

DISABILITY DISCRIMINATION ORDINANCE (Chapter 487)

CODE OF PRACTICE ON EDUCATION

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INTRODUCTION

1. Background

- 1.1 The Disability Discrimination Ordinance (DDO) was enacted in 1995 and became operative in 1996. It aims at eliminating and preventing discrimination against persons with disabilities. The DDO makes particular references to the field of education, and seeks to ensure that persons with disabilities have equal opportunities in access to, and meaningful participation in, local education.
- 1.2 It is important for the general public to be aware of the significant role that educational establishments play in promoting equal opportunities in the community. Similarly, it is important that educational establishments be aware of their obligations to persons with disabilities as set out in the DDO, and ensure that their interactions with persons with disabilities are free from any form of discrimination or other treatment resulting in unlawful acts.
- 1.3 The Code of Practice on Education (the Code) is issued by the Equal Opportunities Commission (EOC) in accordance with the DDO.¹ The EOC may from time to time revise any part of the Code to assist educational establishments to develop strategies consistent with the DDO or to take into account any developments or changes in the law.

2. Purpose of the Code

- 2.1 The Code is issued to:
 - 2.1.1 assist educational establishments to develop policies and procedures that prevent and eliminate disability discrimination;
 - 2.1.2 provide educators with practical guidance on making provision for students with disabilities that are consistent with the provisions set out in the DDO; and
 - 2.1.3 enable persons with disabilities, their parents and their associates (such as family members, carers and business associates) to understand their rights and responsibilities under the provisions of the DDO.

3. Application of the Code

- 3.1 The Code applies to all educational establishments in Hong Kong specified in column 1 of Schedule 1 of the Sex Discrimination Ordinance (see appendix A of the Code).
- 3.2 Responsible bodies which manage educational establishments at the kindergarten, primary, secondary and post-secondary levels through structures such as governing bodies, management committees, councils or similar groups, are obliged to comply with the DDO.
- 3.3 The Code also applies to the employees of educational establishments, such as principals, teachers and supporting staff, and those studying at educational establishments. Similarly, it can be used as a reference for professionals who provide services to persons with disabilities in the course of education, such as medical practitioners, therapists, social workers and psychologists.
- 3.4 The Code also applies to the Government in the performance of its functions and the exercise of its powers in relation to education.
- 3.5 The examples given in the Code are illustrative only. In order to gain a more detailed understanding of the obligations that educational establishments have in eliminating and preventing disability discrimination, reference should in all instances be made to the DDO.
- 3.6 The Code uses terms from time to time which denote a person's gender. This is particularly so in some of the examples used to illustrate various concepts. Readers are reminded that the DDO applies equally to persons of both genders, and the use of gender specific terminology in the Code is for illustrative purposes only.

4. Definitions

4.1 *Disability*

4.1.1 The DDO defines that disability includes a condition that presently exists, previously existed but no longer exists, may exist in the future or is imputed to a person. It defines disability relating to individuals as including:

- *total or partial loss of the person's bodily or mental functions;*
- *total or partial loss of a part of the person's body;*
- *the presence in the body of organisms causing disease or illness;*
- *the presence in the body of organisms capable of causing disease or illness;*
- *the malfunction, malformation or disfigurement of a part of the person's body;*
- *a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or*
- *a disorder, illness or disease that affects a person's thought processes, perception of reality, motions or judgement or that results in disturbed behaviour.*²

4.1.2 The provisions of the DDO therefore apply to a wide range of persons, including those usually referred to as persons with intellectual disability or mental handicap, autism, specific learning disabilities, hearing impairment, visual impairment, physical disability or handicap, mental illness and various other chronic illnesses, and persons who are infected with the human immunodeficiency virus (commonly known as "HIV-positive") or who have acquired immune deficiency syndrome (commonly known as "AIDS").

4.2 *Associates of Persons with Disabilities*

4.2.1 The DDO also applies to the associates of persons with disabilities. Associates of persons with disabilities include a spouse of a person with a disability, someone who is living with a person with a disability on a genuine domestic basis, a relative, a carer or those in a business, sporting or recreational relationship with a person with a disability. For the purpose of the DDO, the term carer includes the Director of Social Welfare, or any officer of the Social Welfare Department authorised in writing by the Director of Social Welfare, and any person specified in Schedule 1 of the DDO.³

4.2.2 An example of possible discrimination in such circumstances is:

- A child, although she herself does not have a disability, is refused enrolment in a kindergarten on the ground that one of her parents is HIV-positive.

4.3 *Direct Disability Discrimination*⁴

4.3.1 Direct disability discrimination means treating a person with a disability less favourably than another person without that disability, in comparable circumstances, on the ground of the disability.

4.3.2 Examples of possible direct disability discrimination in the field of education are:

- A student is refused admission to a school because of his severe visual impairment.
- A student who uses a wheelchair is denied admission to a secondary school because her classroom would be on the third floor, and the school management refuses her access to the lift, which has traditionally been reserved for staff only.

4.4 *Indirect Disability Discrimination*⁵

4.4.1 Indirect disability discrimination exists when a person applies the same requirement or condition to a person with a disability as well as to another person without the disability, but the outcome is detrimental to the person with the disability and the first mentioned person cannot show the requirement or condition to be justifiable. In such circumstances it is unlawful to treat a person with a disability and another person without the disability in the same way. This is because in some circumstances the person with the disability cannot comply with the requirement or condition due to the disability.

- 4.4.2 The following are examples of possible indirect disability discrimination in education:
- A student is given a lower grade of conduct because he cannot comply with the usual school attendance expectations due to his periodical hospital-based treatment for diabetes.
 - In a dictation test, the passage being dictated was read out from a cassette tape recorder. A student with hearing impairment in the class who lip-reads had difficulty in listening to the tape recorded passage because no alternative arrangement was made to accommodate her special needs and got very low grade in the test as a result.
- 4.5 *Disability Discrimination Relating to Auxiliary Aids, Carers and Assistants*⁶
- 4.5.1 It is considered disability discrimination to treat a person with a disability less favourably because he or she uses an auxiliary aid, or is accompanied by an assistant such as an interpreter, reader or carer.
- 4.5.2 Examples of possible disability discrimination relating to auxiliary aids, carers and assistants are:
- A person with a disability who uses a wheelchair for mobility purposes is refused entry into a school on the ground that it does not want wheelchairs in the premises.
 - A student with a disability is not allowed to join his classmates on an excursion because his assistant will take up an extra seat on the bus.
- 4.6 *Disability Harassment*⁷
- 4.6.1 Disability harassment means unwelcome conduct towards a person on account of his or her disability, or towards this person's associate, where a reasonable person, having regard to all circumstances, would have anticipated that the person with the disability would be offended, humiliated or intimidated.
- 4.6.2 Examples of possible disability harassment are:
- A student ridicules a classmate with spina bifida in the playground by making crude gestures which mimic her disability.
 - A student with Down's Syndrome is called an idiot and ridiculed by staff members of his school.
- 4.7 *Disability Vilification*⁸
- 4.7.1 Disability vilification occurs when someone, by any activity in public, incites hatred, serious contempt for, or serious ridicule of a person with a disability or members of a class of persons with a disability.
- 4.7.2 The following are examples of possible disability vilification:
- A group of parents publicly ridicule a parent with a disability during a parents' meeting at the kindergarten of their children.
 - A student loudly derides a girl with a severe visual impairment in front of everyone when she enters the canteen, and shouts that blind people should not be allowed on campus.
 - Posters are displayed in public which make fun of people with a mental handicap.
 - A mother is publicly ridiculed in a school about having a child with autism.
- 4.8 *Serious Disability Vilification*⁹
- 4.8.1 Serious disability vilification occurs when a person, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of a person with a disability or members of a class of persons with a disability and involves threatening physical harm to a person with a disability, his or her property or premises, or the property or premises he or she has access to. Inciting others to behave in this way also amounts to serious disability vilification. Serious disability vilification is a criminal offence.
- 4.8.2 Examples of possible serious disability vilification in the field of education are:
- Someone in a school publicly incites hatred towards a student with a physical handicap and threatens to damage his wheelchair.
 - Someone at a public meeting encourages serious contempt and severe ridicule of a student with AIDS and threatens to beat him up if he goes back to school again.

4.9 *Disability Victimisation*¹⁰

4.9.1 Disability victimisation exists when someone (the discriminator) treats another person (the person victimised) in comparable circumstances less favourably because the person victimised or a third person has done or intends to do, or is suspected to have done or intend to do, any of the following:

- 4.9.1.1 bring proceedings against the discriminator or any other person under the DDO;
- 4.9.1.2 give evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the DDO;
- 4.9.1.3 otherwise do anything under or by reference to the DDO in relation to the discriminator or any other person; or
- 4.9.1.4 allege that the discriminator or any other person has committed an act, which would amount to a contravention of the DDO.

4.9.2 Examples of possible disability victimisation are:

- A lecturer refuses to write a reference for a student because she has made a complaint against him under the DDO.
- A student who gives information against her teacher in a case involving alleged discrimination under the terms of the DDO is subsequently treated unfavourably by that teacher because of this act of providing information.
- A student is offered a poor grade in conduct since he was a witness in a case in which his teacher had allegedly harassed a classmate with a disability.

IMPLICATIONS OF THE DDO IN EDUCATION

5. General Liability

- 5.1 According to the DDO, an unlawful act of discrimination, harassment or vilification done by a person in the course of his or her employment may render both that person and his or her employer liable, unless the employer can demonstrate that the employer has taken all reasonably practicable steps to avoid the act from occurring.¹¹ This also applies to contract workers, whether employed by the employer or provided under a contract between the employer and a third person. Furthermore, acts done by a person as agent for the educational establishment, such as a volunteer, will also be treated as having been done by the educational establishment as well.¹² This means that educational establishments may be legally responsible for any discriminatory act of their employees, contract workers or agents done in the course of their employment, contract service or agency, whether or not these acts were done with the employer's or principal's knowledge or approval¹³.
- 5.2 It is also unlawful to instruct, induce, threaten or knowingly aid others to commit unlawful acts under the DDO.¹⁴
- 5.3 Failure by a person to observe any of the recommendations made in the Code does not automatically render him or her liable in any proceedings under the DDO. However, if a person is alleged to have committed an unlawful act under the DDO in relation to the provision of education, failure to implement recommendations made in the Code shall be taken into account by a court of law when considering whether such person has contravened the DDO.¹⁵ This applies to employees, students and persons seeking to be students of an educational establishment. This also applies to members of the responsible body of the educational establishment.
- 5.4 When the EOC investigates an alleged discriminatory act or conducts a formal investigation, it will also take compliance with the Code into account.
- 5.5 The Code may be used by educational establishments as a guide to what steps are reasonably practicable for them to take in order to prevent themselves and their employees from committing unlawful acts. The fact they did so will assist an investigation to determine whether they have taken all reasonably practicable steps to avoid the commission of an unlawful act.¹⁶

6. Discrimination and Harassment in Education

- 6.1 *Discrimination in Access to Education*
- 6.1.1 Section 24 of the DDO sets out circumstances in which it is unlawful for educational establishments to discriminate against a student or a prospective student with a disability. Except where there can be shown to be *unjustifiable hardship* (see paragraph 12.3 below) and except in relation to the paragraph 6.1.3 below, the DDO makes it unlawful for an educational establishment to discriminate against¹⁷:
- 6.1.1.1 an applicant with a disability by refusing or failing to accept his or her application for admission as a student;
- 6.1.1.2 a person with a disability by setting less favourable terms or conditions on which it is prepared to admit that person as a student;
- 6.1.1.3 a student of that educational establishment by denying or limiting him or her to any benefit, service or facility provided by it;
- 6.1.1.4 a student with a disability by expelling him or her; or
- 6.1.1.5 a student with a disability by subjecting him or her to any other detriment.
- 6.1.2. The following are examples of acts concerning access to education which, subject to paragraph 6.1.3 below, may be unlawful:
- A kindergarten refuses to accept an application for admission from a child because she has Down's Syndrome.
 - A student has an accident that leaves her disabled. When her school finds this out, she is expelled because of the disabilities she has acquired.

- 6.1.3. Paragraph 6.1.1 above does not apply to an educational establishment ¹⁸ :
- 6.1.3.1 which discriminates against a person with a disability with respect to admission if the educational establishment is established wholly or primarily for students with a particular disability, and the applicant does not have that particular type of disability. For example, the following refusal of admission may not be unlawful:
- A child who has a visual impairment but has normal hearing is refused admission to a school for the deaf;
- 6.1.3.2 which 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* (see paragraph 12.3 below) on the educational establishment;
- 6.1.3.3 which discriminate against a person with a disability in the circumstances that:
- 6.1.3.3.1 the person is not reasonably capable of performing the actions or activities reasonably required by the educational establishment in relation to its students. For example, the following situation may not be unlawful:
- An educational establishment refuses to admit a student who uses crutches for mobility to a ballet course;
- 6.1.3.3.2 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. For example, the following refusal to admit may not be unlawful:
- A school selects students to participate in a school choir by an audition which students with speech impairment are unable to pass.

6.2 *Harassment in Education*

- 6.2.1 Section 37 of the DDO has specific provision concerning circumstances of harassment which may occur in educational establishments. Under this provision, it is unlawful for:
- 6.2.1.1 a staff member of an educational establishment, or a student, or a member of its responsible body, to harass a person with a disability who is, or is seeking to be, a student of that educational establishment; or
- 6.2.1.2 a student of an educational establishment, or a person seeking to be a student at that educational establishment, to harass a person with a disability who is a member of the responsible body or a staff member of the establishment.
- 6.2.2 An educational establishment is not liable under the DDO for acts committed by its students. However, if it has knowledge of unlawful acts committed by its students against another who has a disability but takes no action on such acts, it may be liable for discrimination under section 24 of the DDO in certain circumstances. For example, the school in the following situation may be liable of disability discrimination:
- A school always disciplines its students who bully other students in the school, whenever such bullying acts come to its attention. A student of the school walks with crutches because she had polio when she was small. She has been teased by her classmates a number of times on the way she walks. Sometimes her crutches were even taken away by the classmates. She reported the incidents to the school each time but the school has taken no action either to discipline the harassers or to prevent similar harassing acts from recurring. As a result her study in the school is adversely affected.

7. Access to Premises

- 7.1 The DDO makes it unlawful for a person to discriminate against another person with a disability¹⁹:
- 7.1.1 by refusing to allow that other person access to, or the use of premises that the public, or a section of the public, is entitled or allowed to enter or use (whether for payment or not);
 - 7.1.2 by setting discriminatory terms or conditions on which that other person is allowed access to or the use of such premises;
 - 7.1.3 in relation to the provision of means of access to such premises;
 - 7.1.4 by refusing to allow that other person the use of any facilities in such premises that the public, or a section of the public, is entitled or allowed to enter or use (whether for payment or not); or
 - 7.1.5 by requiring that other person to leave such premises or cease to use such facilities.
- 7.2 The following are examples of possible discrimination in access to premises in educational establishments which, subject to paragraph 7.3 below, may be unlawful:
- The librarian of a school library asks a student with a disability to leave because his wheelchair is taking up extra space.
 - A university has arranged lectures of a particular subject to be held in a room that is inaccessible to a student who uses a wheelchair and has enrolled in the subject.
- 7.3 The DDO provides that discrimination in respect of access to premises, including premises relating to educational establishments, is not unlawful if it can be shown that the premises are so designed or constructed as to be inaccessible to a person with a disability, and any alteration to the premises to provide access would impose *unjustifiable hardship* (see paragraph 12.3 below) on those who would have to provide that access.²⁰

8. Provision of Goods, Services and Facilities

- 8.1 The DDO makes it unlawful for a person who provides goods, services or facilities, whether for payment or not, to discriminate against another person with a disability²¹:
- 8.1.1 by refusing to provide goods, services or facilities to that person with a disability;
 - 8.1.2 in the terms or conditions on which that person with a disability is provided goods, services or facilities; or
 - 8.1.3 in the manner in which goods, services or facilities are made to that person with a disability.
- 8.2 The following are examples of acts relating to goods, services and facilities which, subject to paragraph 8.3 below, may be unlawful:
- A school does not allow a student with visual impairment to sit for a public examination because he would not be able to read the printed examination paper.
 - A student with autism is refused access to a school's computers because some staff members consider that she might damage the computers.
- 8.3 Paragraph 8.1 does not apply to a person who discriminates against another person with a disability if²²:
- 8.3.1 the provision of the goods, services or facilities would impose *unjustifiable hardship* (see paragraph 12.3 below) on the person who would have to provide those goods, services or facilities; and
 - 8.3.2 in the case of facilities for education, and to the extent those facilities are physical in nature, those facilities are so designed or constructed as to be inaccessible to a person with a disability.²³

9. Infectious Diseases²⁴

- 9.1 The DDO defines infectious disease as any disease specified in the First Schedule to the Quarantine and Prevention of Disease Ordinance (Cap. 141), and any communicable disease specified by the Director of Health by notice in the Gazette.
- 9.2 Nothing in the DDO shall apply to a person who discriminates against another person with a disability if that person's disability is an infectious disease and the discriminatory act is reasonably necessary to protect public health.

- 9.3 HIV infection and acquired immune deficiency syndrome (commonly known as 'AIDS') are not infectious diseases under the DDO. A person who is HIV-positive or who has AIDS is protected by the provisions of the DDO as a person with a disability.

10. Special Measures ²⁵

- 10.1 The DDO indicates that an act is not unlawful if it is reasonably intended to:
- 10.1.1 ensure that persons with disabilities have equal opportunities with other persons in circumstances in relation to which a provision is made by the DDO;
 - 10.1.2 afford persons with disabilities goods or access to services, facilities or opportunities to meet their special needs in relation to, among other things, education; or
 - 10.1.3 afford persons with disabilities grants, benefits or programmes to meet their special needs in relation to, among other things, education.

PRACTICAL GUIDELINES FOR EDUCATIONAL ESTABLISHMENTS

11. Formulating Policy on Equal Opportunities

- 11.1 In order to eliminate discrimination against persons with disabilities, sponsoring bodies and educational establishments are advised to include in their existing general policy statements or strategic plans, a specific section on the goal of equal opportunities of persons with disabilities. This section should:
 - 11.1.1 make a clear commitment to promote positive educational outcomes and meet the objectives of equal opportunities of persons with disabilities;
 - 11.1.2 indicate that disability harassment and vilification will not be tolerated;
 - 11.1.3 make it clear that there are grievance procedures in the educational establishment to handle complaints or disputes concerning matters relating to the DDO, and that such disputes will be addressed in a timely and non-discriminatory manner; and
 - 11.1.4 explain how parents or guardians of students with disabilities and their associates are to be actively involved in planning and supporting both the educational establishment's general education programme and the education of students with disabilities.
- 11.2 These policies should be promoted and made available to all stakeholders of an educational establishment, and those seeking to become stakeholders.
- 11.3 Educational establishments should periodically review their policies in consultation with appropriate groups, such as school management committees, parent-teacher associations, students with disabilities and their parents, and relevant disability groups.
- 11.4 Larger educational establishments, such as universities, are advised to prepare a separate policy on disability discrimination, detailing matters such as objectives, admission procedures and support mechanisms available for students with disabilities. They should also have a clearly stated grievance procedure to deal with complaints. Large tertiary institutions are encouraged to establish a centre or designate a group to distribute information, implement and coordinate related activities in areas of equal opportunities.

12. General Considerations

- 12.1 In the provision of education, educational establishments will come across different activities and events that may influence persons with disabilities such as the admission process; provision of goods, services and facilities; design of curriculum and assessment methods; etc. Educational establishments should consider the following factors before making decisions in order to avoid committing discriminatory or other unlawful acts against persons with disabilities.
- 12.2 *Reasonable Accommodation*
 - 12.2.1 Accommodations are measures or actions taken in order to provide equal opportunities for students with disabilities, such as the provision of aids, facilities or services to meet his or her individual needs. 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.
 - 12.2.2 Educational establishments have the obligation to make reasonable accommodations in their existing programmes, services, facilities and benefits in order to meet the needs of their students, or prospective students with disabilities, unless such changes impose *unjustifiable hardship* (see paragraph 12.3 below).
 - 12.2.3 The type and extent of accommodation may vary depending on the individual and specific requirements of the student and other relevant circumstances. Multiple accommodations may be required and may include multiple activities. In determining what accommodations are to be made, the following factors and circumstances should be considered:
 - 12.2.3.1 the accommodations are reasonable for the purpose; that is, they reasonably fulfill the educational and training needs of the student;

- 12.2.3.2 the accommodations are focused on enhanced student independence;
- 12.2.3.3 the accommodations are the least disruptive and intrusive for the student;
- 12.2.3.4 the impact of the accommodations on anyone else affected; and
- 12.2.3.5 the cost of providing or continuing the accommodations.
- 12.2.4 Examples illustrating the provision of reasonable accommodation in different aspects of education can be found in subsequent sections.
- 12.3 *Unjustifiable Hardship* ²⁶
 - 12.3.1 The DDO makes it unlawful for educational establishments to discriminate against a person with a disability. However, the DDO exempts educational establishments from liability in cases where there would otherwise be an *unjustifiable hardship*.
 - 12.3.2 For the purposes of the DDO, relevant circumstances in determining what constitutes *unjustifiable hardship* include:
 - 12.3.2.1 the reasonableness of any accommodation to be made available to a person with a disability;
 - 12.3.2.2 the nature of the benefit or detriment likely to accrue or be suffered by any person concerned. This means that, apart from the benefits to the person with a disability seeking the adjustments, benefits to others should also be considered. For example, a ramp installed to allow wheelchair access for a particular student might benefit other students or visitors with similar needs, and those moving goods around the site;
 - 12.3.2.3 the actual effect of the disability of a person concerned. Only those adjustments that the student with a disability actually needs should be considered and adjustments which would not be effective to assist that person are not relevant; and
 - 12.3.2.4 the financial circumstances and the estimated amount of expenditure (including recurrent expenditure) required to be made by the educational establishment claiming *unjustifiable hardship*. The DDO allows differences in the financial capacity of various educational establishments when determining what constitutes *unjustifiable hardship* in each case.
 - 12.3.3 In each case of proving unjustifiable hardship, the responsibility always rests with the educational establishment. Before claiming *unjustifiable hardship* as a defence in discriminating against a student or prospective student with a disability, the educational establishment must consult the student or prospective student and his or her parents with a view to identifying what the special needs of the student are and the accommodations required. It is only after the required accommodations are identified, and the educational establishment cannot, after careful consideration, provide the accommodations due to *unjustifiable hardship*, that the educational establishment may claim this exemption under the DDO. The fact that the consultation is made and the reasons justifying the hardship claimed should be documented for future reference.
 - 12.3.4 The following is an example illustrating a circumstance where a school may encounter *unjustifiable hardship*:
 - A school which has been established for decades and which has steps at its entrances and no lift, receives an application for enrollment from a wheelchair user. In the discussion with the applicant on her special needs, the school is requested to build a ramp at its entrance and install a lift. However, a feasibility study conducted by qualified and well known experts, clearly indicates with detailed facts and analysis that, due to structural and technical difficulties, there is no space to build a ramp and that installation of a lift would require most classes to suspend lessons for at least six months.

- 12.3.5 In a number of court cases in overseas countries which applied the concept of unjustifiable hardship, educational establishments have often been instructed to meet the needs of persons with disabilities even when this has involved financial cost and much increased effort. Educational establishments should carefully determine what is needed to be done to accommodate the special needs requested by each student with a disability, before refusing a request. The summary of an overseas court case in which the educational establishment successfully claimed unjustifiable hardship is in Appendix B for illustration purposes.
- 12.4 *Practical Steps*
- 12.4.1 In order to realize the objective of equal opportunities in the schooling of students with disabilities, educational establishments should consider the following steps in the whole policy formulation or programme design process:
- 12.4.1.1 educational establishments should not make assumptions about the abilities and needs of persons with disabilities. Each case needs to be considered individually, since the requirements in each can be quite specific;
- 12.4.1.2 when policies or decisions are made for all the students, make sure that these would not result in indirect discrimination to persons with disabilities;
- 12.4.1.3 discuss directly with the person with a disability to identify his or her needs and the adjustments required. Involvement of the parents would be useful to the process;
- 12.4.1.4 consult relevant outside bodies such as the Education Department, special schools or concerned disability groups, if necessary; and
- 12.4.1.5 keep a record of the procedures made or the methods tried out.

13. Student Admission

- 13.1 A major barrier for persons with disabilities is often encountered when they first seek admission to study at an educational establishment. Admission barriers for persons with disabilities can occur at all levels of formal education— from kindergarten to university.
- 13.2 Under the terms of the DDO, educational establishments have an obligation to ensure that their admission procedures do not discriminate against persons with disabilities.
- 13.3 *Recruitment*
- 13.3.1 The promotional materials, course information and application forms used by educational establishments should be made available on request in a range of accessible formats such as Braille, enlarged print, audio-tapes or telephone explanation, so that it can be accessed by persons with special needs.
- 13.3.2 Where information is made available on the Internet, the web pages giving such information should be designed in accessible formats.
- 13.4 *Selection Criteria*
- 13.4.1 Educational establishments should assess the competence of applicants with disabilities on the same grounds as are adopted for applicants without a disability. Consistent selection criteria should be developed along the following principles:
- 13.4.1.1 the criteria are reasonable and relevant to the purpose of the selection;
- 13.4.1.2 the criteria should not make assumptions about what applicants with disabilities can or cannot study or achieve; and
- 13.4.1.3 the criteria established for admission should be critically examined to ensure that no indirect disability discrimination would result.
- 13.5 *Selection Procedures*
- 13.5.1 Educational establishments should ensure that their interactions with applicants with disabilities are conducted in a manner that maximises the exchange of relevant information in an appropriate format, and which allows them to show their competence without any restrictions relating to their disabilities.

- 13.5.2 In order to achieve equal opportunity in the admission process, educational establishments should ensure that:
- 13.5.2.1 all applicants are informed that those with a disability and who need special arrangements in the selection process may discuss their needs with designated personnel, and that such arrangements would be made as far as practicable;
 - 13.5.2.2 all applicants, with or without disabilities, should go through the same selection process and avoid adopting separate forms or selection panels for applicants with disabilities, unless a need for special arrangements has been identified as mentioned above;
 - 13.5.2.3 interviews for applicants with disabilities are conducted in venues that are appropriate and accessible;
 - 13.5.2.4 interview processes are flexible and adjusted to meet the needs of applicants with disabilities; and
 - 13.5.2.5 personnel staff who may be involved in the recruitment process should be trained in discrimination law and practice. It should be brought to their attention that it is unlawful to instruct or put pressure on others to discriminate ²⁷.

14. Curriculum

- 14.1 Subject to any accommodations made for students with disabilities, educational establishments should ensure that students with disabilities have access to the same curriculum for students without disabilities. That is, students with disabilities should have access to the same subjects, teachers and classrooms as students without disabilities in order to eliminate segregation in the educational establishments.
- 14.2 Similarly, subject to any accommodations made for students with disabilities, educational establishments need to ensure that they offer students with disabilities access to the same extra-curricular benefits and after school programmes that they make available to other students, such as camping trips, educational excursions and visits.
- 14.3 Where information technology and/or computer skills are taught as part of the curriculum or used as a media of teaching, educational establishments have to make sure that the facilities and content are accessible to students with disabilities.
- 14.4 Educational establishments should actively observe whether students with disabilities have difficulty in following the curriculum because of their disabilities. If so, accommodation should be considered in the form of tailoring the curriculum to meet the individual needs of the student with disability concerned. This means that the content of and the teaching methods used in some of the subjects studied by the particular student may need to be adjusted. A tailored curriculum should enable students with disabilities to achieve the objective of the curriculum more easily without necessarily lowering its standard.
- 14.5 Educational establishments are advised to make use of available sources of help when tailoring the curriculum and planning other adjustments. For example, the Education Department offers advice to schools in tailoring the curriculum, and students with disabilities, their parents or people providing professional support to them are usually valuable sources of information. Similarly, a number of disability groups and special schools can provide useful information regarding individualizing the curriculum and appropriate teaching methods for students with various types of disability.
- 14.6 The following are examples of adjustments made to the curriculum to enhance the equal education opportunities of students with disabilities:
 - A student in a wheelchair has his physical education subject tailored by re-designing the physical exercises according to his individual health targets.
 - A university lecturer makes magnified photocopies of overhead transparencies in lectures so that they can be given to a student with low vision in the class.
 - A primary school encourages the participation of a student with a disability in its annual camp by arranging for her grandfather or grandmother to join the activity and be available to give particular help to the child.
 - A secondary school with a newly admitted student with a disability consults his previous teachers at a special school and his parents so that his programme of study is appropriate and delivered using suitable methods.

15. Providing Access to Premises

- 15.1 Educational establishments have the obligation to provide an accessible environment to persons with disabilities or otherwise they commit an unlawful act of discrimination, subject to paragraph 7.3 above.
- 15.2 Universities and educational establishments which own their premises should conduct regular audits of campus facilities to identify problems with access which are experienced by persons with disabilities. A schedule of improvements in respect of facilities that do not meet required standards should be developed and the standard design may make reference to relevant codes and manuals such as the “Design Manual Barrier Free Access 1997” issued by the Buildings Department.
- 15.3 Key routes of access such as main entrances, location of lifts, toilets and offices should be clearly signed and identified on campus maps, which should be in accessible formats.
- 15.4 Educational establishments should take into account the characteristics of persons with disabilities in designing the procedures for fire alert and evacuation, safety and security issues.

16. Providing Goods, Services and Facilities

- 16.1 Educational establishments should ensure that goods, services and facilities provided to all students, such as circulars and notices, boarding, student guidance, transport and technology, meet the particular requirements of students with disabilities, unless such provision would impose *unjustifiable hardship* as mentioned in paragraph 8.3 above.
- 16.2 The provider needs to ensure that:
 - 16.2.1 the location at or from which the goods, services or facilities are provided is physically accessible to persons with disabilities;
 - 16.2.2 appropriate medium of communication is available, such as electronic mail or sign language;
 - 16.2.3 information on the services provided is made available to all staff and students with disabilities, in accessible formats; and
 - 16.2.4 the staff are able to respond appropriately to the requirements of students with disabilities and to call on specialist advice if necessary.
- 16.3 When technologies are to be used as an aid to connect students with disabilities to the regular curriculum and regular classroom activities, they should not be used to isolate students with disabilities from their classmates, or from the general classroom activities. Care must always be taken to match the learning needs of particular students with the technology to be used before its actual implementation, and the students themselves (and their parents or associates where appropriate) should be involved in determining what technology is useful.
- 16.4 Examples of services or facilities used to promote the equal opportunities of students with disability in education are:
 - Students wearing some types of hearing instruments may be assisted if teachers use a compatible FM microphone while teaching.
 - A library links a monitor which magnifies type to its computerised database of holdings so that students with visual impairment can conduct searches for information.
 - Voice controllers are installed on a computer to allow Internet access to a student who cannot use a keyboard because of her disability.
 - Photocopiers with a facility to magnify print can be used to provide students with visual impairment enlarged copies of notes, work sheets and examination papers.

17. Assessment

- 17.1 Educational establishments should ensure that their assessment mechanisms do not discriminate against students with disabilities. Teachers are advised to use a number of assessment methods in order to allow students, including those with disabilities, to display their competencies.
- 17.2 Sometimes an assessment method can hamper students from displaying their true level of competence. For example, it may be difficult for some students with hearing impairment to display their true proficiency in a listening or dictation test unless they are seated where they can clearly see the speaker’s lips.

- 17.3 Educational establishments should critically review their assessment methods adopted to ensure that they serve the purpose of the assessment. If the purpose is to assist students to appreciate their progress and identify future learning needs, more individualized instead of standardised methods should be adopted.
- 17.4 Sometimes the curriculum for students with disabilities is tailored in order to meet their individual needs as mentioned in paragraph 14 above. The content as well as the method of assessment should also be adjusted having regard to the tailored curriculum.
- 17.5 Examples of adjustments to the assessment process that could be made by educational establishments to meet the needs of students with disabilities are:
 - A student who has difficulty in writing due to cerebral palsy is given extra time to complete a written examination.
 - A student who cannot physically write is allowed to audio-tape her responses.
 - Braille facilities are prepared for students with severe visual impairment in an examination.

18. Discipline

- 18.1 All students, including students with disabilities, are entitled to safe and orderly learning environments.
- 18.2 Discipline for students with disabilities should not be avoided, but should be considered with care. Educational establishments should be aware that sometimes failure of a student with a disability to follow the instruction of a teacher may be due to his or her disability and therefore the student requires no disciplinary action. For example, a student with dyslexia should not be punished like other students for writing letters or words frequently outside small boxes in exercise books, even after repeated correction from teachers.
- 18.3 Discipline should never be cruel for any student, nor should it impose an extra burden on students because of their disabilities. For example, written punishment might be an unfair disciplinary strategy for students with dyslexia. Similarly, after school detention may not be appropriate for students who are chronically ill and need extra rest.
- 18.4 Educational establishments need to ensure that their written discipline policies take account of students with disabilities.

19. Request for Information and Confidentiality

- 19.1 The DDO makes it unlawful for a person to request information from another person, which a person without a disability would not ordinarily be requested to provide, for the purpose of discriminating on the basis of a disability.²⁸
- 19.2 Educational establishments should make sure that any request for information about a student's or an applicant's disability is collected and/or held for the purpose of:
 - 19.2.1 providing an accommodation, including assessing the nature and extent of the accommodation needed and assessing the provider's capacity to provide the accommodation; and/or
 - 19.2.2 an assessment that is intended to clarify the student's ability to comply with any non-discriminatory requirements of a programme.
- 19.3 Such information should only be sought when needed and educational establishments should ensure that any information about a person's disability will not be used in a discriminatory manner.
- 19.4 Information about a person's disability should be treated as confidential and passed on only with the person's consent or as otherwise provided by the Personal Data (Privacy) Ordinance, Cap. 486. The information should only be used for the purpose for which it was collected and any change in use should also comply with the terms of the Personal Data (Privacy) Ordinance.
- 19.5 Information about the disability of a student is often useful to the educational establishment, and necessary where the purpose of obtaining such information is to provide their student with better care, support, and/or reasonable accommodations. It is therefore a good practice for educational establishments to encourage disclosure of disability. In doing so, educational establishments should clearly and publicly advise:
 - 19.5.1 that disclosure of one's own disability is entirely a personal choice and that non-disclosure will not result in any disciplinary action against the student;

- 19.5.2 the reasons and importance for the invitation to disclose, including the establishment's duty of care to the student, and the purposes for which the disclosed information is intended;
- 19.5.3 that the information provided will not be used in a discriminatory manner;
- 19.5.4 who may have access to the information and the basis on which such access is granted; and
- 19.5.5 the responsibility of students or applicants to disclose relevant information if they require timely access to services or accommodations.

20. Staff Development

- 20.1 As mentioned in paragraph 5 above, employers and principals may be vicariously liable for the unlawful discriminatory acts of employees, contract workers and agents (as the case may be) against persons with disabilities. Educational establishments are therefore advised to take all reasonably practicable steps to ensure that their employees, contractors and agents do not commit any of the unlawful acts described in the DDO.
- 20.2 Educational establishments are advised to establish staff development programmes for all teaching and support staff which explain equal opportunities in respect of persons with disabilities and promote the acceptance of them. They should also inform their teaching and support staff about the staff's personal liability, should such staff commit unlawful acts of discrimination, harassment or vilification.
- 20.3 As an increasing number of students with disabilities is admitted to kindergartens, regular schools and universities, these establishments need to implement training programmes which explain teaching strategies in meeting the learning needs in the classroom. Educational establishments should support staff training by providing reasonable time and resources for staff to receive relevant training in equal opportunities principles and requirements.

ROLES AND RESPONSIBILITIES

21. Roles and Responsibilities of Various Parties

- 21.1 Contributions and support from various parties, including the Government, educational establishments, professionals, support staff, students and parents, are necessary to realize equal opportunities in education for persons with disabilities. The following paragraphs describe their particular roles and responsibilities in this respect in the education process.

22. Government

- 22.1 The DDO is binding on the Government²⁹. Government should develop appropriate policies and deploy reasonable resources to support equal opportunities for persons with disabilities in all aspects of education.
- 22.2 The policies mentioned in paragraph 22.1 should ensure that:
- 22.2.1 educational establishments have the necessary services and facilities to support inclusive education;
 - 22.2.2 reasonably adequate training programmes are made available to teachers to enhance their understanding of the needs of students with disabilities, and equip them with professional knowledge in adjusting teaching strategies;
 - 22.2.3 the development of curricula of different subjects have regard to the needs of students with disabilities, and professional advice is made available to educational establishments and teachers in respect of curriculum tailoring.
- 22.3 The Government should allocate reasonable resources to facilitate educational establishments having students with disabilities or planning to admit such students to modify their premises or acquire the necessary services or facilities to enable such students to study in the educational establishments.
- 22.4 The Government should ensure that the choice of segregated or inclusive schooling afforded to students with disabilities and their parents under the DDO is implemented. The Government should support this process by:
- 22.4.1 setting out a clear application procedure for student admission to be used by all schools and students with disabilities and their parents;
 - 22.4.2 providing the following advice and information to students with disabilities and their parents to enable them to make an informed choice on where the students should receive their education:
 - 22.4.2.1 professional advice on the effect of the disability the student has and the special needs of the student;
 - 22.4.2.2 information on the admission system and procedures applicable to regular and special schools for students with disabilities; and
 - 22.4.2.3 information on the services and facilities available in various schools to meet the special needs of students with various disabilities.
 - 22.4.3 advising schools on the availability of appropriate resources to support equal opportunities in education; and
 - 22.4.4 making the matter of parental choice and other aspects of equal opportunities for students with disabilities part of the Education Department's Quality Assurance Inspections, which apply to primary and secondary schools.
- 22.5 The Government should help resolve disputes between schools and students with disabilities and their parents concerning matters relating to the DDO. The Government is advised to set up a dispute resolution mechanism to handle such disputes.
- 22.6 The Government should have regard to parental choice for special and inclusive education and put in place mechanisms to facilitate the shifting of resources between the segregated sector and regular schools, so that students with disabilities, particularly those who elect inclusive schooling, are adequately supported.

23. Educational Establishments

- 23.1 Sponsoring bodies of educational establishments, which serve in a supervisory capacity, have a duty to adopt policies that pursue the elimination and prevention of unlawful disability discrimination, and facilitate the equal opportunities of persons with disabilities in education. They should ensure that their members understand the provisions of the DDO and their educational establishments support the education of persons with disabilities in their policy documents.
- 23.2 Educational establishments have a responsibility to ensure that persons with disabilities have equal opportunities to a quality education and the following strategies should be developed:
 - 23.2.1 the educational establishment's leadership (for example, its sponsoring body, management board, principal or head teacher) should be fully informed about equal opportunities principles and requirements;
 - 23.2.2 policies that promote the participation of persons with disabilities and their families in quality education for the former;
 - 23.2.3 the educational establishment's practices should be regularly evaluated so that they are consistent with the DDO. This should be done in a consultative and transparent manner that involves staff, students with disabilities and their parents;
 - 23.2.4 educational establishment should ensure that key matters, such as privacy of information, admission procedures, assessment mechanisms, and access to premises, goods, services and facilities are free from unlawful disability discrimination;
 - 23.2.5 educational establishment should allocate resources in a way that does not discriminate against students with disabilities;
 - 23.2.6 educational establishment should facilitate staff training which supports teachers and other personnel in meeting the needs of students with disabilities;
 - 23.2.7 educational establishment should carefully plan, and periodically review, all aspects of the curriculum, including its content, arrangement and assessment, and ensure that it is flexible enough to be adapted to meet individual needs; and
 - 23.2.8 education establishments should develop grievance procedures to handle grievances or complaints from their students/prospective students with disabilities, and/or their parents, concerning matters relating to the DDO. Such procedures should be communicated to all students of the educational establishment and their parents in order that they understand the function and operation of the procedures.

24. Teachers, Other Professionals and Support Staff

- 24.1 It is important that teachers have a sound knowledge of their obligations under the DDO. They are expected to devise methods of assessment and discipline, tailor the curriculum and develop effective strategies to cater for the individual needs of all students, including those with disabilities; and to equip themselves with the professional knowledge of how to use different teaching methods and techniques to meet the needs of students with disabilities.
- 24.2 Other professionals and the support staff of an educational establishment are important parties in creating and sustaining an environment of equal opportunities in the establishment. They should understand their personal liability under the DDO for acts of discrimination, harassment and vilification, whether committed against students and/or colleagues. They should also understand that each of them, be they bus drivers, cleaners or caretakers, also have the potential to make positive contributions to the educational experience and day-to-day life of students with disabilities.
- 24.3 Sometimes students with disabilities may not be able to express their needs clearly. As such, all teachers, other professionals and support staff of an educational establishment should learn to be sensitive to the special needs of students and discuss their needs with them or their parents.

25. Students and Parents

- 25.1 Students should understand their personal liability under the DDO for acts of harassment and vilification against other students and staff. They should also understand that they can contribute to an environment of equal opportunities by being supportive of each other and developing positive attitudes towards disability.
- 25.2 Students with disabilities and their parents have a duty to disclose the students' special needs to the educational establishments if they expect the latter to develop, in a timely and an effective manner, a physical environment, curriculum and services and facilities which meet their needs. Besides, it would be difficult to substantiate a claim of less favourable treatment on the ground of disability if the alleged discriminator is not aware of the disability of the student concerned.
- 25.3 Where there are disputes between an educational establishment and a student, or a prospective student, with a disability or his/her parents regarding the special needs arising from the student's disability, the student or parent is advised to make use of the internal grievance procedures of the educational establishment or, where appropriate, the Government dispute resolution mechanism referred to in paragraph 22.5, in order to resolve the matter. However, this will not prejudice their rights under the DDO.
- 25.4 Parents should understand their personal liability under the DDO for acts of vilification against others. Parents are encouraged to promote positive attitudes in their children regarding disability and to discourage behaviour such as teasing, ridicule or harassment. They should also understand that they can be helpful to each other and be supportive to those who need understanding and assurance.
- 25.5 Participation of parents of students with disabilities in school organisations such as parent-teacher associations can greatly facilitate the promotion of equal opportunities. They are also encouraged to co-operate with educational establishments in the process of making any accommodations to their children's study and recreational programmes in the establishment.

Appendix A

This Code applies to all educational establishments listed in column 1 of Schedule 1 of the Sex Discrimination Ordinance (SDO) as listed below:

| Educational establishment | Responsible body |
|--|---|
| 1. The University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053) | The Court, the Council, the Senate or the Convocation, within the meaning of section 2 of the University of Hong Kong Ordinance (Cap. 1053), according to which of them has the function concerned |
| 2. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109) | The Council, the Senate, the Convocation, the Faculties, the School of Studies or the Board of Studies, within the meaning of section 2 of The Chinese University of Hong Kong Ordinance (Cap. 1109), according to which of them has the function concerned |
| 3. The Hong Kong Polytechnic established by the Hong Kong Polytechnic Ordinance (Cap. 1075) | The Council of the Hong Kong Polytechnic established under section 5 of the Hong Kong Polytechnic Ordinance (Cap. 1075) |
| 4. Any post secondary college registered under the Post Secondary Colleges Ordinance (Cap. 320) | The Board of Governors (or Board of Trustees where no Board of Governors exists) or the College Council, according to which of them has the function concerned |
| 5. Any technical college or technical institute defined in section 2 of the Vocational Training Council Ordinance (Cap. 1130) | The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap. 1130) |
| 6. Any industrial training centre or skills centre defined in section 2 of the Vocational Training Council Ordinance (Cap. 1130) | The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap. 1130) |
| 7. The Hong Kong Baptist College established by the Hong Kong Baptist College Ordinance (Cap. 1126) | The Board of Governors or the Council, within the meaning of section 2 of the Hong Kong Baptist College Ordinance (Cap. 1126), according to which of them has the function concerned |
| 8. The City Polytechnic of Hong Kong established by the City Polytechnic of Hong Kong Ordinance (Cap. 1132) | The Council or the Academic Board, within the meaning of section 2 of the City Polytechnic of Hong Kong Ordinance (Cap. 1132), according to which of them has the function concerned |
| 9. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135) | The Council or the Academic Board, within the meaning of section 2 of The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135), according to which of them has the function concerned |
| 10. The Hong Kong University of Science and Technology established by the Hong Kong University of Science and Technology Ordinance (Cap. 1141) | The Court, the Council, the Senate or the Convocation, within the meaning of section 2 of the Hong Kong University of Science and Technology Ordinance (Cap. 1141), according to which of them has the function concerned |
| 11. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145) | The Council or the Senate, within the meaning of section 2 of The Open University of Hong Kong Ordinance (Cap. 1145), according to which of them has the function concerned |

| Educational establishment | Responsible body |
|---|--|
| 12. Lingnan University established by the Lingnan University Ordinance (Cap. 1165) | The Court, the Council or the Senate, within the meaning of section 2 of the Lingnan University Ordinance (Cap. 1165), according to which of them has the function concerned |
| 13. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444) | The Council or the Academic Board, within the meaning of section 2 of the Hong Kong Institute of Education Ordinance (Cap. 444), according to which of them has the function concerned |
| 14. Any school which is registered or provisionally registered under the Education Ordinance (Cap. 279) | The management committee, within the meaning of section 3 of the Education Ordinance (Cap. 279), of the school |
| 15. Any school, within the meaning of section 3 of the Education Ordinance (Cap. 279), entirely maintained and controlled by the Government | The Director of Education |

Note 1: The names of the educational establishments listed here are as set out in Schedule 1 of the SDO, although some of the names may have changed subsequently.

Note 2: These educational establishments are listed in the SDO rather than the DDO because the definition of what constitutes an educational establishment in the DDO makes reference to the SDO.

L v Minister for Education for the State of Queensland

Facts

This case involved L, a seven year old girl with an intellectual impairment which resulted in poor communication and gross motor skills, and poor self care ability in matters such as hygiene and eating. Prior to commencing her primary education, L had attended a Special Education Development Unit for 2 to 3 days per week. She had been assessed by the State Education Department and was found to have high level support needs. In 1994, she was enrolled in a State primary school for 3 days per week. At the same time, she attended a 2 day programme each week at the Special Education Development Unit. In 1995, she was enrolled at the State Primary School for 5 days per week.

Accommodations Provided by the School

L attended the State primary school for 5 days per week from the beginning of the school year in 1995 until she was suspended in mid-1995. During that time, she was taught by two teachers who had no qualifications for teaching students with disabilities. Neither teacher had any experience in teaching a child with L's level of disability either. Both teachers, however, had assistance from a teacher's aide for 20 hours per week and the assistance of a visiting advisory teacher once a fortnight for 1.5 hours.

Because of L's behaviour, the teachers found that they were required to spend more time with L than they could spare from the rest of the class. L cried frequently, could not concentrate on tasks, failed to return to class after breaks, had a limited vocabulary and hygiene problems. This had been of concern in 1994 as well, but in 1995 the problems had increased and it had become necessary for L to spend most of the day in a withdrawal area in a corner of the classroom working on her tailored curriculum. The teachers observed that she was not attaining the goals set, that there was little improvement and she spent most of her time in the withdrawal area crying, and that she was learning very little in school.

Assessment and Follow Up Action

As a result of the concerns expressed by L's teachers and the parents of the other children in L's class, a guidance officer of school conducted an assessment of L. The guidance officer found that there were problems in teaching and managing L and recommended that she would require long-term special education support. However, L's mother preferred mainstream education for L in a regular school setting and so declined the offer to put L in a special school. In July 1995, L was suspended from attendance at the school. The regional Director of the Education Department decided that the suspension should be extended. A review officer of the Education Department recommended that L be excluded from the school until she could be enrolled at a special school or special education unit, on the basis that her behaviour was prejudicial to the good order and discipline of the school and that she was disadvantaged by not being put in the appropriate educational setting.

Judgment of Tribunal

The case ended up before the Queensland Anti-Discrimination Tribunal, which delivered judgment in January 1996. The complainant in the case argued that the suspension and decision to expel L from the school constituted direct discrimination on the ground of disability. The argument was that L was being treated less favourably than a child without the disability. The respondent argued, however, that the discrimination was not unlawful, because L required special services or facilities which would impose *unjustifiable hardship* on the educational authority.

Having heard expert evidence as to L's needs and educational requirements, and after considering the various provisions of the relevant legislation, the Tribunal found that the Minister's act was lawful, even though it discriminated against L. Although the Tribunal had concluded that the respondent's act was authorized by "an existing provision of another [piece of legislation]", it nevertheless also considered that the provision of special services and facilities for L at the

mainstream school would have amounted to an *unjustifiable hardship* on the school.

In so doing, the Tribunal took into account the following factors:

- (i) the continuation of L's education by a regular classroom teacher, without special education training, with the assistance of an advisory visiting teacher and a teacher's aide, was inadequate to meet L's needs;
- (ii) even if such were adequate to meet L's needs, the demands that this would impose on the teachers involved would themselves amount to *unjustifiable hardship*;
- (iii) the issue of costs alone is not persuasive of *unjustifiable hardship* as, even if there were that level of resources available, L's remaining in the classroom would still disrupt the other children; and
- (iv) even if full integration were considered the best method of teaching intellectually disabled children, other considerations (such as stress placed on teaching staff without specialist training and disruption to the other children) outweigh the benefits and constitute *unjustifiable hardship*.

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- 1 See Section 65 of the DDO.
 - 2 See Section 2(1) of the DDO.
 - 3 See Section 2(1) of the DDO.
 - 4 See Section 6(a) of the DDO.
 - 5 See Section 6(b) of the DDO.
 - 6 See Sections 9 and 10 of the DDO.
 - 7 See Section 2(6) of the DDO.
 - 8 See Section 46 of the DDO. See Section 46(2) for those public activities which do not constitute vilification.
 - 9 See Section 47 of the DDO.
 - 10 See Section 7 of the DDO.
 - 11 See Section 48(1) and (3) of the DDO.
 - 12 See Section 48(2) of the DDO.
 - 13 Reference to "principal" in this context is reference to the principal/agent legal relationship.
 - 14 See Sections 44, 45 and 49 of the DDO.
 - 15 See Section 65(13) of the DDO.
 - 16 See Section 48(3) of the DDO.
 - 17 See Section 24(1) and (2) of the DDO.
 - 18 See Section 24(3) and (4) of the DDO.
 - 19 See Section 25(1) of the DDO.
 - 20 See Section 25(2) of the DDO.
 - 21 See Section 26(1) of the DDO.
 - 22 See Section 26(2) of the DDO.
 - 23 See Section 26(2) of the DDO.
 - 24 See Section 61 of the DDO.
 - 25 See Section 50 of the DDO.
 - 26 See Section 4 of the DDO.
 - 27 See Sections 44 and 45 of the DDO.
 - 28 See Section 42(1) of the DDO.
 - 29 See Section 5 of the DDO.