65 of the DDO, it is appreciated that your reply in both languages could reach us as soon as possible.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

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