

立法會
Legislative Council

LC Paper No. CB(2)1275/07-08
(These minutes have been seen by
The English Schools Foundation)

Ref : CB2/BC/9/06

**Bills Committee on
The English Schools Foundation (Amendment) Bill 2007**

**Minutes of the sixth meeting
held on Saturday, 26 January 2008, at 9:30 am
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon YEUNG Sum, JP (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon TAM Heung-man

Member absent : Hon Albert Jinghan CHENG, JP

Attendance by invitation : Items II and III
The English Schools Foundation

Professor Felice LIEH MAK
Chairman

Mrs Heather Du Quesnay
Chief Executive

Mrs Jan Martin
Special Educational Needs Adviser

Mr Jonothan Abbott
Barrister and Legislative Drafting Consultant

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Stanley MA
Senior Council Secretary (2)6

Miss Carmen HO
Legislative Assistant (2)6

Action

I. Confirmation of minutes

[LC Paper No. CB(2)860/07-08]

The minutes of the meeting held on 17 December 2007 were confirmed.

II. Meeting with The English Schools Foundation

[LC Paper Nos. CB(2)859/07-08(01), CB(2)898/07-08(01),
CB(2)946/07-08(01) and (02)]

2. The Bills Committee deliberated (index of proceedings at **Annex**).

Objects of the Foundation

3. Dr Fernando CHEUNG briefed members on his revised Committee Stage amendment (CSA) to proposed section 4(1) to set out clearly that it was the aim of the English Schools Foundation (ESF) not to discriminate against students with special educational needs (SEN students).

4. Mr Jonothan Abbott said that he remained of the view that any requirements set out in the objects of ESF in section 4 would carry statutory obligations that would put ESF at risk of being challenged in court. He held the view that the effect of introducing into the Ordinance the concept of "non-discrimination against SEN students" when discrimination against SEN students was already unlawful under the Disability Discrimination Ordinance (DDO) might well be to override in part the "undue hardship" exception contained in the DDO. He further pointed out that, unlike the inclusion of "without regard to race or religion" in the existing objects of ESF, the reference

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to "SEN" in section 4 would carry on-going implications for ESF as special adaptation to its facilities and teaching methods, etc, would be required.

5. Mrs Heather Du Quesnay pointed out that the spirit of Dr Fernando CHEUNG's revised CSA had already been reflected in ESF's Mission Statement which expressly stipulated that "*ESF provides schools and other educational services in the medium of English to children and young people who can benefit from them, including those with special educational needs, in Hong Kong.*" Moreover, ESF Executive Committee had agreed on and published a SEN policy which reiterated the commitment of ESF to continue to discharge its responsibilities in the area of SEN under the subvention within the financial resources available to it. She stated that ESF would object to Dr Fernando CHEUNG's revised CSA to section 4, irrespective of how the amendment was drafted.

6. At the invitation of members, Senior Assistant Legal Adviser 2 (SALA2) reiterated his advice concerning proposed amendments to the objects of ESF as contained in LC Paper No. LS10/07-08.

7. Mr Abraham SHEK said that he respected the spirit of Dr CHEUNG's CSA, but Members belonging to The Alliance would not support the CSA as it would put ESF at risk of being challenged in court, and the CSA was tantamount to punishing ESF for its good work in providing quality education to SEN students. As the aim of the Bill was to streamline the governing structure of ESF, the issue of the provision of education for SEN students without discrimination should not be tackled in the context of the Bill but should be followed up by the Panel on Education.

8. Mr Tommy CHEUNG accepted ESF's explanations. He considered that the incorporation of a parent representative of SEN students in the Board of Governors (the Board) had already demonstrated ESF's commitment to provide education for SEN students. He indicated that Members belonging to the Liberal Party did not support Dr Fernando CHEUNG's revised CSA.

9. The Chairman and Ms Audrey EU expressed support for the revised CSA. The Chairman said that ESF had already made its commitment to provide education for SEN students in its Mission Statement, and the revised CSA only stated the obvious. Ms Audrey EU said that the revised CSA could address the concern of ESF about statutory obligation. The revised CSA was indeed an appreciation of the good work done by ESF in the provision of quality education for SEN students.

10. Ms Emily LAU requested ESF to provide written information on the number of SEN students whose applications for admission to ESF schools had been rejected in the past few years. Mrs Heather Du Quesnay agreed.

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Election of parent member of SEN students to the Board

11. Members noted the identification process for SEN students under the SEN policy endorsed by ESF Executive Committee. Under the process, students would be assessed against a 6-level scale. The levels of the scale indicated the degree of support or adjustment that was needed to enable a SEN student to be educated in school. The higher the level at which a student was placed, the more support he/she would require in education. Members agreed to ESF's proposal that the parent of a student who had been formally assessed by the school at Level 2 or above would be eligible to stand as a candidate for the seat designated for the SEN parent on the Board.

12. Mr Tommy CHEUNG expressed concern about possible political influence in the assessment process and the availability of appeal against the SEN assessment.

13. Mrs Heather Du Quesnay assured members that the assessment process was highly professional and would be done by the Assessment and Review Panel comprising teachers, principals and specialists such as educational psychologists and speech therapists. The parent concerned would also be involved in the process. The determination on the SEN assessment would be evidence-based and a professional judgement made collectively. This being the case, the possibility of adjusting the assessment outcome would be remote.

14. Mrs Jan Martin explained to members the assessment process. She stressed that once the assessment had been made, appropriate support would be provided for the student concerned. There would be regular reporting and his/her performance would be monitored. As parental input was essential for the continuous assessment of a student's SEN, it was unlikely that a parent would disagree with the assessment on the child's SEN under the 6-level scale.

15. Members were concerned about the eligibility of an elected parent member of SEN students in the Board should his/her child's SEN be adjusted to below Level 2. Mrs Heather Du Quesnay replied that the matter was yet to be considered by the ESF. However, during the subsequent clause-by-clause discussion of the Bill, Mrs Du Quesnay indicated that ESF would probably wish to adopt the approach taken in the case of membership of the Board and reflected in section 3(5) of the draft ESF (General) Regulation (the draft Regulation), namely that the office of a member should be declared vacant should the member cease to be eligible for nomination/election as a member.

16. SALA2 advised that under Regulation 3(5) of the draft Regulation, if a member ceased to be eligible for nomination or election for the purposes of the provision of the Ordinance under which his nomination or election was made, the Chairman of the Board should, upon the matter coming to his knowledge, declare the member's position to be vacant. This provision would apply across

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the board to all members of the Board.

III. Clause-by-clause examination of the Bill

[LC Paper Nos. CB(3)583/06-07, CB(2)2324/06-07(01),
CB(2)613/07-08(02), CB(2)636/07-08(02) and (03)]

17. Members completed examination of the Bill clause by clause and the draft Regulation.

18. Members agreed that -

(a) Hon Abraham SHEK would move CSAs to improve the text of the Bill; and

(b) ESF should provide a complete set of draft Regulation before the resumption of the Second Reading debate on the Bill.

19. Members also agreed that the Bills Committee would report its deliberations to the House Committee on 15 February 2008 and support the resumption of the Second Reading debate on the Bill on 5 March 2008.

IV. Any other business

20. There being no other business, the meeting ended at 11:38 am.

Council Business Division 2
Legislative Council Secretariat
5 March 2008

**Proceedings of the sixth meeting of Bills Committee on
The English Schools Foundation (Amendment) Bill 2007
on Saturday, 26 January 2008, at 9:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000419	Chairman	Confirmation of minutes	
000420 - 001322	Chairman Dr Fernando CHEUNG Ms Emily LAU Chief Executive of The English Schools Foundation (CE(ESF)) Mr Jonothan Abbott	<p>Briefing by Dr CHEUNG on his revised Committee Stage amendment (CSA) to amend the proposed section 4(1)(a) by adding "<i>and with the aim of non-discrimination against students with special educational needs</i> " after the word "religion", and a definition of special educational needs (SEN).</p> <p>CE(ESF)'s response that Dr CHEUNG's revised CSA would put ESF into a very difficult and vulnerable position when being challenged in court.</p> <p>Mr Abbott's response that any CSA to the objects of ESF in the proposed section 4 would affect the scope of powers of ESF in school management and operations; and his view that the revised CSA would have the effect of overriding the provisions of the Disability Discrimination Ordinance (DDO) which provided for an exception on the ground of undue hardship.</p>	
001323 - 001654	Ms Emily LAU Chairman of ESF CE(ESF)	<p>Ms LAU's enquiry on whether ESF had any plans to achieve the spirit of Dr CHEUNG's CSA in the long term.</p> <p>Chairman of ESF's response that ESF schools were severely constrained by space to meet with the needs of different kinds of SEN students in education.</p> <p>CE(ESF)'s response that each ESF school admitted students with some degree of SEN in accordance within its capacity to support them in learning. Some ESF schools had a wider range of facilities, equipment and staff expertise than others to cater for a larger variety and higher levels of SEN. Given the resources constraints, it was impossible for all the 17 ESF schools to provide education for students with different types and levels of SEN.</p>	
001655 - 001814	Mr Tommy CHEUNG	Mr CHEUNG's indication that Members of the Liberal Party did not support Dr CHEUNG's revised CSA, although he respected its spirit. He maintained the view that the incorporation of a parent member of SEN students in the Board of Governors (the Board)	

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		<p>was sufficient to demonstrate ESF's commitment to provide education for SEN students.</p>	
001815 - 002954	<p>Ms Audrey EU Chairman Mr Jonothan Abbott SALA2</p>	<p>Ms EU's view that Dr CHEUNG's revised CSA had taken into account the concern about statutory obligation as advised by ESF's Legal Adviser. The revised CSA could demonstrate the commitment of ESF to provide education for SEN students.</p> <p>Mr Abbott's response that ESF had all along considered section 4 not the appropriate section to reflect the commitment of ESF to provide education for SEN students, which was already included in ESF's mission statement. Section 4 was about the objects and powers of ESF and the reference to non-discrimination against SEN students therein would have far-reaching impact on ESF.</p> <p>SALA2's advice that the reference to "SEN" in section 4, as in the case of "without regard to race or religion", might be interpreted as a target duty. In achieving this target duty, the resources of ESF schools would be considered.</p>	
002955 - 003345	<p>Mr Abraham SHEK Chairman</p>	<p>Mr SHEK's advice that Members belonging to The Alliance did not support Dr CHEUNG's CSA as it would impose a burden on ESF in the provision of education for SEN students. His view that the issue of the provision of education for SEN students without discrimination should not be tackled in the context of the Bill. His suggestion that the matter should be followed up by the Panel on Education.</p>	
003346 - 004644	<p>Mr Jasper TSANG Dr Fernando CHEUNG SALA2 Chairman CE(ESF)</p>	<p>Mr TSANG's concern about the practical implications of Dr CHEUNG's CSA and enquiry about the acts of ESF which would be considered a breach of the provision as amended.</p> <p>Dr CHEUNG's response that ESF had been appreciated for providing quality education for English-speaking SEN students. The purpose of proposing the CSA was to reflect in law ESF's mission in this regard. His view that ESF would only contravene the provision as amended if it completely retreated from providing education for SEN students.</p> <p>SALA2's advice that it would be possible that the proposed amendments to the objects of ESF, if passed, might have some practical implications on ESF in formulating and implementing operational policies, including financial and resource implications. The proposed objects of ESF in so far as they might be interpreted as a target duty provided a wide measure of tolerance within which ESF might operate. The court would not intervene in how they</p>	

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		<p>would be implemented or achieved as long as ESF was not acting outside the tolerance. In essence, the court would not intervene unless ESF had completely retreated from providing education for SEN students.</p> <p>CE(ESF)'s response to Mr TSANG's enquiry that ESF had committed to provide education for SEN students in its mission statement, and had formulated a SEN policy.</p>	
004645 - 005302	Ms Emily LAU Chairman CE(ESF)	In response to Ms LAU's enquiry, CE(ESF)'s advice that paragraph 3 of ESF's SEN policy had expressly stated the targets and commitments of ESF to provide and improve education for SEN students	
005303 - 005540	Chairman	Chairman's view that Dr CHEUNG had revised the wording of his CSA to minimize its possible impact on ESF school management, and ESF was over-conservative and over-cautious concerning the possibility of judicial challenge.	
005541 - 005930	Mr Abraham SHEK Chairman	Mr SHEK's view that the Bill aimed to enhance the governing structure of ESF, and the inclusion of a parent representative of SEN students in the Board had indicated the commitment of ESF to provide education for SEN students. He appreciated the spirit of Dr CHEUNG's CSA but considered that the matter should be followed up by the Panel on Education.	
005931 - 010158	Dr Fernando CHEUNG Mr Abraham SHEK	Dr CHEUNG's view that the provision of education without any discrimination against SEN students should apply to all schools including international schools. Given the limited scope of his CSA, he considered it appropriate for ESF to set a model for other international schools to follow.	
010159 - 010231	Ms Emily LAU Chairman CE(ESF)	Ms LAU's request for information on the number of children with SEN whose applications for admission to ESF schools had been rejected. CE(ESF) agreed to provide the information.	See para 10 of the minutes
010232 - 011250	Chairman Mr Tommy CHEUNG Chairman of ESF CE(ESF) Mrs Jan Martin	<p>Mr CHEUNG's concern about possible political influence in SEN assessment and CE(ESF)'s response that SEN assessments were conducted professionally by the Assessment and Review Panel.</p> <p>Mrs Martin's elaboration of the assessment process.</p>	
011251 - 011414	Mr Abraham SHEK CE(ESF)	<p>Mr SHEK's enquiry about the eligibility of the SEN parent member should the assessment of his/her child's SEN be adjusted below Level 2.</p> <p>CE(ESF)'s response that ESF had not yet considered the matter in detail.</p>	

Time marker	Speaker	Subjects	Action required
011415 - 011636	Ms Emily LAU CE(ESF)	Ms LAU's question about the terms of office of the SEN Adviser of ESF. CE(ESF)'s response that the post had been established for about three years. Given the limited supply of SEN experts in the market, ESF had persuaded Mrs Martin to serve for six months. ESF would continue to search for a suitable candidate to fill the post on a permanent basis.	
011637 - 011744	Chairman Mr Tommy CHEUNG	Clause-by-clause examination	
011745 - 012541	Chairman Mr Jonothan Abbott Ms Emily LAU Mr Abraham SHEK Chairman of ESF SALA2 CE(ESF) Mr Tommy CHEUNG	Clauses 1 - 6 Chairman of ESF's advice that ESF had no plan to operate schools outside Hong Kong in the medium term.	See para 18(a) of the minutes
012542 - 013900	Chairman Ms Emily LAU Mr Jonothan Abbott SALA2 Mr Tommy CHEUNG	Clauses 7 - 8 SALA2's advice that new section 4(1)(b) empowered ESF to provide educational services generally, within Hong Kong or elsewhere, as a means of raising revenue for ESF. Mr CHEUNG's and Ms LAU's view that the office of a Board member should be declared vacant should he cease to be eligible for nomination or election as a member of the Board, and SALA2's advice that Regulation 3(5) of the draft ESF (General) Regulation had provided for such.	
013901 - 014436	Chairman Mr Jonothan Abbott Ms Emily LAU CE(ESF) SALA2 Mr Abraham SHEK Mr Tommy CHEUNG	Clause 8 : Section 7 - Meeting of the Board Ms LAU's enquiry whether meetings of the Board would be open to the public and Mr Abbott's advice that the Regulation 6(1) provided that the Board should determine its own procedures. Mr CHEUNG's and Mr SHEK's indication of not supporting opening up the meetings of the Board.	
014437 - 015417	Chairman Mr Jonothan Abbott Ms Emily LAU Chairman(ESF) Mr Abraham SHEK	Clause 8 : Sections 8 to 17 Mr Abbott's advice that the terms of Office of the Chief Executive Officer of ESF should be determined by the Board.	
015418 - 015714	Chairman Mr Jonothan Abbott SALA2 Ms Emily LAU	Clauses 9 - 11 Mr Abbott's advice that a CSA would be moved to delete "and Manpower" in all references to the	

Time marker	Speaker	Subjects	Action required
		<p>former post of "Permanent Secretary for Education and Manpower" in the Bill.</p> <p>SALA2's advice that matters subject to appeal to the Appeals Panels were specified in proposed sections 20(1)(a) and (b).</p>	
015715 - 020100	Chairman Mr Jonothan Abbott Ms Emily LAU Chairman of ESF CE(ESF)	<p>Clause 12 - Regulation</p> <p>Mr Abbott's advice that regulations made by ESF under the Ordinance would be subject to the scrutiny of the Legislative Council.</p>	
020101 - 020512	Chairman Mr Jonothan Abbott Ms Emily LAU CE(ESF)	<p>Clauses 13-17</p> <p>CE(ESF)'s advice that subject to the early passage of the Bill, election of Board members would be held at the beginning of the 2008-2009 school year in August or September 2008.</p>	
020513 - 020930	Chairman Mr Jonothan Abbott Mr Abraham SHEK CE(ESF) Ms Emily LAU	<p>CE(ESF)'s agreement to provide an updated set of the draft Regulation before the resumption of the Second Reading debate on the Bill.</p> <p>Members' agreement to report the deliberations of the Bills Committee to the House Committee on 15 February 2008 and support the resumption of the Second Reading debate on the Bill on 5 March 2008.</p>	<p>See para 18(b) of the minutes</p>

Council Business Division 2
Legislative Council Secretariat
 5 March 2008