

29 October 2007

**Paper for Legco Bills Committee on the ESF (Amendment) Bill  
for meeting on 5 November 2007**

**1. Background**

- 1.1 ESF wishes to express its appreciation of the representations made at the meeting of the Bills Committee on 8 October 2007. The number of deputations and the careful thought that had been put into their presentations reflect the importance of the issues which the Committee is considering.
- 1.2 This report is ESF's response to the key issues that arose at that meeting.

**2. The Process underlying the Review of the ESF Ordinance**

- 2.1 It is noteworthy that a majority of the deputations, including the Principals, School Council Chairmen, the parents, the teachers (with certain reservations) and the support staff acknowledged the thoroughness of the consultation process.
- 2.2 The ESF (Amendment) Bill has been in discussion within the ESF community for nearly three years and there is a wish now to bring the process to a timely conclusion.

**3. Removal of Legco Members from the Composition of the Board of Governors**

- 3.1 While the views of the Committee on this matter will be respected, there continues to be strong support among parents and teachers for some kind of public representation on the Board of Governors, whether through Legco or EDB.
- 3.2 If it is decided to remove the two Legco places, the Committee should consider the overall balance of composition of the Board. ESF could not support the allocation of a place to the teachers' union, the Association of Professional Teachers of the English Schools Foundation (APTESFS), as requested by that body as this would undermine the Board's strategic and managerial role. Nor would ESF support the allocation of one of these places to the parent of a child with special educational needs (making 8 parents in all) since this would bring the combined total of parents and staff to 12 out of 25, endangering the balance between members with a direct interest and members with an independent or management perspective (School Council Chairmen and independent members drawn from the academic, professional and business communities) which we have worked hard to achieve during the consultation process and potentially jeopardizing the Board's ability to take difficult decisions impartially.

3.3 Therefore, if the Committee decides to remove the Legco places, ESF advises that one additional place should be allocated to a School Council Chairman, elected by the Committee of School Council Chairmen, (making a total of 4 School Council Chairmen) and that one place should be eliminated, reducing the Board to a total of 25 voting members, plus the CEO.

#### 4. **Special Educational Needs Issues**

##### 4.1 Representation of Parents with Special Educational Needs

4.1.1 Strong views were expressed by School Council Chairmen, Principals, teachers and the Joint Council of Parent Teacher Associations (JCPTA) that it would be inappropriate to give one particular interest group, however important, dedicated representation on the Board. After consulting stakeholders widely, ESF shares this view. We believe that it is essential that members of the Board should look to the broad interests of the whole student community and not to any particular group. Section 17 of the draft revised Ordinance states that members of the Board, School Councils and Committees are nominated, elected or appointed on a personal basis and not as the delegate of the group of eligible persons. This reinforces our view that all members of the Board should be impartial.

4.1.2 School Councils are much smaller bodies than the Board, with between 8 and 14 voting members. Representation of a particular interest group would create an even greater imbalance at this level than on the Board and cannot, therefore, be supported.

4.1.3 If the Committee is minded to support the representation of parents of children with special educational needs on the Board, ESF advises that this should be achieved by ear-marking one of the six places to be filled by an election among all parents for the parent of a child with special educational needs.

4.1.4 It was suggested by a number of deputations that communications should be improved between ESF and the parents of children with special educational needs. To this end ESF would support a proposal to include within the advisory committees of the Chief Executive Officer an advisory committee whose members are drawn from the parents of children with special educational needs.

#### 5. **Amendment of Section 4(1)(a) of the Ordinance, Objects and Powers of the Foundation, to include the words 'irrespective of disability or special educational need'**

5.1 The representations of School Council Chairmen, Principals, parents and teachers made clear their opposition to the adoption of this proposed amendment. The teachers (both Staff Council and APTESFS) explained their concern about the challenge of delivering modern styles of teaching and learning in the restricted space of our current classrooms. Students with special educational needs often require adults to assist them in the classroom and also need access to specialist equipment; this means that space can be

at a premium. If there were an open-ended commitment to the admission of children with special educational needs, they feared that the additional burden on teachers would endanger the quality of education both for the students with additional needs, students with special educational needs often need support from Educational Assistants and space consuming and for all students.

- 5.2 The commitment of ESF to providing education for students with special educational needs was emphasised by all the stakeholder deputations and is reiterated by ESF. However, if we are to maintain the standard and quality of education for all students, we have to be in a position, with our Principals, to manage admissions to ensure that only children with special educational needs whom we can successfully educate within the resources available are admitted to our schools.
- 5.3 The Legco Legal Adviser stated that the amendment of the Objects and Powers would not change the Foundation's statutory duties, but would simply constitute a statement of principle. As such, he did not believe that it would bring about any greater exposure to the risk of judicial review.
- 5.4 ESF does not accept this advice and we shall ask our own legal adviser to attend the meeting on 5 November 2007 to give his opinion. It is understood that the view of ESF's legal advisor is that if the statutory objects of ESF prohibit ESF from having regard to the "need or disability" of any child then any exercise of a power by ESF which disadvantages a child due to his or her disability or needs, no matter how reasonable, would be contrary to the objects and, therefore, could be struck down as *ultra vires*. This would make administration of ESF impossible (as it is of course critical for ESF to have regard to the needs and disabilities of children in exercising its powers). It is also to be noted that the amendment of the Foundation's Objects and Powers in the way proposed, fails to reflect the 'unjustifiable hardship' provisions contained in the Disability Discrimination Ordinance. This statute was enacted in 1995 with the expressed purpose of redressing unlawful discrimination against persons on the ground of their....disability in respect of their .....education". It makes no sense to impose a greater obligation on ESF over and above that imposed on other Hong Kong educational institutions by the primary legislation protecting disabled persons. We stress that the retention of this wording in the objects would result in our having to make exceptional and costly arrangements for students with special educational needs which would not be necessary for the student population as a whole.
- 5.5 We have already made clear that the cost of educating a child with special educational needs is significantly greater than the cost for a mainstream child. The difference is of the order of 264% for a special school student and between 113% (primary) and 146% (secondary) for a student in a Learning Support Class in a mainstream school. Pressure both to increase the number of children with special educational needs and to extend the range of needs provided for could de-stabilise ESF both financially and educationally.
- 5.6 The admission of a child with special educational needs requires a sensitive process involving the judgment of both our SEN Adviser, a professional expert

with many years of experience in the field and of the Principal of the school. It is not our practice to force Principals to admit children whose needs they are not confident of being able to meet. Increased exposure to judicial review would make these judgments more difficult.

5.7 ESF would wish to support all of those who called for a more wide-ranging review of educational provision for English-speaking children with special educational needs in Hong Kong. We would cooperate fully with such an exercise.

**6. Inclusion of the British and Hong Kong General Chambers of Commerce among the members of the Nominating Committee**

6.1 Section 8 of the draft ESF (Amendment) Ordinance provides for the establishment of a Nominating Committee to nominate ten persons to serve as independent members of the Board of Governors. The proposed Nominating Committee comprises :

- 2 School Council Chairmen
- 2 persons from the business sector, one nominated by the Hong Kong General Chamber of Commerce and one by the British Chamber of Commerce
- 1 person active in the field of higher education
- 1 person nominated by the Committee of Parents

6.2 Concern was expressed by the Police Force Council about the undue influence of the business sector in the nomination of independent members. However, it will be seen that only two out of six members of the Nominating Committee come from the business sector. Moreover, ESF is firmly of the view that the Board needs the benefit of the advice of experienced business people in developing its strategies for the education of young people who will be future members of the workforce. It is, therefore, important to seek the help of the business community to identify such people to serve on the Board. The membership of the Foundation has always included representatives of some of the major businesses of Hong Kong, and we would wish that situation to continue.

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