

**Executive Summary of the Investigation Report
on Education Department's Contingency and Relief Measures
for the Secondary School Places Allocation Exercise 2001**

Background

Since 1978, boys and girls have been placed in secondary schools under the Secondary School Places Allocation (SSPA) System administered by the Education Department (ED). In August 1999, the Equal Opportunities Commission (EOC) pronounced the SSPA System as being sex-discriminatory. In July 2000, EOC sought judicial review on three allegedly sex-discriminatory features in the system -

- separate scaling of internal assessment scores for boys and girls;
- banding of students by sex; and
- sex quotas for placement of Secondary One (S1) students in co-educational secondary schools.

In June 2001, the Court ruled that the SSPA System is contrary to the Sex Discrimination Ordinance, Cap. 480 and thus unlawful.

2. To remedy substantiated cases of discrimination, ED introduced relief measures (RM) and Special Placement Service (SPS) in late July 2001 to place affected students. ED's handling of the matter, in particular, the administrative arrangements for the contingency and relief measures drew widespread community and media criticism. In view of the public concern, The Ombudsman decided to conduct a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397.

The Investigation

3. The direct investigation examines whether ED has taken appropriate contingency and relief measures in the light of questions over the SSPA System, implemented these measures fairly and reasonably, and handled students' banding information properly.

The SSPA System

4. In August 1999, EOC released an investigation report on the SSPA System which concluded that separate scaling of internal assessment scores and separate banding of students by sex as well as sex quotas for placement of S1 students in co-educational secondary schools were sex-discriminatory. In response, ED maintained that boys and girls have different inherent rates of development and that the form and content of internal assessments were inevitably biased in favour of girls. It was thus fairer to place boys and girls separately. Gender quotas for co-educational secondary schools were necessary for a balance of the sexes to facilitate co-education. In April 2000, ED informed EOC that it would not change the SSPA System. In early July 2000, ED met with EOC and offered to abolish the gender quotas in co-educational schools. However, this concession was not accepted by EOC.

5. In mid-July 2000, EOC applied for judicial review on the three features in the SSPA System it regarded as sex-discriminatory (para. 1). Court hearing was conducted between 14 and 24 May 2001. In Court, ED explained that there would be chaos if combined processing for boys and girls were to be hastily adopted for the 2001 allocation exercise. ED proposed the introduction of relief measures to help aggrieved students if the judgment went against it. On 22 June 2001, just 24 days before the scheduled release of the SSPA results on 17 July 2001, the Court ruled that all three features were unlawfully sex-discriminatory. The Court did not require ED to quash the three features immediately, on the understanding that ED would have a relief arrangement to redress substantiated cases of discrimination when the allocation results were released.

Contingency and Relief Measures

6. After the release of the EOC investigation report in August 1999, ED took steps to enhance its SSPA computer system to prepare for combined processing of boys and girls. System enhancement commenced in November 1999 and was completed in May 2000 in readiness for the 2000 allocation exercise. In March 2001 about two months before the Court hearing, ED drew up a contingency plan to prepare for a possible Court order to remove the three gender-based features of the SSPA System immediately and hence to adopt combined processing for the 2001 allocation exercise. The contingency plan consisted of a decision tree for all possible scenarios and a procedural workflow for combined processing.

7. In anticipation of the Court not ordering immediate removal of the gender-based features, ED started planning for the RM in early June 2001. ED adopted two simple criteria to determine if students might have been affected -

- (a) whether the banding of the student would be raised when combined processing of both boys and girls was adopted; and
- (b) where the re-assessed banding of the student was the same as that under separate processing, whether the schools above the student's allocated choice had been allocated a student of the opposite sex with a lower band.

8. In devising the RM, ED adopted the following guiding principles -

- to be fair, efficient, user-friendly and easily comprehensible;
- to be transparent; and
- to maximise chances of re-allocation for aggrieved students.

9. One extra place per S1 class was added to all public-sector secondary schools. These places together with other vacant places resulting from non-registration of allocated students, amounting to a total of some 3,500 places, were reserved by ED for the placement of aggrieved students. Students were required to forward requests for relief on a standard application form to ED via their schools from 17 July 2001 to noon of 20 July 2001. They had to undertake to give up the originally allocated S1 places if they were successfully re-allocated to schools of their higher choice. Band 1 students were allocated first, followed by Band 2 and Band 3. The order of allocation within the same band was determined by the computer-generated random number.

10. ED announced the RM at a press conference held on 8 July 2001. During the press conference, ED stressed that the number of vacancies available for placement under the RM would be very small and that the chance of successful re-allocation would be extremely limited. ED estimated that there would only be about 600 places available for re-allocation under the RM.

11. During the application period, ED received 7,722 applications for relief. 3,001 were subsequently identified as students whose allocation results had likely been affected by the gender-based features of the SSPA System. Through the operation of the RM, ED successfully placed 2,261 students to schools of higher choice. The remaining 740 were not re-allocated due to the lack of vacancies in schools of their higher choice. ED released the RM placement results on 28 July 2001 and affected students registered with their re-allocated schools on 30 or 31 July 2001. The RM process was completed within two weeks.

12. To accommodate the remaining 740 aggrieved students not placed in schools of their higher choice in the RM phase due to the lack of vacancies, ED decided, after consulting the heads of ten Government schools and one aided secondary school, to operate an additional S1 class in each school. This resulted in 11 additional S1 classes, with about 440 places, for the SPS. ED contacted the parents of the 740 students on 28 and 29 July 2001 to offer them a place in one of the 11 schools or other additional places offered by some schools. With the SPS, ED successfully placed another 672 aggrieved students. The remaining 68 students did not seek special placement. The exercise was completed by 1 August 2001. ED regarded the SPS a special measure “outside the RM”.

13. To enhance transparency and fairness, ED set up a Monitoring Group (MG) to oversee the operation of the RM and, where necessary, to advise on its implementation. The MG consisted of seven appointed non-official members and held altogether five meetings.

Observations and Opinions

14. In this investigation, The Ombudsman has made the following observations and opinions -

General Comments

- (a) The allocation of S1 places in 2001 was complicated by simultaneous education reform : the abolition of the Academic Aptitude Test and the reduction of bands from five to three. The latter resulted in a greater degree of randomization and unpredictability in the allocation results, and led to greater disappointment and dissatisfaction among parents and students.
- (b) Time constraint and parental pressure aggravated the strain on ED and contributed to inadequacies in the relief measures. At times, ED staff, with the support of MG members, had to work practically round-the-clock in their efforts to bring early relief to students and parents.

Contingency Plans

- (c) ED was technically ready for combined processing in the 2000 and 2001

allocation exercises. ED had drawn up contingency plans and had taken steps to prepare for contingencies in the light of questions over the SSPA System.

Relief Measures and Special Placement Service

- (d) ED's assertion that SPS was a special measure "outside the RM" is not convincing. The SPS was clearly devised to accommodate the remaining aggrieved students not placed in schools of their higher choice under the RM phase because of lack of vacancies. In this light, the SPS was *de facto* an extension and an integral part of the RM.
- (e) Had ED assessed more accurately the need to accommodate as many aggrieved students as possible and included in the RM phase the additional school places later created under the SPS, placement would have been, and be seen as, a well co-ordinated exercise.

Operation of the Monitoring Group

- (f) ED did not allow enough time for the MG to comment or to advise before the results of the RM were made public. Two incidents helped to illustrate this point -

Incident 1 : RM placement results were available for scrutiny by the MG only in the afternoon of 27 July 2001, when the results had already been announced by press conference and result slips printed and packed for collection the following day.

Incident 2 : The results of ED's sample checks were endorsed by the MG only on 6 August 2001, when all affected students under the RM and the SPS had already registered with their re-allocated schools.

- (g) Although the fourth meeting of the MG was held, more than half the members were absent.

Handling of Banding Information

- (h) ED's practice of not retaining students' banding information immediately after the allocation exercise is unreasonable, given the importance of the band in determining students' priority for placement and the justifiable need for students/parents and investigating bodies (e.g. EOC and this Office) to inspect such information in case of queries or complaints.
- (i) As ED may reconstruct banding information from raw data, it can be argued that the department is still holding banding information indirectly. ED should review its practice of not retaining and not releasing banding information to students/parents on their express requests, to ensure consistency with the Personal Data (Privacy) Ordinance.

Public Announcements and Comments

- (j) Some parents had refrained from applying for relief as a result of ED's statement about the little chance of success (para. 10). They subsequently found ED's statement untrue: ED had practically re-allocated all aggrieved students under the RM and the SPS. We consider that since ED was offering relief to students, it should not have speculated on the chances of success publicly. Those utterances had come across as cautioning against application for relief.

Other Observations

- (k) ED had reviewed the SSPA System and announced in December 2001 that, to abide by the Court ruling, the only changes for the time being would be the removal of the gender-based features.
- (l) ED had released in February 2002 new guidelines for internal assessments of P5 and P6 students.
- (m) EC would further review the SSPA System in 2003/04 and implement any long-term changes in 2005/06.

Conclusions

15. On the basis of our investigation, we have come to the following conclusions -
- (a) ED has taken steps to prepare for contingencies in the light of questions over the SSPA System.
- (b) The relief measures were fine in principle but deficient in implementation.
- (c) Administrative deficiencies have been identified in the procedures for the MG's execution of its advisory and supervisory functions.
- (d) There was discrepancy in ED's treatment of requests for access to banding information from EOC and from aggrieved students or their parents.
- (e) ED had made apparently "cautious", but in effect misleading, statements about the chances of successful re-allocation through the RM.
- (f) ED's introduction of the SPS, in our view a *de facto* extension of the RM, had been made with undue haste and without advance notice to students and parents.

Recommendations

16. The Ombudsman has made the following seven recommendations to ED for consideration -

Relief Measures

- (a) To ensure fairness and maximum access to redress for aggrieved students when formulating and implementing relief measures, if ever necessary again in future;

Monitoring Mechanism

- (b) To work out with the monitoring body beforehand the key stages of operation and set up corresponding check points for review;
- (c) To allow time, when scheduling its operation, for the monitoring body to review and advise on the operation and for the department to respond to or act on such advice;
- (d) To reschedule meetings of the monitoring body when more than half of the members are absent;

Banding Information

- (e) To review, in consultation with the Office of the Privacy Commissioner for Personal Data and EOC, the existing practice of retaining and releasing banding information;

Public Announcements and Comments

- (f) To refrain from speculating on chances of success of appeal in public statements or comments; and

Long-Term Allocation

- (g) To speed up the progress of the overall review of the SSPA System.

A Final Note

17. On a final note, The Ombudsman sees a conflict between the policy objectives of the Sex Discrimination Ordinance and the educational principles behind the SSPA System. We respect the need to enforce the legislation on sex discrimination. However, we also see the need to recognise and accept the different rates of growth, development and maturity between boys and girls. This is fact of life and nature which no legislation can alter.

- End -

Office of The Ombudsman

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