

律政司  
法律草擬科

香港中環下亞厘畢道 18 號  
律政中心中座及東座 3 樓及 4 樓  
圖文傳真: 852-3918 4613 (3 樓)  
852-3918 4711 (4 樓)



DEPARTMENT OF JUSTICE

Law Drafting Division

3/F & 4/F, Main and East Wing,  
Justice Place, 18 Lower Albert Road,  
Central, Hong Kong  
Fax: 852-3918 4613 (3/F)  
852-3918 4711 (4/F)

本司檔號 Our Ref: LDT 1023/00/0/M 'A'

BY HAND

來函檔號 Your Ref:

電話號碼 Tel. No.: 3918 4687

10 June 2016

Hon. Dennis Kwok, Member of the Legislative Council  
Room 813, Legislative Council Complex,  
1 Legislative Council Road, Central,  
Hong Kong  
(Attn: Ms. Janet Pang, assistant to the Member)

Dear Mr. Kwok,

**Re: Special Education Needs Bill**

We refer to your email of 8.6.2016@16:16.

2. We enclose the final English and Chinese versions of the captioned Bill together with the Certificate signed by the Law Draftsman under Rule 51(2) of the Rules of Procedure of the Legislative Council (*the Rules*).

3. Please note that the Law Draftsman's Certificate is issued on the basis that the Bill conforms with the requirements of Rule 50 of the Rules and the general form of Hong Kong legislation. It does not imply endorsement by the Department of Justice of the contents of the Bill.

Yours faithfully,

(Alex Lai)

Government Counsel

Encl.

c.c. Miss Queenie Wu, 'B' File

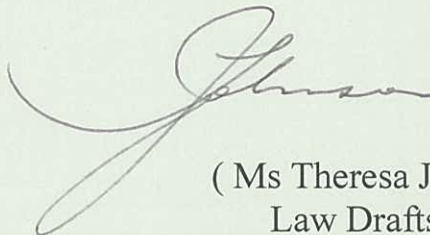
## **Special Education Needs Bill**

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### **Certificate under Rule 51(2) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region**

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I am of the opinion that the Special Education Needs Bill conforms to the requirements of Rule 50 and the general form of Hong Kong legislation.



( Ms Theresa Johnson )  
Law Draftsman

10 June 2016



## Special Education Needs Bill

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## A BILL

## To

Make provision about children and young people with special education needs.

Enacted by the Legislative Council.

## Part 1

## Preliminary

## 1. Short title and commencement

- (1) This Ordinance may be cited as the Special Education Needs Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Education by notice published in the Gazette.

## 2. Interpretation

- (1) In this Ordinance—

**DSS school** (直資學校) means a school which has joined the Direct Subsidy Scheme administered by the Permanent Secretary for Education under which the school receives subsidy directly from the Government on such terms and conditions as specified by the Government from time to time;

**EDB** (教育局) means the Education Bureau or a governmental oversight body that supervises educational policies and provisions;

**EO (Cap. 279)** (《教育條例》(第 279 章)) means the Education Ordinance (Cap. 279);

**IE needs assessment** (個別學習需要評估) has the meaning given by section 18(2);

**IE plan** (個別學習計劃、計劃) means an independent education plan within section 19(1);

**mainstream school** (主流學校) means a primary or secondary school (including but not limited to any aided school, private school, grant school or DSS school) which is registered or provisionally registered as defined by section 3 of the EO (Cap. 279) that is not a special school;

**proprietor** (經營者), in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution;

**special education needs** (特殊教育需要) means the needs of children or young people within the meaning of section 5(1);

**special education provision** (特殊教育服務規定) has the meaning given by section 6;

**special school** (特殊學校) means a school that provides education for pupils through a special education curriculum and that has been approved by the Permanent Secretary for Education for such purpose;

**young person** (青年) means a person over compulsory school age but aged under 25.

- (2) A reference in this Ordinance to education—

- (a) includes full-time and part-time education; but

- (b) does not include higher education,

and educational and educate (and other related terms) are to be read accordingly.

**3. Application**

This Ordinance does not apply to any school in the provision of any nursery, kindergarten, post secondary or tertiary education.

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**Part 2****General Principles****Division 1—EDB functions****4. EDB functions: supporting and involving children and young people**

In exercising a function under this Part in the case of a child or young person, the EDB must have regard to the following matters in particular—

- (a) the views, wishes and feelings of the child and his or her parent, or the young person;
- (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;
- (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions; and
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.



**Division 2—Special Education Needs etc.****5. When child or young person has special education needs**

- (1) A child or young person has special education needs if he or she has a learning difficulty or disability which calls for special education provision to be made for him or her.
- (2) A child of compulsory school age or a young person has a learning difficulty or disability if he or she—
  - (a) has a significantly greater difficulty in learning than the majority of others of the same age; or
  - (b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special education provision were made).
- (4) A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.
- (5) This section applies for the purposes of this Part.

**6. Special education provision**

For the purposes of this Part—

- (a) special education provision, for a child aged 2 or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in—

- (i) mainstream schools; or
- (ii) any school which is not a special school;
- (b) special education provision, for a child aged under 2, means educational provision of any kind.

**Division 3—Identifying Children and Young People with Special Education Needs and Disabilities****7. Identifying children and young people with special education needs and disabilities**

The EDB must exercise its functions with a view to securing that it identifies, within a reasonable time as specified in the code of practice under section 39—

- (a) all the children and young people who have or may have special education needs; and
- (b) all the children and young people who have a disability.

**Division 4—Children and Young People for whom EDB is Responsible****8. When EDB is responsible for child or young person**

- (1) The EDB is responsible for a child or young person if he or she has been—
  - (a) identified by the Department of Health or any governmental authority or statutory body in the provision of health services as someone who has or may have special education needs;
  - (b) brought to the attention of the Department of Health or any governmental authority or statutory body in the provision of health services by any person as someone who has or may have special education needs;



- (c) identified by a registered medical practitioner as someone who has or may have special education needs; or
  - (d) brought to a registered medical practitioner's attention by any person as someone who has or may have special education needs.
- (2) In this section—
- registered medical practitioner* (註冊醫生) has the meaning given by section 2(1) of the Medical Registration Ordinance (Cap. 161).
- (3) This section applies for the purposes of this Part.

### Division 5—Education Provision: Integration and Joint Commissioning

#### 9. Promoting integration

- (1) The EDB must exercise its functions under this Part with a view to ensuring the integration of educational provision and training provision and social care provision, where it thinks that this would—
- (a) promote the well-being of children or young people who have special education needs or a disability; or
  - (b) improve the quality of special education provision made for children or young people who have special education needs.
- (2) A reference in subsection (1) to the well-being of children and young people is a reference to their well-being so far as relating to—
- (a) mental health and emotional well-being;
  - (b) protection from abuse and neglect;

- (c) control by them over their day-to-day lives;
- (d) participation in education, training or recreation;
- (e) social and economic well-being;
- (f) domestic, family and personal relationships; and
- (g) the contribution made by them to society.

### Division 6—Review of Education and Care Provision

#### 10. Duty to keep education and care provision under review

- (1) The EDB must keep under review the educational provision, training provision and social care provision made for children and young people who have special education needs or a disability, or both.
- (2) The EDB must consider the extent to which the provision referred to in subsection (1) is sufficient to meet the education needs, training needs and social care needs of the children and young people concerned.
- (3) In exercising its functions under this section, the EDB must consult—
- (a) children and young people with special education needs, and the parents of children in its area with special education needs;
  - (b) children and young people who have a disability, and the parents of children who have a disability;
  - (c) the applicable governing body for each type of applicable mainstream schools in the provision of education to children or young people with special education needs;



- (d) the advisory boards of mainstream schools in the provision of education to children or young people with special education needs; and
- (e) such other persons as the EDB thinks appropriate.

### **Division 7—Co-operation and Assistance**

#### **11. Co-operating generally: EDB functions**

The EDB must make arrangements for ensuring co-operation between—

- (a) its officers who exercise the authority's functions relating to education or training;
- (b) its officers who exercise the authority's social services functions for children or young people with special education needs; and
- (c) its officers, so far as they are not officers within the meaning of paragraph (a) or (b), who exercise the authority's functions relating to provision which is within the meaning of section 13(3) (provision to assist in preparing children and young people for adulthood and independent living).

#### **12. Co-operating generally: governing body functions**

- (1) This section applies where an appropriate authority for a school mentioned in subsection (2) has functions under this Part.
- (2) The schools referred to in subsection (1) are mainstream schools.
- (3) The appropriate authority must co-operate with the EDB, and the EDB must co-operate with the appropriate authority, in the exercise of those functions.

- (4) The appropriate authority for a school is the applicable governing body for mainstream schools in the provision of education to children or young people with special education needs.

### **Division 8—Information and Advice**

#### **13. Offer**

- (1) The EDB must publish information about the provision within the meaning of subsection (2) it expects to be available at the time of publication for children and young people who have special education needs or a disability.
- (2) The provisions for children and young people referred to in subsection (1) are—
  - (a) education, health and social care provision;
  - (b) other educational provision;
  - (c) other training provision; and
  - (d) provision to assist in preparing children and young people for adulthood and independent living.
- (3) For the purposes of subsection (2)(d), provision to assist in preparation for adulthood and independent living includes provision relating to—
  - (a) finding employment;
  - (b) obtaining accommodation; and
  - (c) participation in society.
- (4) The EDB must keep its offer under review and may from time to time revise it.
- (5) The EDB must from time to time publish—
  - (a) comments about its offer it has received from or on behalf of—



- (i) children and young people with special education needs, and the parents of children with special education needs; and
  - (ii) children and young people who have a disability, and the parents of children who have a disability; and
- (b) the EDB's response to those comments (including details of any action the EDB intends to take).
- (6) Comments published under subsection (5)(a) must be published in a form that does not enable the person making them to be identified.
- (7) Regulations may make provision about—
  - (a) the information to be included in the EDB's offer;
  - (b) how the EDB's offer is to be published;
  - (c) who is to be consulted by the EDB in preparing and reviewing its offer;
  - (d) how the EDB is to involve—
    - (i) children and young people with special education needs, and the parents of children with special education needs; and
    - (ii) children and young people who have a disability, and the parents of children who have a disability, in the preparation and review of its offer; and
  - (e) the publication of comments on the offer, and the EDB's response, under subsection (5) (including circumstances in which comments are not required to be published).
- (8) In this section—  
*offer* (資訊提供) means information required to be published by the EDB under this section.

**14. Advice and information**

- (1) The EDB must arrange for children and young people for whom it is responsible, and parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special education needs of the children or young people concerned.
- (2) The EDB must arrange for children and young people with a disability, and the parents of children with a disability, to be provided with advice and information about matters relating to the disabilities of the children or young people concerned.
- (3) The EDB must take such steps as it thinks appropriate for making the services provided under subsections (1) and (2) known to—
  - (a) the parents of children;
  - (b) children;
  - (c) young people; and
  - (d) the head teachers, proprietors and principals of schools.
- (4) The EDB may also take such steps as it thinks appropriate for making the services provided under subsections (1) and (2) known to such other persons as it thinks appropriate.

**Division 9—Mainstream Education****15. Children and young people with IE plans**

- (1) This section applies where the EDB is securing the preparation of an IE plan for a child or young person who is to be educated in a mainstream school.
- (2) The EDB must secure that the plan is provided for the child or young person to be educated in a mainstream school, unless that is incompatible with—



- (a) the wishes of the child's parent or the young person; or
- (b) the provision of efficient education for others.
- (3) The EDB may rely on the exception in subsection (2)(b) in relation to mainstream schools taken as a whole only if it shows that there are no reasonable steps that it could take to prevent the incompatibility.
- (4) The EDB may rely on the exception in subsection (2)(b) in relation to a particular mainstream school only if it shows that there are no reasonable steps that it or the governing body, proprietor or principal could take to prevent the incompatibility.
- (5) The governing body, proprietor or principal of a mainstream school may rely on the exception in subsection (2)(b) only if they show that there are no reasonable steps that they or the EDB could take to prevent the incompatibility.
- (6) This section does not affect the operation of section 32 (fees payable by the EDB for special education provision at schools).

**16. Children and young people with special education needs but no IE plan**

- (1) This section applies to a child or young person who has special education needs but for whom no IE plan is maintained, if he or she is to be educated in a school.
- (2) The child or young person must be educated in a mainstream school, subject to subsections (3) and (4).
- (3) This subsection applies while the child or young person is admitted to a special school for the purposes of an IE needs assessment, if all of the following have agreed to his or her admission to the school—
  - (a) the EDB which is responsible for him or her;

- (b) the applicable governing body for the school;
- (c) the child's parent or the young person;
- (d) anyone else whose advice is required to be obtained in connection with the assessment by virtue of regulations under section 18(11).
- (4) This subsection applies while the child or young person remains admitted to a special school, in prescribed circumstances, following an IE needs assessment at the school.
- (5) This subsection applies while the child or young person is admitted to a special school, following a change in his or her circumstances, if all of the following have agreed to his or her admission to the school—
  - (a) the EDB which is responsible for him or her;
  - (b) the applicable governing body for each type of applicable institutions;
  - (c) the child's parent or the young person.
- (6) This section does not affect the operation of section 32 (fees payable by the EDB for special education provision at schools).

**17. Children with special education needs in mainstream schools**

- (1) This section applies where a child with special education needs is being educated in a mainstream school.
- (2) Those concerned with making special education provision for the child must secure that the child engages in the activities of the school together with children who do not have special education needs, subject to subsection (3).
- (3) Subsection (2) applies only so far as is reasonably practicable and is compatible with—



- (a) the child receiving the special education provision called for by his or her special education needs;
- (b) the provision of efficient education for the children with whom he or she will be educated; and
- (c) the efficient use of resources.

### **Division 10—Assessment**

#### **18. Assessment of independent education plans needs**

- (1) A request for the EDB to secure an IE needs assessment for a child or young person may be made by the child's parent, the young person or a person acting on behalf of a school.
- (2) An IE needs assessment is an assessment of the education and social care needs of a child or young person.
- (3) When a request is made to the EDB under subsection (1), or the EDB otherwise becomes responsible for a child or young person, the EDB must determine whether it may be necessary for special education provision to be made for the child or young person in accordance with an IE plan.
- (4) In making a determination under subsection (3), the EDB must consult the child's parent or the young person.
- (5) Where the EDB determines that it is not necessary for special education provision to be made for the child or young person in accordance with an IE plan it must notify the child's parent or the young person—
  - (a) of the reasons for that determination; and
  - (b) that accordingly it has decided not to secure an IE needs assessment for the child or young person.
- (6) Subsection (7) applies where—
  - (a) no IE plan is maintained for the child or young person;

- (b) the child or young person has not been assessed under this section or section 24 during the previous 6 months; and
  - (c) the EDB determines that it may be necessary for special education provision to be made for the child or young person in accordance with an IE plan.
- (7) The EDB must notify the child's parent or the young person—
- (a) that it is considering securing an IE needs assessment for the child or young person; and
  - (b) that the parent or young person has the right to—
    - (i) express views to the EDB (orally or in writing); and
    - (ii) submit evidence to the EDB.
- (8) The EDB must secure an IE needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the EDB is of the opinion that—
- (a) the child or young person has or may have special education needs; or
  - (b) it may be necessary for special education provision to be made for the child or young person in accordance with an IE plan.
- (9) After an IE needs assessment has been carried out, the EDB must notify the child's parent or the young person of—
- (a) the outcome of the assessment;
  - (b) whether it proposes to secure that an IE plan is prepared for the child or young person; and
  - (c) the reasons for that decision.
- (10) In making a determination or forming an opinion for the purposes of this section in relation to a young person aged



over 18, the EDB must consider whether he or she requires additional time, in comparison to the majority of others of the same age who do not have special education needs, to complete his or her education or training.

- (11) Provisions about IE needs assessments may be made by regulation, in particular—
- (a) about requests under subsection (1);
  - (b) imposing time limits in relation to consultation under subsection (4);
  - (c) about giving notice;
  - (d) about expressing views and submitting evidence under subsection (7);
  - (e) about how assessments are to be conducted;
  - (f) about advice to be obtained in connection with an assessment;
  - (g) about combining an IE needs assessment with other assessments;
  - (h) about the use for the purposes of an IE needs assessment of information obtained as a result of other assessments;
  - (i) about the use of information obtained as a result of an IE needs assessment, including the use of that information for the purposes of other assessments; and
  - (j) about the provision of information, advice and support in connection with an IE needs assessment.

#### 19. Preparation of IE plans: draft plan

- (1) Where the EDB is required to secure that an IE plan is prepared for a child or young person, it must consult the child's parent or the young person about the content of the plan during the preparation of a draft of the plan.

- (2) The EDB must then—
- (a) send the draft plan to the child's parent or the young person; and
  - (b) give the parent or young person notice of his or her right to—
    - (i) make representations about the content of the draft plan; and
    - (ii) request the EDB to secure that a particular school or other institution is named in the plan.
- (3) A notice under subsection (2)(b) must specify a period before the end of which any representations or requests are made.
- (4) The draft IE plan sent to the child's parent or the young person must not—
- (a) name a school; or
  - (b) specify a type of school.

#### 20. Finalizing IE plans: request for particular school or other institution

- (1) This section applies where, before the end of the period specified in a notice, a request is made to the EDB to secure that a particular school or other institution is named in an IE plan.
- (2) The EDB must consult—
- (a) the governing body, proprietor or principal of the school; and
  - (b) the governing body, proprietor or principal of any other school the EDB is considering having named in the plan.
- (3) The EDB must secure that the IE plan names the school or other institution specified in the request, unless subsection (4) applies.



- (4) This subsection applies where—
  - (a) the school requested is unsuitable for the age, ability, aptitude or special education needs of the child or young person concerned; or
  - (b) the attendance of the child or young person at the requested school would be incompatible with—
    - (i) the provision of efficient education for others; or
    - (ii) the efficient use of resources.
- (5) Where subsection (4) applies, the EDB must secure that the plan—
  - (a) names a school which the EDB thinks would be appropriate for the child or young person; or
  - (b) specifies the type of school which the EDB thinks would be appropriate for the child or young person.
- (6) Before securing that the plan names a school under subsection (5)(a), the EDB must (if it has not already done so) consult the governing body, proprietor or principal of any school the EDB is considering having named in the plan.
- (7) The EDB must, at the end of the period specified in the notice, secure that any changes it thinks necessary are made to the draft IE plan.
- (8) The EDB must send a copy of the finalized IE plan to—
  - (a) the child's parent or the young person; and
  - (b) the governing body, proprietor or principal of any school named in the plan.

## **21. Finalizing IE plans: no request for particular school or other institution**

- (1) This section applies where no request is made to the EDB before the end of the period specified in a notice to secure that a particular school is named in an IE plan.
- (2) The EDB must secure that the plan—
  - (a) names a school which the EDB thinks would be appropriate for the child or young person concerned; or
  - (b) specifies the type of school which the EDB thinks would be appropriate for the child or young person.
- (3) Before securing that the plan names a school or other institution under subsection (2)(a), the EDB must consult the governing body, proprietor or principal of any school the EDB is considering having named in the plan.
- (4) The EDB must also secure that any changes it thinks necessary are made to the draft IE plan.
- (5) The EDB must send a copy of the finalized IE plan to—
  - (a) the child's parent or the young person; and
  - (b) the governing body, proprietor or principal of any school in the plan.

## **22. Duty to secure special education provision in accordance with IE plan**

- (1) This section applies where the EDB maintains an IE plan for a child or young person.
- (2) The EDB must secure the specified special education provision for the child or young person.
- (3) Subsection (2) does not apply if the child's parent or the young person has made suitable alternative arrangements.
- (4) In this section—



*specified* (指明), in relation to a plan, means specified in the plan.

### 23. Schools named in IE plan: duty to admit

- (1) The governing body, proprietor or principal of the school named in a plan has the duty to admit the child or young person named in a plan.
- (2) Subsection (1) does not affect any power to exclude a pupil or student from a school.

### 24. Reviews and re-assessments

- (1) The EDB must review an IE plan that it maintains—
  - (a) in the period of 12 months starting with the date on which the plan was first made; and
  - (b) in each subsequent period of 12 months starting with the date on which the plan was last reviewed under this section.
- (2) The EDB must secure a re-assessment of the educational and social care needs of a child or young person for whom it maintains an IE plan if a request is made to it by—
  - (a) the child's parent or the young person; or
  - (b) the governing body, proprietor or principal of the school which the child or young person attends.
- (3) The EDB may also secure a re-assessment of those needs at any other time if it thinks it necessary.
- (4) Subsections (1) and (2) are subject to any contrary provision in regulations made under subsection (7)(b).
- (5) In reviewing the IE plan maintained for a young person aged over 18, or deciding whether to secure a re-assessment of the needs of such a young person, the EDB must have regard to whether the educational or training outcomes specified in the plan have been achieved.

- (6) During a review or re-assessment, the EDB must consult the parent of the child, or the young person, for whom it maintains the IE plan.
- (7) Regulations may make provision about reviews and re-assessments, in particular—
  - (a) about other circumstances in which the EDB must or may review an IE plan or secure a re-assessment (including before the end of a specified phase of a child's or young person's education);
  - (b) about circumstances in which it is not necessary for the EDB to review an IE plan or secure a re-assessment; and
  - (c) about amending or replacing an IE plan following a review or re-assessment.
- (8) Regulations under subsection (7) about re-assessments may in particular apply provisions of or made under this Part that are applicable to IE needs assessments, with or without modifications.
- (9) Regulations under subsection (7)(c) must include provision applying section 15 (mainstream education for children and young people with IE plan) to a case where an IE plan is to be amended following a review.

### 25. Ceasing to maintain IE plan

- (1) The EDB may cease to maintain a plan for a child or young person only if—
  - (a) the EDB is no longer responsible for the child or young person; or
  - (b) the EDB determines that it is no longer necessary for the plan to be maintained.
- (2) The circumstances in which it is no longer necessary for an IE plan to be maintained for a child or young person include



where the child or young person no longer requires the special education provision specified in the plan.

- (3) When determining whether a young person aged over 18 no longer requires the special education provision specified in his or her IE plan, the EDB must have regard to whether the educational or training outcomes specified in the plan have been achieved.
- (4) The EDB may not cease to maintain an IE plan for a child or young person until—
  - (a) after the end of the period allowed for bringing an appeal under section 29 against its decision to cease to maintain the plan, where no such appeal is brought before the end of that period;
  - (b) after the appeal has been finally determined, where such an appeal is brought before the end of that period.
- (5) Regulations may make provision about ceasing to maintain an IE plan, in particular about—
  - (a) other circumstances in which it is no longer necessary for an IE plan to be maintained;
  - (b) circumstances in which the EDB may not determine that it is no longer necessary for an IE plan to be maintained; or
  - (c) the procedure to be followed by the EDB when determining whether to cease to maintain a plan.

## 26. Maintaining IE plan after young person's 25th birthday

- (1) The EDB may continue to maintain an IE plan for a young person until the end of the academic year during which the young person attains the age of 25.
- (2) In this section—

*academic year* (學年) means the period of 12 months ending on the prescribed date.

## 27. Release of child or young person for whom IE plan previously maintained

- (1) This section applies where—
  - (a) a child or young person who has been subject to a detention order is released;
  - (b) on the release date, the EDB becomes responsible for him or her; and
  - (c) an IE plan was—
    - (i) maintained for him or her immediately before the start of the detention; or
    - (ii) kept for him or her during the detention.
- (2) The EDB must—
  - (a) maintain the plan; and
  - (b) review the plan as soon as reasonably practicable after the release date.
- (3) Subsection (2)(b) is subject to any contrary provision in regulations under section 24(7)(b).

## 28. Personal budgets and direct payments

- (1) The EDB, when maintaining an IE plan, or securing the preparation of an IE plan, for a child or young person, must prepare a personal budget for him or her if asked to do so by the child's parent or the young person.
- (2) The EDB must prepare a personal budget for the child or young person if it identifies an amount as available to secure particular provision that is specified, or proposed to be



- specified, in the IE plan, with a view to the child's parent or the young person being involved in securing the provision.
- (3) Provisions about personal budgets may be made by regulations, in particular—
- (a) about requests for personal budgets;
  - (b) about the amount of a personal budget;
  - (c) about the sources of the funds making up a personal budget;
  - (d) for payments (*direct payments*) representing all or part of a personal budget to be made to a child's parent or a young person, or a person of a prescribed description in prescribed circumstances, in order to secure provision to which the budget relates;
  - (e) about the description of provision to which personal budgets and direct payments may (and may not) relate;
  - (f) for a personal budget or direct payment to cover the agreed cost of the provision to which the budget or payment relates;
  - (g) about when, how, to whom and on what conditions direct payments may (and may not) be made;
  - (h) about when direct payments may be required to be repaid and the recovery of unpaid sums;
  - (i) about conditions with which a person or body making direct payments must comply before, after or at the time of making a direct payment; and
  - (j) about arrangements for providing information, advice or support in connection with personal budgets and direct payments.
- (4) If the regulations include provision authorizing direct payments, they must—

- (a) require the consent of a child's parent or a young person, or a person of a prescribed description in prescribed circumstances, to be obtained before direct payments are made; and
  - (b) require the authority to stop making direct payments where the required consent is withdrawn.
- (5) Special education provision acquired by means of a direct payment made by the EDB is to be treated as having been secured by the EDB in pursuance of its duty under section 22(2), subject to any prescribed conditions or exceptions.

## 29. Appeals and dispute resolution appeals

- (1) A child's parent or a young person may appeal to the SEN Panel against the matters set out in subsection (2).
- (2) The matters are—
  - (a) a decision of the EDB not to secure an IE needs assessment for the child or young person;
  - (b) a decision of the EDB, following an IE needs assessment, that it is not necessary for special education provision to be made for the child or young person in accordance with an IE plan;
  - (c) where an IE plan is maintained for the child or young person—
    - (i) the child's or young person's special education needs as specified in the plan;
    - (ii) the special education provision specified in the plan;
    - (iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan; or



- (iv) if no school or other institution is named in the plan, that fact;
  - (d) a decision of the EDB not to secure a re-assessment of the needs of the child or young person under section 24 following a request to do so;
  - (e) a decision of the EDB not to secure the amendment or replacement of an IE plan it maintains for the child or young person following a review or re-assessment under section 24; or
  - (f) a decision of the EDB under section 25 to cease to maintain an IE plan for the child or young person.
- (3) A child's parent or a young person may appeal to the SEN Panel against the matters set out in subsection (2)(c)—
- (a) when an IE plan is first finalized for the child or young person; and
  - (b) following an amendment or replacement of the plan.
- (4) Regulations may make provision about appeals to the SEN Panel in respect of IE needs assessments and IE plans, in particular about—
- (a) other matters relating to IE plans against which appeals may be brought;
  - (b) making and determining appeals;
  - (c) the powers of the SEN Panel on determining an appeal; or
  - (d) unopposed appeals.
- (5) Regulations under subsection (4)(c) may include provision conferring power on the SEN Panel, on determining an appeal against a matter, to make recommendations in respect of other matters (including matters against which no appeal may be brought).

- (6) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—
- (a) in respect of the discovery or inspection of documents; or
  - (b) to attend to give evidence and produce documents, where that requirement is imposed by an order of the Secretary for Education in relation to an appeal under this section or regulations under subsection (4)(a).
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine at level 3.
- (8) In this section—

**SEN Panel** (特殊教育需要小組) consists of 1 representative from the EDB, 1 representative from the Hospital Authority and 1 representative from the Social Welfare Department, to be appointed by the Secretary for Education.

### 30. Resolution of disagreements

- (1) The EDB must make arrangements with a view to avoiding or resolving disagreements between the parents of children, and young people.
- (2) The EDB must make arrangements with a view to avoiding or resolving, in each relevant school, disagreements within the meaning of subsection (3).
- (3) The disagreements within the meaning of this subsection are those about the special education provision made for a child or young person with special education needs who is a registered pupil or a student at the relevant school concerned, where the disagreements are between—
  - (a) the child's parent, or the young person; and
  - (b) the appropriate authority for the school.



- (4) Arrangements within this section must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of the disagreements to which the arrangements apply.
- (5) For the purposes of subsection (4), a person is not independent if he or she is employed by the EDB.
- (6) The EDB must take such steps as it thinks appropriate for making the arrangements under this section known to—
  - (a) the parents of children with special education needs; and
  - (b) young people with special education needs.
- (7) The EDB may take such steps as it thinks appropriate for making the arrangements under this section known to such other persons as it thinks appropriate.

### **Division 11—Special Education Provision: Functions of EDB**

#### **31. Special education provision otherwise than in schools**

- (1) The EDB may arrange for any special education provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school.
- (2) The EDB may do so only if satisfied that it would be inappropriate for the provision to be made in a school or at such a place.
- (3) Before doing so, the EDB must consult the child's parent or the young person.

#### **32. Fees for special education provision at schools**

- (1) Subsection (2) applies where—
  - (a) the EDB maintains an IE plan for a child or young person;

- (b) special education provision in respect of the child or young person is made at a school; and
- (c) that school, institution or place is named in the IE plan.
- (2) The EDB must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place in accordance with the IE plan.
- (3) Subsection (4) applies where—
  - (a) the EDB is responsible for a child or young person for whom no IE plan is maintained;
  - (b) special education provision in respect of the child or young person is made at a school; and
  - (c) the EDB is satisfied that—
    - (i) the interests of the child or young person require special education provision to be made; and
    - (ii) it is appropriate for education or training to be provided to the child or young person at the school, institution or place in question.
- (4) The EDB must pay any fees payable in respect of the special education provision made at the school, institution or place in question which is required to meet the special education needs of the child or young person.

#### **33. Access to schools**

- (1) This section applies where the EDB maintains an IE plan for a child or young person.
- (2) A person authorized by the EDB is entitled to have access at any reasonable time to the premises of a school at which education or training is provided in pursuance of the plan, for the purpose of monitoring the education or training.



## Division 12—Special Education Provision: Functions of Governing Bodies and Others

### 34. Using best endeavours to secure special education provision

- (1) This section imposes duties on mainstream schools.
- (2) If a registered pupil or a student at a school or other institution has special education needs, the appropriate authority must, in exercising its functions in relation to the school or other institution, use its best endeavours to secure that the special education provision called for by the pupil's or student's special education needs is made.
- (3) In this section—  
*appropriate authority* (學校當局) for a school or other institution is the governing body for each of the school.

### 35. SEN co-ordinators

- (1) This section imposes duties on the appropriate authorities of mainstream schools.
- (2) The appropriate authority must designate a member of staff at the school (*SEN co-ordinator*) as having responsibility for co-ordinating the provision for pupils with special education needs.
- (3) Regulations may—
  - (a) require appropriate authorities which are subject to the duty imposed by subsection (2) to ensure that SEN co-ordinators have prescribed qualifications or prescribed experience (or both); or
  - (b) confer other functions relating to SEN co-ordinators on appropriate authorities which are subject to the duty imposed by subsection (2).
- (4) In this section—

*appropriate authority* (學校當局) for a school or other institution is the governing body for each of the school.

### 36. Informing parents and young people

- (1) This section applies if special education provision is made for a child or young person at a mainstream school.
- (2) The appropriate authority for the school must inform the child's parent or the young person that special education provision is being made for the child or young person.
- (3) In this section—  
*appropriate authority* (學校當局) for a school or other institution is the governing body for each of the school.

### 37. SEN information report

- (1) This section imposes a duty on the applicable governing body for each of the school.
- (2) A governing body or proprietor must prepare a report containing SEN information.
- (3) In this section—  
*disabled person* (殘疾人士) means a person who is a disabled person for the purposes of the Disability Discrimination Ordinance (Cap. 487);  
*disabled pupil* (殘疾學生) includes a disabled person who may be admitted to a school as a pupil;  
*SEN information* (特殊教育需要資訊) is—
  - (a) such information as may be prescribed about the implementation of the governing body's or proprietor's policy for pupils at the school with special education needs; or
  - (b) information as to—



- (i) the arrangements for the admission of disabled persons as pupils at the school;
- (ii) the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and
- (iii) the facilities provided to assist access to the school by disabled pupils.

### **Division 13—Information to Improve Well-being of Children and Young People with Special Education Needs**

#### **38. Provision and publication of special needs information**

- (1) The Secretary for Education must exercise the powers listed in subsection (2) with a view to securing, in particular, the provision of special needs information which the Secretary for Education thinks would be likely to assist the EDB or others in improving the well-being of—
  - (a) children with special education needs; and
  - (b) young people with special education needs.
- (2) In each calendar year, the Secretary for Education must publish, or arrange to be published, special needs information which has been obtained under the EO (Cap. 279), where the Secretary for Education thinks the publication of the information would be likely to assist the EDB or others in improving the well-being of—
  - (a) children with special education needs; and
  - (b) young people with special education needs.
- (3) Information published under subsection (2) must be published in the form and manner that the Secretary for Education thinks fit, except that the names of the children and young people to whom the information relates must not be included.

- (4) The Secretary for Education may make a charge, or arrange for a charge to be made, for documents supplied by virtue of this section.
- (5) A charge under subsection (4) must not exceed the cost of supply.
- (6) References in this section to the well-being of children and young people with special education needs are references to their well-being so far as relating to—
  - (a) physical and mental health and emotional well-being;
  - (b) protection from abuse and neglect;
  - (c) control by them over their day-to-day lives;
  - (d) participation in education, training or recreation;
  - (e) social and economic well-being;
  - (f) domestic, family and personal relationships;
  - (g) the contribution made by them to society.
- (7) In this section—

***special needs information*** (特殊需要資訊) means—

- (a) information about children and young people with special education needs; and
- (b) information about special education provision made for those children and young people.

### **Division 14—Code of Practice**

#### **39. Code of practice**

- (1) The Secretary for Education must issue a code of practice giving guidance about the exercise of their functions under this Part to—
  - (a) the EDB; and



- (b) the applicable governing body for each type of applicable schools.
- (2) The Secretary for Education may revise the code from time to time.
- (3) The Secretary for Education must publish the current version of the code.
- (4) The persons listed in subsection (1) must have regard to the code in exercising their functions under this Part.
- (5) Those who exercise functions for the purpose of the exercise by those persons of functions under this Part must also have regard to the code.

#### 40. Making and approval of code

- (1) Where the Secretary for Education proposes to issue or revise a code of practice under section 39, the Secretary for Education must prepare a draft of the code (or revised code).
- (2) The Secretary for Education must consult such persons as the Secretary for Education thinks fit about the draft and must consider any representations made by them.
- (3) If the Secretary for Education decides to proceed with the draft (in its original form or with modifications), the Secretary for Education must lay a copy of the draft before the Legislative Council.
- (4) The Secretary for Education may not take any further steps in relation to—
  - (a) a proposed code unless the draft is approved by a resolution of the Legislative Council; or
  - (b) a proposed revised code if, within the 40-day period, the Legislative Council resolves not to approve the draft.
- (5) Subsection (6) applies if—

- (a) the Legislative Council resolves to approve the draft, as mentioned in subsection (4)(a); or
- (b) the Legislative Council resolves not to approve the draft, as mentioned in subsection (4)(b).
- (6) The Secretary for Education must issue the code or revised code in the form of the draft, and it comes into force on such date as the Secretary of State may by order appoint.
- (7) Subsection (4) does not prevent a new draft of a proposed code (or proposed revised code) from being laid before the Government.



**Explanatory Memorandum****Introduction**

The main object of this Bill is to impose statutory obligations on Education Bureau (*EDB*) to provide for each of the mainstream school children and young people with special education needs (*SEN*) with an independent education plan.

**The Bill**

2. The Bill aims to introduce certain measures facilitating education of children with SEN in mainstream schools.
3. The proposed legislative provisions deal with the following areas of special education—
  - (a) early identification;
  - (b) early intervention;
  - (c) information and support on schools and special education policies;
  - (d) individual education plans (*IE plans*); and
  - (e) grievances mechanism.

**Early identification**

4. The Bill stipulates that the EDB, in exercising its function, must secure that the children or young people with SEN or disability could be identified (clauses 7 and 8).

**Early intervention**

5. The EDB also has an obligation to implement certain mechanism to ensure that students with SEN are supported and well integrated in

mainstream schools, and that reviews are conducted when needed and resources are distributed accordingly (clauses 9 to 12).

**Information and support on schools and special education policy**

6. Currently, the available information on special education is very limited. Information such as schools' policies to support SEN students, the amount and types of SEN students enrolled at each school and the level of SEN training for teachers, is not transparent and comprehensive, making it difficult for students and parents to choose the suitable schools. Some schools have also indicated their unwillingness to accept SEN students verbally. In practice, some have even tried to make SEN students transfer to another school, and this situation is worthy of attention.
7. The Bill aims to address the issue through imposing obligations on various stakeholders to coordinate. This can guarantee that students receive appropriate intervention, equal education services with sustained follow-up actions, and that they will not be discriminated. If conflicts arise between the parents and students, and the schools or the institutions providing educational services, help may be sought from the EDB, with the EDB taking up a monitoring and coordinating role. The school concerned must also designate a member of staff as the SEN coordinator to monitor and manage affairs related to SEN (clauses 13, 14 and 30 to 40).

**Individual education plan**

8. IE plan is a plan tailor-made and cares for the education of a child or young person with SEN. The Bill provides that all SEN students must be supplied with their own IE plans and this right should be protected legally. The parents and the children must also be able to have a right to participate in, to know, to confirm and to monitor the process of establishing IE plans. The Bill also provides for the maintenance and cessation of the IE plans (clauses 15 to 28).



**Grievances mechanism**

9. A child's parent or a young person may appeal to the SEN panel in case it is aggrieved by the decision of the EDB in relation to special education. The SEN panel consists of 1 representative from the EDB, 1 representative from the Hospital Authority and 1 representative from the Social Welfare Department, to be appointed by the Secretary for Education (clause 29).