

立法會
Legislative Council

LC Paper No. LS 123/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 15 June 2001**

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

Members will recall that the Legal Service Division ("the LSD") has reported on the Code to the House Committee meeting held on 8 June 2001 vide LC Paper No. LS113/00-01. In our last report, we indicated that we have been awaiting the Equal Opportunities Commission's ("the EOC") response to our queries about certain drafting points of the Code. We have now received the EOC's replies in which they agree to most of our proposed amendments to the Code. Copies of the correspondence between the EOC and LSD are annexed for members' reference. The proposed amendments are technical in nature and are contained in the schedules to the EOC's letters respectively. The EOC has agreed to request the Secretary for Health and Welfare to move a motion in this Council to amend the Code.

2. With the proposed amendments, we are satisfied that the Code is legally in order.

Encl

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
13 June 2001

Further/Subleg/LS/S/33/00-01

Annex

EOC/COP/10
LS/S/33/00-01
2106 2220
2511 8142

By Fax: 2877 5029

8 June 2001

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mr. Stephen Lam, Assistant Legal Adviser)

Dear Mr. Lam,

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

Thank you for your comments on the Code and we spoke over the phone this morning. We are agreeable to most of the amendments proposed by you and have counter proposals on a few and suggestions for further amendments, mainly on the language. Our comments and counter proposals are listed in the Annex.

A more substantive point, though, relates to para. 6.1.3.2 of the Code, as spoken this morning. We consider that in the context in question, meaningful comparison can only be made between a student with a disability and a student without the disability that the former student has. In this connection, you may wish to know that we have separately proposed to the Government an amendment to the relevant provisions in the DDO and are discussing the proposal with the Government.

We confirm that the Commission has complied with the pre-conditions set under s.65(2) and (3) of the DDO for issuing the Code before the submission of it to the Legislative Council. The Code is the result of modifications to a proposed Code prepared and published by the Commission for public consultation during the period from 15 January 2001 to 31 March 2001. In the course of preparing the Code, we have consulted a wide range of organizations and bodies, including teaching and medical professional bodies,

schools councils, disability and rehabilitation service groups, parents associations, the Education Department, Board of Education and the Education and Welfare Panels of the Legislative Council.

Please feel free to contact me again if you need further information.

Yours sincerely,

Frederick Tong
Director (Disability)
Equal Opportunities Commission

Enc.

EOC's Comments and Counter Proposals Regarding Amendments to the Code

Chinese Version

Ref.	Proposed Amendments by Assistant Legal Adviser, Legislative Council	Comments/Counter Proposals by the Equal Opportunities Commission	Rationale for Counter Proposals
1.1, line 3	To amend “確保殘疾人士享有平等教育機會” to read as “確保殘疾人士享有平等機會獲得及有意義地參與本地教育”	“確保殘疾人士享有平等機會，以獲得及有意義地參與本地教育。”	To smooth up the language.
1.2, line 1	To delete “平等機會委員會(下稱委員會)相信，”	Agreed	
1.3, line 1	N/A	To amend “是委員會” to read as “是平等機會委員會(下稱委員會)”	Corresponding amendment subsequent to the deletion of the first sentence in para. 1.2
1.3, line 2	To replace “定期” by “不時”	Agreed	
4.9.1, line 1	To clarify “因殘疾而起的使人受害”	To replace “因殘疾而起的使人受害是指” with “「使人受害」的殘疾歧視是指”	To follow the wording used in the heading
6.1.3.3.1, line 2	To replace “動作” by “行動”	Agreed	
7.2, line 3	To replace “太多” by “額外”	Agreed	
9.2, line 1	To replace “保障” by “保護”	Agreed	
10.1.2, line 1	To replace “滿足” by “迎合”	Agreed	
10.1.3, line 1	To replace “滿足” by “迎合”	Agreed	
Table in Appendix A, item 1, second column, line 2	To replace “評議會” with “畢業生評議會”	Agreed	
Table in Appendix A, item 4, second column, line 1	To insert “托” after “信”; and “員” after “委”	Agreed	

Table in Appendix A, item 11, second column, line 3	To insert “能” after “職”	Agreed	
Table in Appendix A, item 12, first column, line 1	To replace “成立為法團的” with “設立的”	Agreed	
Table in Appendix, A, item 13, first column, line 1	To insert “立” after “設”	Agreed	

English Version

Ref.	Proposed Amendments by Assistant Legal Adviser, Legislative Council	Comments/Counter Proposals by the Equal Opportunities Commission	Rationale for Counter Proposals
3.1, line 2	To amend “ column 1 of Schedule 1 of ” to read as “column 1 to Schedule 1 of”	To amend to read as “column 1 of Schedule 1 to”	In line with other proposed amendments
4.1.1, last but one line	To replace “motions” with “emotions”	Agreed	
4.2.1, last but one line	To amend “Schedule 1 of the DDO” to read as “Schedule 1 to the DDO”	Agreed	
4.7.1, line 2	To amend “serious ridicule” to read as “severe ridicule”	Agreed	
4.7.1, line 2	N/A	To insert “towards” after “hatred”	In line with S46(1) of the DDO
6.1.3.2	To amend “required by students without the disability” to read as “required by students without a disability”	To retain the original text	Although S24(4) of the DDO uses “students without a disability”, the correct interpretation should be comparison between students with a disability and students without the particular disability. As the purpose of the Code is to help readers to have a better understanding of the law,

			wordings used should aim at providing a better understanding of the law, rather than just repeating the exact wording in the ordinance.
Appendix A, line 1	To amend “column 1 of Schedule 1 of the“ to read as “column 1 of Schedule 1 to the”	Agreed	

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Equal Opportunities Commission
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Hong Kong

11 June 2001

BY FAX

Fax No. : 2511 8142
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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)**

Thanks very much for your letter of 8 June 2001. Your proposed amendments and comments are agreeable to us. We have further comments marked up on the attached copies of the Chinese version of the Code for your consideration.

It is appreciated that if you would confirm the Secretary responsible for the policy area will move a motion in the Council to amend the Code accordingly.

In facilitating us to further report on the Code to the House Committee meeting to be held on 15 June 2001, we should be grateful for your reply, in both languages, to reach us by tomorrow.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

Encl

EOC/COP/10
LS/S/33/00-01
2106 2220
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By Fax: 2877 5029

12 June 2001

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mr. Stephen Lam, Assistant Legal Adviser)

Dear Mr. Lam,

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

Thank you for your further comments to the Code sent to us yesterday. I have listed our comments and proposed amendments in response to your comments in the Annex for your consideration. Please let me know if you are agreeable with our proposals.

We have approached the Secretary for Health and Welfare (SHW) for moving a motion in the Council on 4 July 2001 to amend the Code. Subject to your confirmation that the proposed amendments in the Annex and those mentioned in my letter to you dated 8 June 2001 are agreeable to you, and that you have no further amendment to propose, we will put a formal request to SHW for him to move the amendments in LegCo on the said day.

I look forward to your advice soon.

Yours sincerely,

Frederick Tong
Director (Disability)

Enc.

ANNEX

EOC's Comments /Proposed Amendments to the Code in Response to ALA/LegCo's Comments dated 11 June 2001

Chinese Version

Ref.	Proposed Amendments by/Queries of Assistant Legal Adviser, Legislative Council	EOC's Comments/Proposed Amendments	Rationale for EOC's Comments/Proposed Amendments
2.1.2, line 2	To add “及” at the end	Agreed	
2.1.3, line 2	Query about “賦予.... 責任”	To amend “認識《條例》賦予他們的權利及責任”to read as “認識他們在《條例》下的權利及責任”	
3.5, line 2	Query on omission of the translation for “for all instances”	To insert “在任何情形下” before “應參閱”	
Ditto	To delete “有關條文”	Agreed	
11.1, line 1	To replace”應” with “宜”	Agreed	
11.1, line 2	To amend “有關殘疾人士的平等教育機會的具體部份” to read as “以殘疾人士平等機會為目標具體部份”	To amend the text to read as ”有關達致殘疾人士平等機會的目標的具體部份”	More in line with the English text.
11.1.3, line 1	To amend “投訴的程序” in order to be in line with the translation adopted in 11.4, line 2	Agreed to amend “投訴的程序” to read as “申訴的程序”	
11.2, line 1	Query if “有關人士” and “該機構成員的人士” is clear enough to refer to “all stakeholders”	To amend “教育機構應向所有有關人士及其他正在謀求成為該機構成員的人士” to read as “教育機構應向所有與其有關的人士及其他正在謀求成為該等人士的人”	

11.3, line 1	To amend “定期” to read as “不時”	Retain the original text	As the original text better conveys the meaning of “periodical”
Ditto	Queried if “並諮詢適當的組織” is clear enough to show that the review must be in consultation with appropriate groups	To insert “在檢討過程中” after “並”	To adhere more closely to the English text.
11.4, line 3	To insert “大型” before “大專院校”	Agreed	
12.1, line 3	To amend “以免作出歧視殘疾人士或其他違法的作為” to read as “以免作出對殘疾人士的作為或其他違法行為”	Retain the original text	The original text is good enough to convey the meaning
12.2.2, line 2	To replace “遷就” with “改變”	Retain the original text	The original text better conveys the meaning in Chinese
Appendix B, paragraph under the sub-heading “評估及跟進行動”, line 4	To insert “暫時” before “停學” and “停學令”	Agreed	
Ditto	To amend “一名官員覆檢後” to read as “一名覆檢官員”	Agreed	
Appendix B, paragraph under the sub-heading “審裁處的判決”, last but one line	To amend “「現行另一[法例]的條文」” to read as “「另一[法例]的現行條文」”	Agreed	

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12 June 2001

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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)**

Thank you for your today's letter under reference. Your proposals are agreeable to us. We will further report on the Code to the House Committee meeting to be held on 15 June 2001.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser