

立法會 *Legislative Council*

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Panel on Education

Background brief prepared by the Legislative Council Secretariat for the meeting on 14 June 2010

School leaving arrangements for students studying in schools for children with intellectual disability

Purpose

This paper summarizes the issues of concern raised by the Panel on Education ("the Panel") on the school leaving arrangements for students studying in schools for children with intellectual disability ("ID").

Background

2. Before the introduction of the Extension of Years of Education ("EYE") Programme, students studying in ID schools received 10 years of basic education, comprising six-year primary and four-year junior secondary education. The Education Bureau ("EDB") launched in the 2002-2003 school year the two-year EYE Programme for ID students after the completion of their junior secondary education. The Programme was targeted for students aged between 16 years and 17 years and 11 months. According to the Administration, ID children were generally admitted to ID schools at the age of six, and with the introduction of the EYE Programme, the age limit for students' stay in ID schools had been extended from 16 to 18. Based on this structure, ID students should leave school at the age of 18.

3. Under the New Senior Secondary ("NSS") academic structure implemented in the 2009-2010 school year, all students, including ID students, are entitled to 12 years of education, comprising six-year primary, three-year junior secondary and three-year senior secondary education.

Deliberations of the Panel

4. The Panel held a series of meetings in the 2008-2009 session to discuss the school leaving arrangements for ID students studying in ID schools. The Panel

received views from 14 deputations at its meeting on 27 June 2009. The concerns of members are summarized below.

School leaving age

5. Members noted with concern the disparity of treatment of ID students and students studying in mainstream schools with regard to their school leaving age. The Code of Aid for Special Schools provided that "*except with the approval of the Permanent Secretary for Education, no pupil shall be allowed to remain in a primary class of a special school after the end of the school year during which he reaches the age of 16 and no pupil shall be allowed to remain in a secondary class of a special school after the end of the school year during which his 20th birthday occurs*". However, the Code of Aid for Aided Schools did not provide for such school leaving ages for students of mainstream schools. Members were concerned whether the current school leaving arrangements for ID students were in breach of the provisions of the Disability Discrimination Ordinance (Cap. 487) ("DDO") and the United Nations Convention on Rights of Persons with Disabilities ("the UN Convention") which had become applicable to the Hong Kong Special Administrative Region in May 2008. In compliance with Article 24 of the UN Convention, member states should ensure the provision of an inclusive education system for students with special educational need at all levels and life-long learning directed to develop the full potentials of persons with disabilities on an equal basis with others in the community.

6. According to the Administration, schools for children with hearing impairment and some schools for children with physical disability offered the mainstream curriculum leading to the Hong Kong Certificate of Education Examination ("HKCEE"). The school leaving requirement at the age of 20 was applicable to students taking the mainstream curriculum in these schools so as to allow them to study for a longer period to prepare for the HKCEE according to their learning needs. For ID schools, when the EYE Programme was launched in the 2002-2003 school year, it was stated clearly that the Programme was targeted for students aged between 16 years and 17 years and 11 months. The age limit for students' stay in ID schools had been extended from 16 to 18 with the introduction of the EYE Programme. In the Administration's view, as students of ordinary and ID schools had different learning abilities, these two types of schools differed significantly in their curriculum, class structure, resources and other administrative arrangements, and it was inappropriate to make direct comparison between their school leaving arrangements. Like many overseas jurisdictions, the Administration had delineated the age of 18 for ID students to transit to vocational training or rehabilitation services.

Repeating class

7. Members sought information on the mechanisms for handling applications for repeating class in mainstream schools and ID schools. The Administration explained that mainstream schools were provided with a quota of 3% to 5% places for repeaters at different levels. For ID schools, ID students could apply for an extension of stay on justifiable grounds. ID students who were absent from school for half a school year due to health or other justifiable reasons were allowed to stay for one more year

by making use of the vacancies in the approved classes, provided that the admission of new students would not be affected.

8. Members considered the adoption of different mechanisms for handling applications for repeating class in mainstream schools and ID schools in breach of the provisions of DDO. Members pointed out that while a quota was provided for students without an age limit to repeat a year of study at different levels in mainstream schools, students in ID schools had to apply for an extension of stay after reaching the age of 18. This was a discrimination against disability. There was a view that when ID students had completed 12 years of education or had reached the age of 18, the schools and teachers concerned should evaluate their learning outcomes and determine whether they should be allowed to repeat a year of study to achieve the desired learning objectives as set out in their Individualized Education Programme ("IEP").

9. The Administration stressed that the mental age of ID students varied within a narrow range, and ID schools had to tailor-make their curricula, support services and learning progression to suit individual students' learning needs and abilities. As the learning of individual ID students needed to be revised in the light of their progress, it would be difficult to determine the need for ID students to repeat a year of study solely on the basis of their learning outcomes. The Administration had provided the flexibility for ID students to extend their stay in schools upon application.

Extension of stay for the 2009-2010 school year

10. Members considered that given the implementation of the NSS academic structure in the 2009-2010 school year and the confusion caused by the overlap of the old and new academic systems, the Administration should allow ID students to stay in schools for one more year after reaching the age of 18. These students should include newly arrived children, children who were admitted to special schools at an older age, non-Chinese speaking ("NCS") students, students recently transferred from other schools to ID schools, and students who could not attain the learning outcomes. Members also requested that students should be allowed to complete the two-year EYE Programme even though they had reached the age of 18.

11. The Administration explained that like mainstream schools, ID schools would start to operate Senior Secondary 1 ("SS1") in the 2009-2010 school year and progress up to SS3 year by year. Students in Secondary 3 ("S3") lower classes in the 2008-2009 school year would progress to SS1 in the 2009-2010 school year, and students in S3 upper classes would progress to the first year of the EYE Programme. Also, the first year students of the EYE Programme would proceed to the second year in the 2009-2010 school year, and students who were currently attending the second year of the EYE Programme would leave school at the end of the 2008-2009 school year. The EYE Programme would lapse by the end of the 2010-2011 school year. Having considered the latest supply and demand of school places, the Administration would approve applications from those students who reached the age of 18 but had not received 12 years of education in the school system or taken the two-year EYE Programme to extend their stay in the 2009-2010 school year. These included newly arrived children, NCS students and students transferred to special schools from other

schools who reached the age of 18 but had not received 12 years of education.

12. As regards applications for extension of stay on the grounds of failure to achieve learning outcomes, the Administration pointed out that ID schools set the learning objectives and IEP for individual students based on their abilities and progress, and schools would review and revise the IEP regularly to reflect the actual learning situation of the ID students. As the learning of individual ID students needed to be revised in the light of their progress, the Administration considered that failure to achieve learning outcomes should not be a reason for extension of stay in ID schools.

13. Members were given to understand that there were around 300 applications for extension of stay in the 2009-2010 school year. As the average unit costs per school place in schools for children with mild, moderate and severe ID were \$100,000, \$167,500 and \$235,000 respectively, members were of the view that the total expenditure for approving all the applications for extension of stay in the 2009-2010 school year would not be substantial. The Panel passed two motions at its meeting on 22 June 2009 urging the Administration, among other things, to suspend the requirement for ID students to leave schools at the age of 18 and to consult the stakeholders within one year on the school leaving arrangements.

14. The Administration maintained its position that in line with the established arrangement, applications with justifiable reasons would be approved as long as there were vacancies in the approved classes. The Administration stressed that the number of available vacancies would depend on the anticipated number of new students and the number of leaving students. Based on the estimated number of new students and the number of school leavers, EDB would determine the number of approved classes and handle the applications for extension of stay. In addition to the average unit costs, the Administration considered a basket of factors in formulating the policy on school leaving arrangements for ID students, including the provision of boarding places and specialist staff, such as speech therapists. As at 11 July 2009, EDB had received some 380 applications for extension of stay in ID schools. For the 2009-2010 school year, there would not be sufficient vacancies in the approved classes to accommodate all the students applying for extension of stay.

15. The Administration subsequently informed members that a total of 600 students left ID schools at the end of the 2008-2009 school year and another 328 were approved extension of stay for one school year. As at 15 January 2010, 516 new students had been admitted to ID schools in the 2009-2010 school year.

Years of education under NSS academic structure

16. Members pointed out that ID students were provided with six-year primary education, four-year junior secondary education and two-year EYE Programme before the implementation of the NSS structure. This made up a total of 12 years of education. However, with the introduction of the NSS academic structure, the total years of primary and secondary education for ID students remained at 12 and the school leaving age at 18. Members considered it reasonable to provide students with

at least three more years to complete the three-year senior secondary education under the NSS academic structure and to extend the school leaving age to 21.

17. The Administration explained that all ID students would be provided with 12 years of education, comprising six-year primary, three-year junior secondary and three-year senior secondary education under the NSS academic structure. The NSS academic structure would be introduced in all schools on a one-grade-per-year basis starting from the 2009-2010 school year. While all students would enjoy 12 years of free education, there were fundamental differences in curriculum design, class structure and size, manpower provision and administrative arrangements between special schools and mainstream schools. The NSS curriculum for ID students were designed in collaboration with the special school sector to help ID students develop their potential and abilities that would enable them to transit smoothly from school to adult life. After completion of education in schools, arrangement for post-school placement would be made for ID students in vocational training or rehabilitation service centres, including skills centres, sheltered workshops, day activity centres, healthcare service centres, etc, operated by the Vocational Training Council, the Social Welfare Department or other organizations. As agreed with the Hong Kong Special School Council, the Administration would review the school leaving arrangements for ID students in the 2009-2010 school year, with a view to establishing a mechanism for the smooth processing of applications for extension of stay under the NSS academic structure.

18. In members' view, the choice should rest with the parents/ID students and not the Administration on whether ID students should complete education at the age of 18 and proceed to another phase of life to receive vocational training. Members noted the view of the Equal Opportunities Commission ("EOC") in its submission dated June 2009 to the Panel that if ID students were to be provided with NSS education on par with the three-year NSS education for non-ID students, it should be logical to conclude that they should be provided with another three years on top of the existing six years spent in junior secondary education. EOC considered that with the setting of an exit age limit, EDB had to explain whether ID students were really treated in the same way as their non-ID counterparts with the provision of three additional years of senior secondary education.

Judicial review

19. In 2009, an 18-year-old young person with Down's Syndrome filed an application for judicial review concerning rejection of his application for extension of stay in an ID school. A gist of the case is in **Appendix I**.

Latest development

20. According to a press release issued by EDB on 4 March 2010, under the NSS academic structure, students of special schools would graduate and leave school on completion of S6. As a norm, ID students in special schools should complete their

primary and secondary education in 12 years and those in special schools offering ordinary curriculum to children with physical disability or hearing impairment should complete their schooling in 13 years.

21. Additional school places would be provided for special schools to cater for students with genuine needs to extend their years of study. Schools should set up an objective mechanism approved by their school management committees and exercise professional judgement under a fair, evidence-based and transparent system on the use of the additional places. Valid reasons for extension of stay included prolonged absence from school due to justifiable reasons, serious disruptions in learning, and serious adaptation problems.

22. Improvement measures would be implemented progressively starting from the 2010-2011 school year as the provision of additional school places would need more classrooms and boarding places. Having discussed the issues in a pragmatic manner, all parties involved agreed that the improvement measures should be implemented according to short, medium and long term plans. Schools having the physical capacity would proceed first; conversion works in those schools with such a need would be conducted in medium term; and suitable sites would be identified to build new schools in the long run. Upon full implementation of the improvement measures, the additional recurrent expenditure was estimated to be over \$300 million a year.

Relevant papers

23. A list of the relevant papers on the Legislative Council website is in the **Appendix II**.

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Legislative Council

LC Paper No. LS72/09-10

**Information Note on
TONG Wai-ting by CHOI Wai-chu v Secretary for Education and another
(HCAL73/2009)**

Background

This is an application for judicial review by the applicant (the Applicant), who was an 18-year-old young person with Down's Syndrome at the time of application. The application was heard on 4 and 5 August 2009 and was dismissed by the Court of First Instance on 24 August 2009.

2. The Applicant was studying at a special school (the School) providing education for students with special education needs (SEN) due to intellectual disability (ID). The Applicant completed 12 years of free education, including the two-year Extra Years of Education programme or its equivalent, as available to all ID students at the School but he wished to have his study be extended for one more year. He applied to the School for the extension, which was viewed by the School favourably. On 29 May 2009, the Permanent Secretary for Education (PSE) made a decision on the class organization and staff establishment plan for the School in the school year for 2009/2010. The decision has the effect of reducing funding for the total number of students attending the School. As a result, the Applicant would not be allocated a place in the School in the coming school year. The Applicant challenged PSE's decision.

The Grounds of Challenge

3. Counsel for the Applicant argued that it was a rule of the Government that unless for special reasons specified by the Government and the approval of the PSE was obtained, and unless there were vacancies at the relevant ID school to accommodate the application for an extension of study, an ID student who was already or would be in the coming school year 18 years old must leave school.¹

¹ Paragraph 3 of the Judgment.

4. As a result of the rule, the Applicant was discriminated under section 6(a) of Disability Discrimination Ordinance (Cap. 487)² on the ground that owing to his intellectual disability, he was treated less favourably than a mainstream student seeking to repeat in a mainstream secondary school, who was not subject to the age restriction of 18.³

5. Counsel also argued that under paragraph 12(c) of Appendix I to the Code of Aid for Special Schools⁴, he was entitled to study at the School until he reached 20-year-old.

Reasons of Judgment

Scope of the Application

6. The Court noted that the application was not a class action and the Applicant was not in any representative capacity. The application was specifically on the issues raised by the Applicant.⁵ The Court also noted that Counsel for the Applicant argued new grounds which were not contained in the original application at the hearing. The Court did not rule on the new grounds.

Direct Discrimination

7. The Court found that the purported age restriction of 18 does not exist as an absolute rule barring schooling beyond 18. The Court noted that for mainstream schools, there is an objective event by which students are expected to leave school, namely the sitting of the Hong Kong Certificate Education Examination. However, there is no such objective event for ID students. The uncontradicted evidence shows that the Government has been using the age of 18 as a point of reference and review in relation to its provision of free education to ID students for the purpose of budgetary planning. 18 is the age when normally ID students, having started at 6, are expected to have completed their 12 years of free education and to leave school.⁶

8. The Court compared the Applicant's application to extend his study by one year with a mainstream student seeking to repeat his study. The Court noted that

² Section 6(a) of DDO provides that "[a] person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if (a) on the ground of that other person's disability he treats him less favourably than he treats or would treat a person without a disability."

³ Paragraph 6 of the Judgment.

⁴ Paragraph 12(c) provides that "Except with the approval of the Permanent Secretary, no pupil shall be allowed to remain in a primary class of a special school after the end of the school year during which he reaches the age of 16 and no pupil shall be allowed to remain in a secondary class of a special school after the end of the school year during which his 20th birthday occurs."

⁵ Paragraph 47 of the Judgment.

⁶ Paragraphs 26 and 68

like an ID-student, a mainstream student is not, as of right, entitled to repeat. The Government policy is that repetition in a mainstream school should be an exception.⁷ It is also subject to the availability of vacancies and is merit-based. The court concluded that the Applicant failed to establish that in terms of the requirements for approving an application for an extension of study or repetition, he was in a worse position than a comparable counterpart in a mainstream school in getting the application approved.⁸

Paragraph 12(c) of the Code of Aid

9. The Court rejected the argument on paragraph 12(c). The Court observed that paragraph 12(c) only concerns with a student's school leaving arrangement upon completion of his free education in a school. Paragraph 12(c) should not be read as giving a right to a student who finished his study before the age of 20, to remain in the school until he has reached 20.⁹

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⁷ Paragraphs 36 to 39 of the Judgment.

⁸ Paragraphs 81 to 84 of the Judgment.

⁹ Paragraphs 95 to 103 of the Judgment.

**Relevant papers on school leaving arrangement for students
studying in schools for children with intellectual disability**

Meeting	Date of meeting	Paper
Panel on Education	8.6.2009 (Item VI)	Minutes Agenda
Panel on Education	22.6.2009 (Item II)	Minutes Agenda
Panel on Education	27.6.2009	Minutes Agenda
Legislative Council	8.7.2009	[Question 16] Arrangements for students with intellectual disability under the new senior secondary academic structure
Panel on Education	11.7.2009 (Item V)	Minutes Agenda

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