

Paper for the Legislative Council Education Panel

**Proposed Code of Practice on Education under
the Disability Discrimination Ordinance**

Purpose

1. The purpose of this paper is to inform Panel Members of the background and issues relating to the proposed Code of Practice of Education (“COP”) under the Disability Discrimination Ordinance (“DDO”) so as to assist Panel Members in their consideration of the COP. Copies of the proposed COP have been sent to all Legislative Council Members at the commencement of the public consultation period in January 2001.

Background

2. The DDO came into operation in 1996. It seeks to ensure that persons with disabilities have equal opportunities in various fields, including education. Since then the Equal Opportunities Commission (“EOC”) has received 38 complaint cases concerning disability discrimination or harassment in the field of education.

3. 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 proposes to issue a code of practice in the education field under S65(2) of the DDO. The proposed COP has therefore been prepared and published for public consultation for the period from 15 January 2001 to 31 March 2001. The specific purposes of the COP are given in paragraph 2 of the consultation document.

The Public Consultation

4. Five public forums have been planned for the purpose of obtaining feedbacks from educational establishments, principals, teachers, disability groups, welfare and rehabilitation organisations, professionals and parents in the public consultation period. Four forums have been held and the last is scheduled for 21 March 2001.

5. In addition to organizing public forums, the EOC has presented the proposed COP to relevant bodies and organisations, including the Board of Education, and obtained their views on the document. The EOC has also maintained a constant dialogue with the Education Department to look into the implementation aspects of the COP.

Issues of Concern

6. The feedbacks so far obtained during the public consultation indicate that the public and the education sector are supportive of the principles of non-discrimination and integration. Concerns expressed are mainly related to practical and implementation issues. These are summarised below.

a. Inaccessibility of school premises

There were concerns that school premises may not be physically accessible to students with disabilities. For some schools it may be structurally infeasible to make the school premises accessible. For others, it may be feasible but the schools concerned may not have the resources to carry out the necessary improvements.

b. Stress on school resources

Concerns were expressed that the implementation of the COP might put too much stress on the resources of a school. Special equipment might be needed to assist the students with disabilities, and extra teachers would also be required to deal with the

increase in workload arising from dealing with the special needs of the students. If extra resources are not provided to the schools it would be unfair to other students.

c. Lack of experience and skills in teaching students with disabilities

There were concerns that few teachers in regular schools have received training on disabilities or had experience in teaching students with disabilities. Hence they may not be able to provide the best education to such students.

d. Increase in number of disability discrimination complaints

Schools were concerned that there might be disputes between schools and parents as to whether it would be in the best interest of a student with a disability to study in a particular regular school, and what accommodation the school could and should be provided to the student. They were worried that, as more parents would aspire to enrol their children with disabilities into regular schools on the implementation of the COP, there would be more such disputes, leading to an increase in complaints being lodged against the schools.

e. Questions on the future of the present Integrated Education Programme and resource support from the ED

Some parents were concerned that, with the implementation of the COP, the Education Department (ED) might abolish the current Integrated Education Programme on the grounds that under the DDO schools would generally be obliged to admit students with disabilities. They expressed that, although the ED should still be obliged to provide support to regular schools admitting students with disabilities, it may not be able to provide as adequate resources to the schools as it does now for those schools joining the Programme, given the larger number of schools which would have such students. They considered that the current Integrated Education Programme could give them the assurance that schools joining the Programme would admit their

children and provide the appropriate support. Without the Programme they were worried that schools would simply treat their children like anyone else without addressing their special needs.

f. Possible excessive demand on schools admitting students with disabilities

Schools currently joining the Integrated Education Programme have also expressed a concern that, under the present Scheme, they would admit no more than eight students with two different types of disabilities only. With the implementation of the COP they may not be able to reject “the ninth” student. If no further resources are to be provided by ED, the schools would not be able to cope.

g. Disclosure of information on the student’s disability

Some schools considered it important to highlight the need for, or responsibility of, students with disabilities or their parents to cooperate with the schools they attend or intend to attend and disclose the disabilities the students have, so that the schools could make suitable arrangements to accommodate their special needs.

Response to the Issues

7. The EOC had anticipated some of the above issues in the drafting stage of the COP and has been working with the ED to ensure a smooth implementation of the COP. A working group with ED’s participation (“the Working Group”) will be formed to address matters pertaining to the implementation of the COP. The following is a summary of the actions taken or planned in response to the issues raised.

a. Access and facilities

It is understood from the ED that the following arrangements are in place to ensure that government and aided schools are accessible where feasible:

- New schools planned since the commencement of the DDO will comply with the latest standards for school premises;
- The ED will systemically review the accessibility and facilities of all existing schools to assess the need and feasibility for improvement, and carry out the improvement works where feasible under the School Improvement Programme;
- Where a school needs improvement urgently, for example, because it has enrolled a student with physical disabilities, it may apply to the ED's Major Repair Fund or the Emergency Repair Fund, or include the improvements required in the Annual Maintenance Programme.

b. Equipment

The ED has equipment for use by students with disabilities, such as computers and magnifying glasses, which can be provided on loan to schools. In 2001/02 the ED has proposed to set aside a reserve fund for applications by schools for procurement of special equipment on a need basis.

c. Pre-service and in-service teacher training

There is at present a selection of in-service training programmes for teachers. For example, the ED is providing a 10-hour training for teachers of schools participating in the Integrated Education Programme. For the regular school teachers, the ED will from time to time organise training sessions, workshops and seminars etc. on supporting students with various types of disabilities. Some non-governmental organisations promoting integrated education will also organise workshops on skills and techniques in teaching students with special needs.

However, it is noted that existing pre-service teacher training in Hong Kong is lacking to equip prospective teachers with the knowledge and skills in dealing with students with disabilities. Not all teacher training institutes provide training programmes on special education. Where an institute does, the training programme is only optional. As a result, student-teachers who do not intend to teach in special school will unlikely opt for special education training. It is considered that the Government should work with the teacher training institutes to deal with this training gap and make sure that training on teaching students with disabilities becomes an integral part of pre-service teacher training.

d. Establishment of a dispute resolution mechanism

It is acknowledged that there may be difference in opinions between parents and schools on what is the best arrangement for a student with a disability. It is also accepted that it may not be desirable for all disputes to be brought to the court for a resolution, or to the EOC to be handled under its complaint handling procedures.

To deal with this, it is suggested that educational establishments themselves should have in place a dispute resolution mechanism to handle any complaints or disputes brought to it, and that this mechanism should be made clear in the school policy, as recommended in the proposed COP.

If the dispute cannot be resolved at the school level, it is suggested that a second tier dispute resolution mechanism be put in place, with ED's participation. Discussions have been held with the ED on this suggestion. The initial idea is for the mechanism to involve a panel of experts comprising representatives of parents' associations, schools councils/associations, professionals (medical/legal/educational) and the ED. The role of the ED in the second tier has yet to be worked out. Two possible models have been proposed. In the first model, the expert panel would, after investigating and hearing,

make recommendations for adoption by the parent or student with a disability, the school concerned and the ED, at their discretion. In the second model, the panel would make recommendations to the ED, which would decide on the course of action to be taken, taking into consideration the panel's recommendations and other factors as appropriate.

If the dispute is still not resolved in the second tier of the mechanism, and if the parent or student with a disability considers that he/she has been discriminated against, he/she may lodge a complaint with the EOC under the DDO for investigation and conciliation under the Ordinance.

Details of the proposed mechanism will be further discussed by the Working Group mentioned in para. 7 above.

e. Other forms of support to be provided

It is considered desirable for other kinds of support to be provided to the various parties concerned. An important form of support would be the availability of relevant information and guidance materials. It is anticipated that a series of informational material will be published to help the parents to make informed choice of schools, provide teachers with guidance on how to handle students with different disabilities, and to enhance the school authorities' understanding of the relevant mechanisms in place and particular aspects of the COP. Other types of support under planning include the development of training packages and model policy on equal opportunities for educational establishments.

f. The issue of disclosure

The concerns mentioned in para. 6(g) above are noted. The proposed COP has already addressed the issue (see paragraphs 19, 21.4.2 and 21.4.4). The basic principles are that disclosure should be voluntary but that non-disclosure would reduce the obligation of the school to provide reasonable accommodation to the student concerned. The EOC will consider the need to

emphasize this latter aspect in the COP after the consultation exercise.

8. Apart from the above arrangements and support mechanisms, it is clear that a crucial factor to ensure a smooth implementation of the COP is the Government's commitment to provide adequate resources to support a quality integrated education programme for all students with disabilities studying in regular schools, irrespective of whether the school in question is participating in the current Integrated Education Programme or not.

Equal Opportunities Commission
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