

立法會
Legislative Council

LC Paper No. CB(2)119/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/PL/ED

LegCo Panel on Education

**Minutes of special meeting
held on Thursday, 19 July 2001 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon YEUNG Yiu-chung, BBS (Deputy Chairman)
Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon SZETO Wah
Hon Michael MAK Kwok-fung
Hon Audrey EU Yuet-mee, SC, JP
- Member Attending** : Hon Margaret NG
- Members Absent** : Dr Hon YEUNG Sum (Chairman)
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon LAU Kong-wah
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
- Public Officers Attending** : Mr Matthew CHEUNG, JP
Director of Education

Mr K S LEE
Assistant Director of Education (Planning and Research)

Attendance by Invitation : Equal Opportunities Commission

Ms Anna WU
Chairperson

Dr Priscilla CHUNG
Director (Gender)

Miss Alexandra PAPADOPOULOS
Legal Adviser

Ms Betty LIU
Head (Promotion and Education Unit)

Mr Sam HO
Equal Opportunities Officer

Hong Kong Association of Sponsoring Bodies of Schools

Ms LAU Siu-kay
Principal, Sheung Kung Hui Fung Kei Primary School

Education Convergence

Mr CHOI Kwok-kwong
Vice-president

Hong Kong Federation of Education Workers

Mr WONG Kwan-yu
Principal, Fukien Secondary School (Siu Sai Wan)

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

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The Deputy Chairman informed members that as the Chairman was out of town, he would chair the meeting on his behalf.

I. Relief Measures for the 1999-2001 Secondary School Places Allocation

Meeting with deputations

2. At the invitation of the Deputy Chairman, representatives of the deputations presented their views on the Relief Measures at the meeting, a summary of which is summarised in the following paragraphs.

The Equal Opportunities Commission (EOC)
(Paper No. CB(2)2130/00-01(01))

3. The Chairperson of EOC briefed members on the submission which was tabled at the meeting. She highlighted that -

- (a) computer analysis revealed that if separate scaling and banding and gender allocation were removed, the percentage of boys allocated to first choice schools would decrease, by way of example, from 60% to 40%, let us say, and the percentage of girls would increase from 40% to 60% in some cases. The method was viable and should not affect the existing school system;
- (b) according to a previous analysis, about 2 500 more boys received favourable treatment among the first three choices under the current Secondary School Places Allocation (SSPA) system;
- (c) the Education Department (ED) had, at the request of EOC, conducted simulations on allocation of places in the past. EOC hoped that ED would retain the necessary data and records to enable similar simulations to be made in the future;
- (d) EOC hoped that ED would announce the proposals for a replacement system as early as practicable for public consultation; and
- (e) EOC had so far received 438 enquiries about the current SSPA system, among which 17 enquiries were received between 22 June and 16 July 2001 and 421 enquiries were received between 17 and

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19 July 2001. Among these, 19 complaints had been lodged with EOC. Most of the cases were related to discrimination against girls.

4. The Chairperson of EOC said that the Court had ruled that the current SSPA system was unlawfully discriminatory in respect of the three elements identified by EOC as set out in paragraph 1(ii) of EOC's submission. The Court granted a declaration that all three gender-based mechanisms were contrary to the Sex Discrimination Ordinance, with liberty for both parties to apply for further relief. She explained that EOC had a statutory requirement to effect a settlement of the matter by conciliation. EOC hoped that ED would offer as much assistance as possible in the conciliation process so that most cases could be settled by conciliation. However, if there were many cases requiring legal actions, EOC would consider taking legal action on behalf of the complainants on a collective basis.

The Hong Kong Association of Sponsoring Bodies of Schools (HKASBS)

5. Representative of HKASBS said that as the Relief Measures were introduced hastily, schools had found it difficult to explain the measures to parents and parents also found the Relief Measures difficult to understand. She pointed out that introduction of the Relief Measures would greatly affect the operation of secondary schools.

6. Mr SZETO Wah asked whether school principals were aware that the current SSPA system, which had been in place for 23 years, was discriminatory on the basis of sex. Representative of HKASBS, who was a primary school principal, responded that schools had only come to the knowledge in recent years that boys and girls were put into two separate allocation bands.

Hong Kong Federation of Education Workers

7. Representative of the Hong Kong Federation of Education Workers presented the following views -

- (a) it could be noted that the allocation of school places was dependent upon banding allocation, computer-assigned random numbers and parental choice. Banding allocation was only one of many factors that determined the allocation of a school place;
- (b) the chaos among schools and parents could have been avoided if ED had made contingency plan for both separate and combined scaling for boys and girls. It could even request parents to indicate in

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advance their choices of schools under separated and combined scaling respectively;

- (c) as it would take about one month to conduct a new school place allocation exercise for combined scaling, the delay might make the next school term unable to start in September 2001. Implementation of the Relief Measures became the only resort under the circumstances;
- (d) as the number of bands of students for allocation of secondary school places had been reduced from five to three, the number of students in each band had increased. As the sequence of allocation with each band was determined by the computer-assigned random numbers, the degree of randomisation of allocation would increase accordingly and the effect of the sex-discriminatory factor should reduce. The Relief Measures should be adequate to address the grievances experienced by students affected by the current SSPA system;
- (e) the increase in the degree of randomisation of allocation might make parents feel that the allocation was unfair. However, the effect of randomisation had been offset by the increase in the number of discretionary places from 10% to 20%. This had resulted in a highest percentage of students being allocated to schools of their first choice; and
- (f) the SSPA system was viable from an educational point of view. With the introduction of a new allocation system in the following year, the confusion caused to the allocation of school places would only be short-term.

Education Convergence

(Paper No. CB(2)2125/00-01(01))

8. The Vice-president of the Education Convergence briefed members on the submission. He supplemented the following -

- (a) many parents chose to apply for school places on their own for their children this year probably because of the court's ruling in respect of the current SSPA system, the reduction in the number of bands of students for the allocation of school places, and the introduction of the Relief Measures; and

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- (b) the Relief Measures were very complicated. It was difficult to explain the measures to parents within two to three days. As many parents could not understand the measures, disputes would arise if they felt that their children had been disadvantaged in the allocation process.

Discussion with the Administration
(Paper No. CB(2)2125/00-01(02))

9. Director of Education (DE) briefed members on the Administration's paper. He highlighted that -

- (a) a Task Force chaired by DE had been set up within ED to oversee the operation of the Relief Measures and draw up proposals for a longer-term improvement of the allocation system which should both be fair and free from discriminatory elements, and conformed to educational principles. ED would consult academics, educational practitioners, teachers, parents, community figures and overseas experts in drawing up the proposals. The aim was to come up with proposals for consultation with the Education Commission, the Board of Education and the public by the end of this year.
- (b) While ED appreciated that it would be difficult for EOC to work with ED in designing a fair system, he hoped that EOC would advise on whether the revised system was fully consistent with anti-discrimination legislation. ED hoped that the revised system would be in place by the time parents had to indicate their choices of schools in May 2002;
- (c) ED had appealed to secondary schools for their assistance in providing one additional Secondary one place per class and to freeze all vacant places arising from the failure of students to register with the allocated schools on 19 and 20 July 2001. It was estimated that around 2 000 additional places would be created among all secondary schools. ED envisaged that only about 600 of these places would eventually be filled by students who were classified as likely affected by the gender-based elements of the current SSPA system because only a small number of schools which had available places fell into the category of popular schools;
- (d) all students who were successfully re-allocated a place in the schools of higher choice must allow ED to allocate their originally allocated Secondary one places to other likely affected students who had not

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been allocated a place yet. This was to maximise the opportunities for placement. As a result, the number of students who would be successfully offered a school place might be increased to well beyond 600; and

- (e) as available school places were limited, there was no guarantee that a student who had been identified as likely affected would automatically be re-allocated to the school of his/her higher choice.

Preservation of banding data

10. Mr CHEUNG Man-kwong pointed out that although the Privacy Commissioner for Personal Data (the Privacy Commissioner) had considered the banding data as students' personal information, ED had refused disclosure of the data to parents and students concerned on the ground that the data were not kept. He asked whether the banding data would be made available to parents and students concerned upon request.

11. DE said that the Administration had no intention to change the practice of not keeping the banding data generated during the allocation process. The practice had been confirmed to be consistent with the Personal Data (Privacy) Ordinance by the Privacy Commissioner. He explained that ED did not possess the banding data which was an intermediate product in the allocation process. As the data was not in its possession, ED was under no legal obligation to release the information.

12. Mr CHEUNG Man-kwong was of the view that with the implementation of the Relief Measures, ED should not destroy the banding data. He queried how students could file an appeal if they could not obtain the data. DE replied that ED preferred not to disclose the banding data because of its "labelling effect" on students. He stressed that the data would cease to exist on 30 July 2001 when the allocation of places under the Relief Measures had been completed. He stressed that students who had any reason to believe that they had been discriminated against could make appeal to ED in a simple standard proforma.

13. The Chairperson of EOC said that information about the original gender curves produced under separate scaling and banding and respective final scores of a student under separate and combined scaling would be needed in the handling of complaints. She requested ED to keep such information for future use.

14. DE said that ED would fully co-operate with EOC in its investigation. Although banding data would not be kept after use, ED could re-generate the data upon the request of EOC

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15. Ms Audrey EU was of the view that ED should preserve the banding data so as to avoid wasting the resources to re-generate the data upon the receipt of a complaint. DE responded that there had been extensive discussions on this highly contentious issue in 1998. There was a consensus at that time including the LegCo Panel on Education, that disclosure of such information, which did not represent the absolute academic performance of individual students, would have a serious impact on the self-esteem and self-confidence of students. He did not wish to re-open the debate at the present time. Ms EU asked whether EOC would apply for an injunction to stop destruction of the banding data on 30 July 2001 because it was vital for parents filing an appeal against the re-allocation results. The Chairperson of EOC said that she would need to seek legal advice on the issue.

Discriminatory nature of the SSPA system

16. Mr SZETO Wah said that he was not aware that the SSPA system was discriminatory on the basis of sex when he was a school principal. He questioned why ED had concealed the fact until EOC applied for judicial review against the system.

17. DE responded that there was no question of concealing any information from schools and parents. ED had distributed leaflets in 1998 to parents informing them that boys and girls were processed separately in scaling and banding. Mr SZETO Wah remarked that ED had taken action only after the enactment of the Sex Discrimination Ordinance.

18. Members criticised the Administration for its failure to devise contingency plan earlier since the discrimination issue had already surfaced two years ago. DE responded that during the hearing of the judicial review, ED had undertaken to introduce contingency measures to comply with the Court's ruling if it was not in its favour. The Relief Measures were introduced to fulfil the undertaking. He added that if the hearing had been held earlier, there might have been more time for the implementation of a revised system this year. However, the judgment was delivered only on 22 June 2001. DE pointed out that there were sound educational rationales underpinning the current SSPA system such as the different inherent rates of development among boys and girls. While there were different views on the issue in the community, many education workers had expressed support for the rationales. Unfortunately, the Court did not accept the ED's justifications. ED had commenced its work to draw up proposals for a revised system after delivery of the judgment.

19. Ms Emily LAU expressed disappointment that DE maintained his position that the current SSPA system was appropriate. In response to Ms LAU's question

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as to whether the Administration would lodge an appeal against the Court's ruling, DE said that legal advice was being sought on the issue.

20. Ms Emily LAU queried why the Administration decided to commence its work on devising a revised system while it was still seeking legal advice as to whether an appeal should be lodged. DE responded that there was insufficient time to wait for the legal advice before starting to work on a revised system because an improved allocation system must be in place by May 2002. He added that according to the Reform Proposals for the Education System in Hong Kong put forward by the Education Commission, the allocation bands would only be based on individual schools' internal assessments in the long run. In view of recent developments, the Administration had expedited the review of the SSPA system originally scheduled to be conducted in 2003.

21. Ms Audrey EU pointed out that investigation into the current SSPA system was conducted in 1998 and EOC had published a report on its findings in August 1999. A judicial review was subsequently sought by EOC and the hearing of the matter by the Court was held from 14 May 2001 to 24 May 2001. A comprehensive judgment of 60 pages setting out the Court's ruling was delivered on 22 June 2001. She expressed dissatisfaction that the Administration seemed to attribute the current chaotic situation to the late delivery of the judgment.

22. DE clarified that he absolutely had no intention of implying that the present situation was a result of the delay in the delivery of the judgment. He stressed that it was of fundamental importance to respect the independence of the Judiciary and he was not trying to put the blame on any party. DE reiterated that the Administration had undertaken during the hearing of the judicial review that it would introduce contingency measures to comply with the Court's ruling. Once the judgment was delivered, ED had already initiated the relief mechanism immediately.

23. Ms Emily LAU queried the rationale for ED to seek EOC's participation in the implementation of the Relief Measures. She said that it was inappropriate for EOC to participate in the Relief Measures introduced by ED, as this would be in conflict with EOC's independent role of handling complaints and taking legal actions in discrimination cases. She asked whether ED had sought legal advice before inviting EOC's participation.

24. DE responded that ED was fully aware of EOC's independent role of handling complaints and taking legal actions in discrimination cases. The Administration had only suggested EOC to send a representative to attend meetings of the Monitoring Group as an observer. The suggestion was put

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forward in order to ensure that the measures thus drawn up would be consistent with anti-discrimination legislation.

25. The Chairperson of EOC said that it was inappropriate for EOC to participate in any of the interim measures introduced by ED to redress discrimination complaints, as EOC administered its own statutory complaint handling mechanism, and had certain statutory obligations which would bring it into conflict if it were to adopt a role in the operation of the Relief Measures. She added that while EOC could not assist ED in devising a replacement system, EOC was prepared to advise whether the proposals for a new system conformed with anti-discrimination law.

Other remedial measures

26. Ms Emily LAU expressed grave concern that the number of affected students who would be successfully allocated a school place would be very small. She asked whether ED had an estimated figure of the students affected and whether there would be other remedial measures for those affected students who could not be offered a new school place of their choice.

27. DE responded that with the reduction of number of allocation bands from five to three in the current year, the effect of randomisation had increased and that of the sex-discriminatory factor had already been reduced. With the increase in the percentage of discretionary places from 10% to 20%, the number of students allocated to schools of their choice this year was the highest. He informed members that 56% of students were allocated to schools of their first choice and 74% of students were allocated to schools of their first three choices. He believed that the number of students affected by the current SSPA system should be smaller than the figures estimated by EOC earlier.

28. Miss Cyd HO said that the effect of the sex-discriminatory factor in the current SSPA system on students had increased with the reduction of number of allocation bands from five to three. She asked whether the Administration would consider providing financial assistance to affected students who were not allocated a place of their choice under the Relief Measures to study in Direct Subsidy Scheme schools or international schools.

29. DE responded that it would be very difficult to provide financial assistance to these students, as it was very difficult to verify whether a student had been disadvantaged by the sex-discriminatory factor under the current SSPA system as long as the factor of randomisation existed.

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30. Miss Cyd HO was of the view that it was the sex-discriminatory factor which affected the band to which a student was allocated. The factor of randomisation would only come into play after a student was allocated to a band. Thus, the factor of randomisation should not be a reason for not assisting the affected students. She asked whether EOC considered that providing financial assistance to affected students was an acceptable way of settling a complaint.

31. The Chairperson of EOC said that it was up to a parent to decide whether a proposed way of settling a complaint was acceptable. She added that a parent could lodge a claim for financial assistance to compensate the additional expenses incurred by an affected student to study in another school. Such a claim was usually made in the conciliation process.

32. Miss Cyd HO and Mr David CHU suggested that these affected students should be given a school place of their choice, if available, in the new school term. DE said that he would consider the suggestion, adding that ED would try its best to assist affected students in all possible ways.

33. The Chairperson of EOC said that during the conciliation process of a complaint case, ED had previously issued acknowledgement letters upon request to confirm the academic performance of students concerned. She hoped that such a practice would be continued in the current school year, as it would have a positive psychological effect on affected students. She reminded the Administration that the issue could cause long-term damage to affected students. DE replied that ED would consider the suggestion, adding that ED would adopt a practical approach in providing assistance to affected students.

34. Mr LEUNG Yiu-chung questioned why the Relief Measures did not contain any contingency measure in case the affected students outnumbered the school places available. He asked whether parents would have to resort to lawsuit to settle the matter.

35. DE said that some school places would definitely be available for allocation but the number of school places of the choice of students and their parents would be limited. The number of students who would lodge an appeal and the number of affected students were still unknown at the present stage. Nevertheless, ED would try its best to assist the affected students. He hoped that problems could be resolved amicably rather than through lawsuit.

Legality of the Relief Measures

36. Miss Margaret NG expressed dissatisfaction that introduction of the Relief Measures seemed to be an attempt to shift the onus onto the parents. She said that

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the major problem arose from the fact that current SSPA system contravened existing legislation. Since the current cycle of allocation remained unchanged, she asked whether the Relief Measures would have the effect of rectifying the unlawful status of the current allocation system of school places. Miss NG also asked whether ED had sought legal advice before introducing the Relief Measures.

37. DE responded that the legal advice sought by the Administration confirmed the propriety of introducing the Relief Measures. In the longer term, the problem would have to be addressed through the introduction of a revised system. DE explained that during the hearing, ED informed the Court that if the judgment was not in its favour, ED would devise a relief mechanism to handle substantiated cases of complaints after the release of the allocation results. The court accepted this. He stressed that the judge in his judgment did not require ED to dismantle the current SSPA system "at one stroke" but believed that ED would take steps to honour its findings and deal with substantiated cases of discrimination in such a way as to remedy the effects of such discrimination.

38. The Chairperson of EOC said that to her understanding, ED had informed the Court of its contingency plan to devise a relief mechanism but the Court had not indicated that it accepted the Relief Measures. She pointed out that the judge had instructed in the Court's ruling that orders for specific relief could be dealt with at a further hearing related specifically to matters of relief and to costs. Liberty to apply was therefore given to the parties. The Chairperson of EOC added that the Court's ruling had already provided clarity in terms of the current SSPA system being unlawful.

39. Ms Emily LAU asked whether EOC considered the Relief Measures in contravention of existing legislation and therefore should not be implemented. The Chairperson of EOC said that that she was not in a position to comment on any issues which might be the subject of future court proceedings. She offered to invite the Legal Adviser of EOC to give her advice in this respect.

40. The Legal Adviser of EOC said that the Court had said that the current SSPA system was illegal. The problem with the Relief Measures was that it only addressed what ED classified as substantiated cases. The classification might not be agreeable to EOC. EOC had its own way of dealing with complaints under its statutory mechanism. Under existing legislation, aggrieved persons had a wide variety of remedies they could seek from the courts. Under the Relief Measures, the only remedy available was allocation of a school place of a higher choice if available. The Relief Measures did not offer any other redress for parents who could not get their children into a better school even though they had been affected by the current SSPA system.

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Way forward

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41. Ms Emily LAU said that the Administration should respond to the questions raised in the submission of Education Convergence. DE undertook to provide a written response after consultation with the Department of Justice. At Ms LAU's suggestion, members agreed that the Panel would hold another meeting to follow up the progress on the issue when the new session began.

42. The Deputy Chairman thanked the deputations and the Administration for attending the meeting.

43. There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat

20 October 2001