

立法會
Legislative Council

LC Paper No. CB(2)202/07-08
(These minutes have been seen by
The English Schools Foundation)

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

**Minutes of the second meeting
held on Monday, 8 October 2007, at 2:30 pm
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 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 Albert Jinghan CHENG, JP
Hon TAM Heung-man

Member absent : Hon Emily LAU Wai-hing, JP

Attendance by invitation : Item I

The English Schools Foundation

Professor Felice LIEH MAK
Chairman

Mrs Heather Du Quesnay
Chief Executive

Mr Jonothan Abbott
Barrister and Legislative Drafting Consultant

Mr John Barker
Special Educational Needs Adviser

Academic Committee, The English Schools Foundation

Mr John Wray
Chairman

Mr John Brewster
Principal, Beacon Hill School

Management Committee, The English Schools Foundation

Mr William Sharp
Chairman

Mr Sunil Nanda
Chairman, Kennedy Primary School Council

Mr George TSO
Chairman, South Island School Council

Staff Council, The English Schools Foundation

Mr Gordon Pheysey
Chairman

The Support Staff Association in The English Schools Foundation

Mr Michael Fulton
Chairman

Joint Council of Parent Teacher Associations

Mrs Jane Tracy
Chairman

Mrs Audrey WONG
Chairman, Kowloon Junior School Parent Teacher Association

Association of Professional Teachers in The English Schools Foundation

Mr Dominic Parry
Chairman

Mrs Sue Page
Vice-Chairman

A Group of SEN Parents of King George V School

Dr Icy LEE Kit-bing
A SEN Parent

Ms Shirley LIU Ying-yee
A SEN Parent

Police Force Council Staff Side

Mr David Williams
Chief Inspector of Police

Mr KWOK Yam-shu
Senior Superintendent of Police

Jockey Club Sarah Roe School Parent Teacher Association

Mr T C Mountain
Chairman

SEN Parents' Advisory Group

Mrs Virginia Wilson
SEN Parent at The English Schools Foundation
Bradbury School

Mr Albert LEUNG
Joint SEN/IN Parent Support Group Coordinator

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

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I. Meeting with deputations and The English Schools Foundation
[LC Paper Nos. CB(2)2780/06-07(01) and CB(2)2797/06-07(01) - (03)]

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

Oral presentation

2. The Bills Committee received 10 organizations and one individual to present views on the Bill.

[*Post-meeting note* : A summary of the views of the organizations and individual is in LC Paper No. CB(2)204/07-08(02).]

The English Schools Foundation's response

3. Mrs Heather Du Quesnay provided the following response -

Objects of the Foundation

(a) The English Schools Foundation (the Foundation) was fully committed to achieving its objects as set out in the English Schools Foundation Ordinance (the Ordinance), and had been providing quality education for English-speaking students including those with SEN. The Foundation recognized the need to improve the provision of integrated education and special education for students with SEN. The Foundation had taken steps to implement the recommendations of the review in this regard, formulated a policy on special educational needs and developed a system to assess the degree of inclusion of individual schools on the basis of feedback from teachers and parents. In last year, three Learning Support Classes had been set up. The proposal to include a legal requirement in the Bill for the Foundation to provide education for students with SEN failed to appreciate the diversity of skills, training, equipment and resources imposed on the Foundation. The proposal would also place the Foundation in an unfair position vis-à-vis other schools which had not faced the imposition of such a legal requirement.

Composition of the Board of Governors

(b) The Foundation had thoroughly consulted and discussed with the key stakeholders before coming up with the proposed composition of the Board of Governors (the Board). The proposed composition would maintain a balanced representation from the stakeholders in the Foundation and the community. The Foundation agreed on the need to retain representation from the Legislative

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Council (LegCo) and from the Government in the Board. The removal of LegCo representation and the addition of one representative from parents of students with SEN might affect the good balance in the Board as staff and parent representatives together would then make up 12 of the 25 voting members in the Board. This might not address the concern raised by the Director of Audit and the Public Accounts Committee that there had been a history of Foundation meetings being dominated by people with a personal interest in the issues discussed.

(c) The function of the Nominating Committee was to nominate persons from different sectors of the community to serve as members of the Board. The Foundation had all along had members from the business community sitting on its governing structure. This would ensure that the Foundation was in touch with the community and had members with the expertise in running organizations. The Foundation was confident that the Hong Kong General Chamber of Commerce and the British Chamber of Commerce in Hong Kong would consult their member organizations and professional bodies in recommending suitable persons for appointment as members of the Board.

4. Professor Felice LIEH MAK said that the proposals in the Bill were drawn up after extensive consultation with the stakeholders including staff and parents, and should not be amended lightly because of dissatisfaction arising from isolated incidents. The proposed amendments to the Bill would create an insurmountable burden on the Foundation.

Implication of the proposed amendment to the objects of the Foundation

5. Senior Assistant Legal Adviser 2 quoted a case law in 2004 to explain that the Foundation was a public body and its decisions were subject to judicial review. He advised that the Court would take into account three factors in considering an application for judicial review of a decision, namely the legal basis for the decision, procedural regularity and reasonableness of the decision. With or without the proposed amendments to include "without regard to disability or SEN" to the objects of the Foundation, the Foundation's acts were subject to the Disability Discrimination Ordinance. The proposed amendments would not impose a statutory duty on the Foundation but the express provision of offering education without regard to disability or SEN of students would be a guiding principle for the Foundation.

Members' views

Objects of the Foundation

6. Dr Fernando CHEUNG said that the Foundation and its schools had been providing quality education for students with SEN. His proposed amendment to the objects of the Foundation would lay down in the law the spirit upheld and the

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commitment made by the Foundation in providing quality education to students with SEN. He stressed that in proposing the amendment, he had not had the slightest intention of creating an insurmountable burden to the Foundation.

7. Mr Abraham SHEK did not support Dr Fernando CHEUNG's proposed amendment because he did not consider it necessary to put down in law the spirit to provide quality education to students with SEN.

Composition of the Board of Governors

8. Mr Tommy CHEUNG considered it inappropriate and unnecessary to have LegCo representation in the Board. He pointed out that with or without LegCo representation in the Board, the use of public fund by the Foundation would be monitored, and staff of the Foundation and parents of students of its schools could approach LegCo Members on matters relating to the Foundation. Moreover, LegCo was not represented in other school sponsoring bodies.

9. Mr Albert CHENG said that as one of the Members elected from the LegCo to serve on the Foundation, he did not consider that he had played an active role in the past. However, as the Board would comprise 25 voting members under the Bill instead of over 100 now, the role of LegCo might be more prominent and its representation might become necessary. He indicated support for the addition of a representative from parents of students with SEN in the Board on the ground that these parents warranted special consideration.

10. Miss TAM Heung-man supported LegCo representation in the Board because the Foundation was subvented by public fund and the use of public fund should be monitored. She also indicated support for the addition of a representative from parents of students with SEN in the Board.

11. Mr Abraham SHEK supported the principle of equity but considered that parents of students with SEN should warrant compassion. He supported the addition of a representative from parents of students with SEN in the Board as this would facilitate other Board members to understand the problems and difficulties experienced by these parents. He was open on the issue of corporate representation in the Nominating Committee.

Follow-up

12. Members requested the Legal Adviser to the Bills Committee to advise in writing the implications of stipulating in the objects of the Foundation to, inter alia, offer education without regard to disability or SEN of students. Ms Audrey EU requested that the legal advice should also highlight the resource implications and the impact on student admission by the Foundation's schools.

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II. Any other business

13. Members agreed to hold the next meeting at 8:30 am on 5 November 2007.
14. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
30 October 2007

**Proceedings of the second meeting of Bills Committee on
The English Schools Foundation (Amendment) Bill 2007
on Monday, 8 October 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000928	Chairman	Welcome to the attending organizations and individual	
000929 - 001337	Academic Committee, The English Schools Foundation	Presentation of views [LC Paper No. CB(2)2780/06-07(02)]	
001338 - 001742	Management Committee, The English Schools Foundation	Presentation of views [LC Paper No. CB(2)95/07-08(01)]	
001743 - 002148	Staff Council, The English Schools Foundation	Presentation of views [LC Paper No. CB(2)2815/06-07(01)]	
002149 - 002327	The Support Staff Association in The English Schools Foundation	Mr Michael Fulton said that the Association supported the Bill as it provided for representation of the support staff of The English Schools Foundation (the Foundation) in the Board of Governors (the Board). Support staff could then participate in the work of the Board and convey their views on policies and issues affecting their interests.	
002328 - 002840	Joint Council of Parent Teacher Associations	Presentation of views [LC Paper No. CB(2)2735/06-07(01)]	
002841 - 003610	Association of Professional Teachers in English Schools Foundation Schools	Presentation of views [LC Paper No. CB(2)112/07-08(01)]	
003611 - 004218	A Group of SEN Parents of King George V School	Presentation of views [LC Paper No. CB(2)2780/06-07(03)]	
004219 - 004432	Police Force Council Staff Side	Presentation of views [LC Paper No. CB(2)2748/06-07(01)]	
004433 - 004920	Jockey Club Sarah Roe School Parent Teachers Association	Presentation of views [LC Paper No. CB(2)1175/07-08(01)]	
004921 - 005424	SEN Parents' Advisory Group	Presentation of views [LC Paper No. CB(2)2815/06-07(02)]	
005425 - 005936	Mr Albert LEUNG	Presentation of views [LC Paper No. CB(2)2815/06-07(03)]	

Time marker	Speaker	Subjects	Action required
005937 - 011311	Chairman Chairman of The English Schools Foundation Chief Executive of The English Schools Foundation (CE(ESF))	<p>CE(ESF)'s response to the views and concerns of the deputations, highlighting the financial and resources implications of including "without regard to disability and special educational needs (SEN)" in the objects of the Foundation under the Bill; the consultation conducted among the stakeholders before reaching a consensus on the proposed governing structure; Foundation's views on LegCo and EDB representation in the Board; and the importance of having a balanced representation in the Board as recommended by the Director of Audit and the Public Accounts Committee.</p> <p>Chairman of the Foundation's remark that the proposals in the Bill were drawn up after extensive consultation with and thorough discussion among the key stakeholders. They should not be amended lightly because of dissatisfaction arising from isolated incidents.</p>	
011312 - 012817	Chairman SALA2	<p>SALA2's advice on the implications of including "without regard to disability or SEN" in the objects of the Foundation, quoting a case law to explain that the Foundation was a public body and its decisions were subject to judicial review. His advice that the Court would take into account the legal basis for the decision, procedural regularity and reasonableness of the decision in considering an application for judicial review.</p> <p>SALA2's remark that he held no diverse views on the advice given by the Foundation's legal adviser on the applicability of the Disability Discrimination Ordinance (DDO) to the Foundation.</p> <p>Chairman's request for written legal advice on the proposed amendment.</p>	
012818 - 013412	Mr Albert CHENG	<p>Mr CHENG's declaration of interest. His views that the Foundation had a good track record on the provision of quality education for students with SEN and the proposed amendment would encourage the Foundation to further upgrade its quality in this respect; and his support for the provision of a representative of parents of students with SEN in the Board.</p> <p>Mr CHENG's remark that LegCo Members elected to serve on the governing body of the Foundation had not played an active role in the</p>	

Time marker	Speaker	Subjects	Action required
		management of the Foundation in the past. However, LegCo representation might become necessary when the Board would comprise 25 voting members only under the Bill.	
013413 - 013936	Dr Fernando CHEUNG	Dr CHEUNG's declaration of interest. His expression of appreciation of the Foundation's contribution on the provision of quality education for English-speaking students with SEN, and his view that his proposed amendment to the objects of the Foundation would not create insurmountable burden to the Foundation.	
013937 - 014239	Miss TAM Heung-man	Miss TAM's views that parents of students with SEN should have a representative in the Board; and that LegCo representation in the Board should be retained to facilitate monitoring of use of public fund.	
014240 - 014343	Chairman	Chairman's invitation of members' views on the Bill.	
014344 - 015824	Mr Tommy CHEUNG Chairman SALA2	<p>Mr CHEUNG's declaration of interest. His explanation for proposing the removal of LegCo representation in the Board, namely that LegCo was not represented in other school sponsoring bodies, and that the use of public fund by the Foundation would be monitored with or without LegCo representation in the Board.</p> <p>Mr CHEUNG's request for clarifications on the legal implications of including "without regard to disability or SEN" in the objects of the Foundation.</p> <p>SALA2's response that at present, the Foundation's decisions were subject to judicial review under the law, and to DDO. With the proposed amendment, judicial review could also be sought under the Bill for matters relating to disability or SEN of students.</p>	
015825 - 020250	Mr Abraham SHEK Chairman	Mr SHEK's declaration of interest. His expression of appreciation of the Foundation's contributions on the provision of quality education for English-speaking students, in particular students with SEN, and the improvement in transparency and accountability of the Foundation's governance structure as proposed in the Bill.	

Time marker	Speaker	Subjects	Action required
		Mr SHEK's expression of support for the Board to have a representative from parents of students with SEN. He was open on the issue of corporate representation but considered it desirable to have representation from different sectors of the community in the Board. His objection to the proposed amendment to the objects of the Foundation.	
020251 - 020615	Ms Audrey EU Chairman	Ms EU's view that the proposed amendment to the objects of the Foundation was consistent with the Basic Law and DDO. Ms EU's request for SALA2 to include in his written legal advice the financial implications of the proposed amendment and its impact on student admission by the Foundation's schools.	See para 12 of the minutes
020616 - 020730	Chairman Mr Abraham SHEK Mr Tommy CHEUNG	Date of next meeting	

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