

Our Ref: L/M (3) to EOC/LEG/01
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28 April 2008

By Fax: 2332 1893 Only

Dr. Hon. Fernando CHEUNG
Chairman of Subcommittee to
Study Issues Relating to the Provision of Boarding
Places, Senior Secondary Education and
Employment Opportunities for Children
with Special Educational Needs
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Dr. Hon. Cheung,

**Subcommittees to Study Issues Relating to the Provision of
Boarding Places, Senior Secondary Education and Employment
Opportunities for Children with Special Education Needs**

**Education for non-Chinese-speaking children
with special educational needs**

I refer to your letter dated 9 April 2008 to the Commission's Chairperson. The Chairperson has instructed me to consider the issues raised and respond accordingly.

The Subcommittee is concerned that there is a lack of parity between the number of subvented school places available for non-Chinese-speaking (NCS) children with special educational needs (SEN) and the number of subvented school

places available for Chinese-speaking children with SEN. The information outlined in your letter indicates that the number for the former is less than 200, and the number for the latter is significantly more (the exact number is not clear from your letter, except that there are 62 aided special schools and 641 special classes in mainstream schools catering for Chinese-speaking children with SEN). NCS children with SEN are in a relatively disadvantaged position when compared to Chinese-speaking children with SEN.

The distinguishing feature between NCS children with SEN and Chinese-speaking children with SEN is their different language preference. While admission to the above 62 aided special schools and the 641 special classes in mainstream schools may in theory be open to NCS children with SEN, it seems clear that admission to these schools is not a practicable solution to their needs in the light of their own or their family's language preference.

The issue is one about language. Any direct discrimination arising from this situation is likely to be defined as language discrimination. Generally speaking, language discrimination may in some circumstances constitute indirect discrimination on the ground of another characteristic such as race if, for example, the same rule applies to people of different races but one race would suffer a disadvantage when compared to another race.

As for disability, however, language discrimination in the above situation is unlikely to be indirect disability discrimination. The disadvantage identified in your letter arises from a comparison between people having the same disability. The difference is language not disability. In this context, the provisions of the Disability Discrimination Ordinance are unlikely to be of much assistance to NCS children with SEN.

The solution to the problem is likely to lie in devoting more resources to NCS children with SEN. This will depend on setting priorities between competing interests in the light of resources available. In the end, a sustainable and satisfactory allocation of resources is likely to come through a continuous process of dialogue among policy-makers and different interests, arriving at an agreeable balance for all concerned. The EOC hopes all parties to the process will show understanding of the needs of others and to strive to meet those needs.

As for whether there is any illegal language discrimination or race discrimination under international human right treaties, or indeed under the Basic Law or Hong Kong Bills of Rights Ordinance, authoritative experts on these instruments will be better placed to give advice, after examining the relevant Government policies in the light of available resources and constraints.

Yours faithfully,

Herman L.H. Poon
Chief Legal Counsel
Equal Opportunities Commission

cc: Secretary for Education (Fax: 2523 1973)
Secretary for Labour and Welfare (Fax: 2893 0858)