

Bills Committee on the Education (Amendment) Bill 2002
Administration's Response to Issues Raised at the Meetings on 21, 27 and 28 May 2004

Issues	Members' Concerns	Administration's Response
<p><i>Section 62 - Procedure on appeal</i></p>	<p>Consider specifying a requirement that an appeal relating to the registration or cancellation of the registration of a principal should be heard by an Appeal Board with at least three principals as members. (21.5.2004)</p>	<p>Section 59 of the existing Education Ordinance has already set up an Appeal Boards Panel, members of which include representatives from the education profession as well as independent persons from other professions. Among the members of the education profession, principals, vice-principals as well as teachers are included.</p> <p>The Education Ordinance also stipulates that the Appeal Board shall hear or determine any appeal concerning the registration of a teacher or the cancellation of the registration of a teacher with at least three of the members comprising the quorum are registered teachers.</p> <p>According to past experience, when handling appeal cases relating to withdrawal of approval of principal, we make reference to the procedures used in dealing with appeal cases on teacher registration and include members from the education sector in the Appeal Board. As such, the existing Appeal Board has already taken into consideration the neutrality of its members as well as the professional views from the education sector. We do not consider it necessary to further amend the provision.</p>

<p>Regulation 76 – Majority vote in certain cases</p>	<p>Refine the drafting of the regulation to reflect more clearly the policy intent that the appointment and dismissal of any member of the teaching staff should be supported by a majority of the managers of that school, and consider excluding temporary staff with a very short period of service from the restriction. (27.5.2004)</p>	<p>Members' proposal will be accepted and corresponding amendments will be made.</p>
<p>Regulation 53 – Infectious diseases</p>	<p>Explain the power of an incorporated management committee (IMC) to decide the temporary closure of a school under the threat of an infectious disease, and clarify whether the exercise of such power would be subject to or affected by the view or decision of the Permanent Secretary for Education and Manpower (PSEM) under the Education Ordinance and Regulations. (27.5.2004)</p> <p>Explain the methods and procedures for a principal to report to a medical officer if there are suspected or known cases of infectious disease amongst teachers, pupils or employees of a school. (27.5.2004)</p>	<p>Section 79 of the Education Ordinance stipulates that the Chief Executive may by notice in the Gazette appoint any Government medical officer to be “a medical officer of schools”. EMB has issued circulars to schools informing them to report to the respective Regional Office of the Department of Health if any unusual pattern of illnesses/sick leave among students or staff is noticed. The medical officer of the concerned Regional Office, in the name of “a medical officer of schools”, will then implement the provisions in Regulations 52 and 53. For consistency, we propose to change the Chinese post title of medical officer of schools in Regulation 79 from 「學校醫務主任」 to 「學校醫生」.</p> <p>Guidelines on the handling of likely emergency situations such as communicable diseases, inclement weather or incidents involving odours of gas from unknown sources have been issued to schools. Other than making reference to the related guidelines and the stipulations in</p>

		the Education Ordinance, schools have in principle the right to make immediate decision on closure of school in case of urgent and unforeseeable circumstances. They should also notify EMB of the decision immediately.
Regulation 81 – Permanent Secretary may disapprove	The provision is about PSEM may by notice in writing forbid the granting of a holiday on any specified day. Consider replacing the “responsible person” with the “management authority” in the regulation. (27.5.2004)	Members' proposal will be accepted and corresponding amendments will be made.
Regulation 96 - Expulsion and suspension of pupils	Clarify the policy intent of empowering PSEM to require a principal to expel a pupil whose behaviour was, in the opinion of PSEM, undesirable or improper or contrary to the good of the school or the other pupils. (27.5.2004) Describe how PSEM would follow up the matter in case the principal did not act in accordance with his request to expel a pupil. (27.5.2004)	The Code of Aid stipulates that relevant procedures should be followed and prior approval by PSEM should be granted when a pupil was to be expelled from a school. When a pupil does not accept the arrangement for his expulsion from the school, Regulation 96 provides PSEM with the statutory power to expel the pupil, so as to protect the interests of most pupils and the school. If the principal did not act in accordance with PSEM’s request to expel a pupil, PSEM might give directions in accordance with section 82 and require the school to comply with the decision.

<i>Principal selection</i>	Consider including section 57 in proposed section 40AEA(1)(a)(ii). (21.5.2004)	Members' views are accepted, and amendments will be made to include section 57 in the proposed section 40AEA(1)(a)(ii).
<i>Powers of Permanent Secretary</i>	<p><i>Section 53 – Approval of first principal of school</i> <i>Section 56 – Grounds for withdrawal of approval of principal</i> Review the power of and the procedures for PSEM to approve or withdraw the approval of a principal of an IMC school if it appeared to him that the selected candidate was not or the appointed principal was no longer a fit and proper person. (21.5.2004)</p> <p><i>Section 83 – Powers of PSEM to close school or give directions in cases of danger or misconduct</i> Consider repealing section 83(1)(b), and explain why the paragraph was not included in proposed new section 83(1AA) as one of the necessary conditions for PSEM to serve an order under section 83(1). (21.5.2004)</p> <p>Consider limiting the definition of the "conduct of pupils" mentioned in section 83(1)(b) to behaviour that cause danger to other parties. (28.5.2004)</p>	<p>According to section 53 of the existing Education Ordinance, approval of principal is granted by PSEM. Therefore, it is reasonable that the withdrawal of approval should also be decided by PSEM.</p> <p>The power of PSEM is granted by the existing Education Ordinance, and it is not newly created power given by the Bill. Moreover, the provision serves as a "safety valve" and would only be used under special and emergent circumstances of the school with the aim to protect other persons in the school. As such, we would not suggest any amendment to or deletion of the related provision.</p> <p>The order being served by PSEM under proposed section 83(1AA) is based on the principles of safety and requiring</p>

		the management authority of a school to act lawfully. As such, section 83(1)(b) has not been included.
<i>Section 87 – Offences and penalties</i>	Review the justifications for the existing levels of penalties for the stipulated offences under the section in the light of the establishment of an IMC and its role and functions in the management of a school, and examine whether failure to comply with administrative procedures or requirements should be criminalized. (21.5.2004)	Members' proposal will be considered and appropriate amendments will be made.
<i>Regulations 101 and 102 – Offences and Penalties</i>	Review the need for the offences in regulation 101 in the light of school-based management and the operation of the IMC, and the justifications for the penalties under regulation 102 in the light of the principle that failure to comply with administrative procedures or requirements should not be criminalized. (27.5.2004)	Having regard to school-based management and the operation of the IMC, we shall base on the principle that failure to comply with administrative procedures or requirements should not be criminalized to review the relevant provisions and propose corresponding amendments.
<i>Schedule 2 to the Bill</i>	Examine whether the functions or responsibilities of supervisors in the regulations specified in Schedule 2 could be transferred to the “management authority” instead of the “responsible person” after the establishment of the IMC. (27.5.2004)	The Bill has stipulated that after the establishment of the IMC, duties in relation to the daily operation of the school, such as the submission of the plan of school premises, medical examination of pupils, notice of school holidays etc will be transferred to “responsible person”. For IMC schools, “responsible person” refers to the “principal”.

		<p>Other duties such as change of premises, application to employ permitted teachers etc. will be transferred to the “management authority”. For IMC schools, “management authority” refers to the “IMC”. Such arrangement will tie in with the daily operation of the school.</p> <p>Based on the above principles, we have reviewed a number of related arrangements and consider it inappropriate to simply transfer all the functions or responsibilities of the supervisor in the regulations specified in Schedule 2 to the “management authority” instead of the “responsible person”.</p>
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Education and Manpower Bureau
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