

Bills Committee on Race Discrimination Bill

Administration's Response to the outstanding general issues on education raised by members of the Bills Committee

Purpose

This paper provides the Administration's response to the outstanding issues on education.

Whether the imposition of the requirement of obtaining a pass in Chinese Language in the Hong Kong Advanced Level Examination for university admission on all local students constitutes indirect discrimination for non-Chinese speaking (NCS) students

2. Under Clause 4 of the Race Discrimination Bill, a requirement or condition imposed by a person, if justifiable according to the criteria under Clause 4(2), would not constitute indirect racial discrimination. In this regard, Hong Kong has a long tradition of being a bilingual society and this tradition is one of Hong Kong's competitive edges. Consistent with the overall language regime, for many years local students applying for entry to undergraduate programmes funded by the University Grants Committee (UGC) are generally required to obtain a pass in Advanced Supplementary Level Use of English and Chinese Language and Culture in the Hong Kong Advanced Level Examination (HKALE) before the institutions would consider their applications. Specifically, such a language proficiency requirement has been put in place to ensure that students admitted have the capability to fully benefit from tertiary education and the programmes the students wish to study. Tertiary education covers not only classroom teaching but also other studies/activities in a local setting and life on campus. This expectation

of our students pursuing higher education also underscores the equal importance of the two official languages and sends a clear signal to our younger generations.

3. Notwithstanding the above general language admission requirement, the UGC-funded institutions have built in flexibility in the admission process by providing a number of alternative avenues to admit students (including NCS students) without the requisite Chinese Language proficiency. Earlier this year further flexibility has been offered in the form of accepting alternative qualification(s) in Chinese Language for Joint University Programmes Admissions System applicants who have pursued the local curriculum and have been verified by the schools concerned as fulfilling certain specified circumstances. We believe that this significant step taken by the UGC-funded institutions will further address the aspiration for higher education of those NCS students studying in our local schools.

To provide more detailed statistics on NCS students (particularly regarding students' ethnicity and spoken language at home) and the number of those students in private schools

4. Based on ethnicity, in the 2007/08 school year, some 5700 students in public sector and Direct Subsidy Scheme (DSS) primary schools have reported that they are not of Chinese ethnicity. The corresponding figure for public sector and DSS secondary school is around 3100. The breakdown by ethnicity is at Annex A.

5. Based on spoken language at home, there are some 5600 non-Chinese speaking students in public sector and DSS primary schools in the 2007/08 school year. The corresponding figure for public sector and DSS secondary schools is around 3300. The breakdown by spoken languages at home is at Annex B.

6. We will consider enhancement of our data collection to cover similar data from all private schools running the local curriculum.

Whether a school will bear legal responsibilities under Clause 26(1) if it refuses to accept the alternative qualifications in Chinese for admitting NCS students to Secondary 6

7. Under the Secondary 6 Admission Procedure, a school may take into account school-based factors in considering applications for admission to its Secondary 6. It may also specify the minimum grading or standard to be accepted for individual subjects including Chinese Language. In this regard, individual schools, for instance those adopting the Chinese medium in teaching content subjects, may consider the Chinese proficiency attained under alternative Chinese Language qualification(s) other than that in Hong Kong Certificate of Education Examination inadequate for meeting their entry requirements. An admission requirement may be challenged for indirect racial discrimination if it has a disproportionate negative impact on a particular racial group and it cannot be justified as serving a legitimate objective and bearing a rational and proportionate connection to the objective. The key is whether the schools could justify their school-based admission requirements and whether the requirements are justifiable irrespective of race.

8. We have put in place transitional arrangements to facilitate the last three cohorts of Secondary 5 students in the 2007/08, 2008/09 and 2009/10 school years seeking admission to Secondary 6 with alternative Chinese Language qualifications. Specifically, we have invited public sector schools to accept these alternative Chinese Language qualification(s) under the Secondary 6 Admission Procedure and to make conditional offers to those applicants under specified circumstances at each stage of the Procedure pending the release of the relevant examination results, provided that the applicants have, except for the Chinese Language, fulfilled all the admission requirements and have attained equal or higher points compared with their counterparts. It is encouraging that more than 80 public sector schools spreading over all districts have responded positively so far. The list of schools willing to make conditional offers, including four designated schools offering Secondary 6 classes, will be finalized and included in the Careers Guidance Handbook for Secondary 5 Graduates to be issued to every graduate in late July 2008.

To explain the scope of affirmative action referred to in paragraph 18 of LC Paper No. CB(2)1152/06-07(01).

9. The paper entitled “Affirmative Action” LC Paper No. CB(2)1152/06-07(01) is to explain the concept of affirmative action and the Administration’s rationale for not making affirmative action a mandatory requirement under the Race Discrimination Bill. The affirmative action mentioned in paragraph 18 of the paper refers to those measures which seek to promote the interests of some, but may impose

undue hardship on other members of the community, or result in discrimination against those who are not members of the targeted group. We therefore do not consider it appropriate to impose a mandatory requirement for affirmative action to be taken.

Constitutional and Mainland Affairs Bureau
Education Bureau
June 2008

Annex A

Number of Non-Chinese Students in Public Sector and Direct Subsidy Scheme Schools by Ethnicity, 2007/08

Ethnicity	Primary Schools	Secondary Schools
Filipino	1 025	620
Indonesian	71	38
Japanese	68	49
Korean	23	19
Thai	133	76
Indian	870	457
Pakistani	1 948	833
Bangladeshi	43	29
Sri-Lankan	15	12
Vietnamese	75	37
Nepalese	885	538
Other Asian	64	39
Other ethnicities not classified above (including mixed)	451	350
Total	5 671	3 097

Note: Figures refer to the position as at September of 2007.

Annex B

Number of Non-Chinese Speaking Students in Public Sector and Direct Subsidy Scheme Schools by Spoken Language at Home, 2007/08

Spoken Language at Home	Primary Schools	Secondary Schools
Filipino	659	363
Indonesian	44	34
Japanese	44	36
Korean	18	21
Thai	75	54
Hindi	633	261
Urdu	1 555	634
Bengali	55	28
Sinhalese	7	7
Vietnamese	46	20
Nepali	795	507
Other Asian and Oceanian languages	191	75
English	1 231	984
Irish	0	1
French	10	12
German	6	16
Italian	0	5
Portuguese	1	5
Spanish	14	44
Dutch	2	21
Russian	2	6
Other European languages	9	26
Other spoken language not classified above	186	112
Total	5 583	3 272

Note: Figures refer to the position as at September of 2007.