

**Legislative Council Panel on Education
Follow-up to Meeting on 8 June 2009**

**School Leaving Arrangements for Students
of Schools for Children with Intellectual Disability**

With regard to the views and concerns raised by Members at the meeting of the Legislative Council Panel on Education on 8 June 2009, the Education Bureau (EDB) has the following responses:

1. Recently, there have been views that, just before the implementation of the New Senior Secondary (NSS) academic structure, EDB had changed its established practice by setting a rule in this school year under which students have to leave school at the age of 18. We would like to clarify that in this school year, EDB has followed the same procedures as in past years in handling applications for extension of stay from students of schools for children with intellectual disability (ID schools). As early as the 2002/03 school year, when the former Education Department launched the Extension of Years of Education (EYE) Programme in ID schools, the age limit for application for extension of stay was raised from 16 to 18. Apart from allowing an extension of stay for students at 18 or above who are absent from school for half a school year or more due to health or other justifiable reasons, we also allow schools to let students extend their stay for one year by making use of the vacancies in the approved classes. These arrangements have been followed since then. Special schools are well-versed with these arrangements and have been submitting applications accordingly.

For applications for extension of stay from students who have reached the age of 18 but have yet to take the two-year EYE Programme, EDB has all along exercised flexibility in allowing the schools to cater for the extension of stay of these students by making use of the vacancies in the approved classes, provided that the admission of school-age children is not affected.

2. Whether in mainstream or special schools, the NSS academic structure will be implemented from the 2009/10 school year on a one-grade-per-year basis. In other words, schools will not operate classes at all three senior secondary levels under the NSS academic structure right from the beginning. Instead, they will start to

operate Senior Secondary One (SS1) classes first, and progress up to SS3 by year. Specifically, Secondary Three (S3) students in mainstream schools in this school year will progress to SS1 in the next school year as the first cohort of students under the NSS academic structure. Similarly, students in Lower S3 classes of ID schools in this school year will be the first cohort of students under the NSS academic structure.

The special school sector and Members proposed that EDB should consider approving the applications in respect of those newly arrived children, non-Chinese-speaking children and students transferred to special schools from other schools for an extension of stay after reaching the age of 18 in the 2008/09 school year. Having carefully considered all applications from such students in this school year and the number of vacancies in the schools in the coming school year, EDB will allow those students who reach 18 but have not received 12 years of education in the school system or taken the two-year EYE Programme to extend their stay in the next school year. In other words, EDB accepts the above proposal for handling special cases.

As regards applications for extension of stay on the grounds of failure to achieve learning outcomes, we have to point out that ID schools set the learning objectives and Individualized Education Programme (IEP) for individual students based on their abilities and progress, and the schools will review and revise the IEP regularly to reflect the actual learning situations of the students with ID. In other words, as the learning of individual students with ID needs to be revised in the light of their progress, failure to achieve learning outcomes should not be a reason for the application.

3. To date, EDB has received about 350 applications from ID schools for an extension of stay of students who have reached the age of 18. The average unit costs per school place in schools for children with mild, moderate and severe intellectual disability are \$100,000, \$167,500 and \$235,000 respectively.
4. Under the Code of Aid for Special Schools, 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. Records of EDB show that such requirements have been in force since the 1970s.

Among the special schools, schools for children with hearing impairment and some schools for children with physical disability offer the mainstream curriculum leading to the Hong Kong Certificate of Education Examination (HKCEE). The above requirement of leaving school at 20 is 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 2002/03 school year, it was stated clearly that the Programme was targeted for students aged between 16 years and 17 years and 11 months. As such, the age limit for students' stay in school was extended from 16 to 18 with the introduction of the Programme.

5. In its submission on 19 May 2005 to the Subcommittee to Study Issues Relating to the Provision of Boarding Places, Senior Secondary Education and Employment Opportunities for Children with Special Educational Needs of the Legislative Council, the Equal Opportunities Commission had expressed views on whether the requirement for students with special educational needs to leave school at the age of 18 had breached the Disability Discrimination Ordinance. Please refer to the attachment for details.

Furthermore, legal advice obtained by EDB also shows that the school leaving arrangements for students of ID schools under the existing or the NSS academic structure do not appear to have contravened the provisions of the Disability Discrimination Ordinance.

Education Bureau

June 2009

**Subcommittee to Study Issues Relating to the
Provision of Boarding Places, Senior Secondary
Education and Employment Opportunities for
Children with Special Educational Needs (Subcommittee)
Meeting on 30 May 2005**

- Submission from the Equal Opportunities Commission -

Introduction

This paper is submitted in connection with the Subcommittee's invitation for the Equal Opportunities Commission (EOC) to send representatives to attend the Subcommittee's meeting scheduled for Monday, 30 May 2005. The Subcommittee has also requested the EOC to comment specifically on whether the following would constitute discrimination against children with special educational needs (SEN) in education or a breach of the Disability Discrimination Ordinance –

- (a) the provision of a three-year junior secondary and a three-year senior secondary education to students in mainstream schools but a six-year secondary education to children with SEN in special schools under the proposed "3+3+4" academic structure; and
- (b) the requirement of students with SEN to leave special schools at the age of 18 whereas students in mainstream schools are not subject to such age limitation.

The Disability Discrimination Ordinance (DDO)

2. The DDO renders unlawful discrimination against persons on the ground of their or their associates' disability in respect of their employment, accommodation, education, access to partnerships, membership of trade unions and clubs, access to premises, educational establishments, sporting activities and the provision of goods, services and facilities. Under Section 36 of the DDO, subject to certain exceptions, it is unlawful for the Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers. Thus, the DDO binds the Government.

Direct and Indirect Discrimination

3. The two major forms of discrimination prohibited under the DDO are “direct” and “indirect” disability discrimination. Direct disability discrimination means treating a person with a disability less favourably than someone without a disability in *comparable circumstances*. Indirect discrimination consists of applying the same requirement or condition on persons with a disability and persons without a disability, but is in practice discriminatory in its effect on persons with a disability because the proportion of persons with a disability who can comply with it is considerably smaller and the requirement or condition set is *not justifiable*.

Six-year Secondary Education for Students with SEN

4. Having reviewed the discussion paper (LC Paper No. CB(2)1317/04-05(02) entitled “*Proposed Arrangements for Students with Special Educational Needs under the New Senior Secondary Education*”) referred to by the Secretariat of the Subcommittee, it is noted that 3 years of senior secondary education would be provided to all students except SEN students in special schools for the mentally handicapped (MH).

5. On the face of it, SEN students in MH schools are treated “differently” under the proposed arrangements. However, whether they are treated “less favourably” than other students in *comparable circumstances* is less certain. Factors such as nature of the special educational needs of these students; appropriateness of the extra resources put into the second-half of the “six-year secondary education” for them; and appropriateness of the accommodations or adjustments made to the curriculum, etc. have to be taken into consideration. All these are questions of fact which need to be answered for the purpose of considering whether the proposed arrangement would constitute disability discrimination. It must however be stressed that the ultimate decision on whether a particular situation constitutes disability discrimination or breach of the DDO rests with the courts. The point to be made is that what is at issue is not so much the labels given to the arrangements (i.e. “3+3” and “6”) but the contents of the respective arrangements.

Requirement of SEN Students to Leave Special Schools at the Age of 18

6. According to the Education and Manpower Bureau’s (EMB) discussion paper entitled “*Issues relating to the proposed academic structure for secondary education and higher education*” (LC Paper No. CB(2)1130/04-05(02)), the existing year of junior secondary education for SEN students in MH schools is limited to four years, plus a two-year Extension of Years of Education Programme. There is no senior secondary education arrangement for these students at the moment, or under the proposed new academic structure.

7. One interpretation of the arrangements is that SEN students in MH schools are in effect “required” to leave their schools at the age of 18. However, another interpretation is that SEN students in MH schools are offered with more choices than their non-SEN counterparts. One choice is to proceed along the usual exit pathways to the various post-school placement destinations. Another choice is to study at the appropriate level in mainstream schools, if they can follow the mainstream curriculum. A third choice is to study in MH schools till they reach the age of 18 before proceeding to post-school placement destinations, if they cannot follow the mainstream curriculum. The latter interpretation, in the Commission’s view, seems to describe the situation more accurately. Thus, the “*requirement*” or “*condition*” imposed by the EMB on all students for further education could well be academic performance based instead of age.

8. Similar to the situation of the “six-year secondary education” arrangement, SEN students in MH schools are treated “differently”. However, whether they are treated “less favourably” than their non-SEN counterparts in the mainstream schools in *comparable circumstances* is less certain. Curriculum, support services, intended exit-paths, etc for SEN and non-SEN students are significantly different. So, it would be difficult, if not impossible, to identify a comparator to establish a case of direct discrimination.

9. One may argue that since the nature of the disability of SEN students in MH schools is such that their real “intellectual age” is significantly below that of their “chronological age”, thus imposing an age limit of 18 would be indirectly discriminatory. As mentioned earlier, however, the “*requirement*” or “*condition*” imposed by the EMB on all students for further education is academic performance based instead of age, which may not be unjustifiable. Therefore, on the face of it, it would seem that no indirect discrimination is involved.

Special Measures

10. Notwithstanding the Commission’s view above, the Commission urges the EMB to widely consult parents and to provide adequate resources to support the proposals and tailor special educational programmes to cater for the special needs of the SEN students in MH schools. These special measures, though not mandated, are encouraged under the DDO.

Equal Opportunities Commission

19 May 2005