

Dear Hon Chairman and LegCo members of the Bills Committee,

With particular reference to ESF's "Paper for Legco Bills Committee on the ESF (Amendment) Bill for meeting on 5 November 2007" (Ref: LC Paper No. CB(2)204/07-08(01)), I provide below my **personal** thoughts and comments for your consideration:

(A) Re: line 7 of para. 3.2 on "... the parent of a child with special educational needs (SEN) (making 8 parents in all)..."

Particular reference is made to the table under para. 24 Chapter 2 in the "Guide to the Law for School Governor June 2007, UK" (copied below):

24. This table shows the proportion of places that should be allocated to a governing body.

Type of school	Category of governor				
	Parent	Staff	LEA	Community	Foundation/ Partnership
Community, community special, maintained nursery school	At least one-third	At least two, but no more than one-third, including the headteacher	One-fifth	At least one-fifth	
Foundation, foundation special (without a foundation)	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than one-quarter
Foundation, foundation special (with a foundation) but are not qualifying foundation schools	At least one-third	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than 45%
Qualifying Foundation Schools	At least one, but enough to total at least one-third when counted with foundation governors who are eligible to be parent	At least two, but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	They must outnumber the other governors by up to two

The resulting **8 parents** after the inclusion of 1 SEN Parent Governor out of either a total of 26 (as in ESF Bill) or 25 (after the deletion of one LegCo member in para. 3.3. of ESF's paper) appears to **match** the recommended minimum proportion of one-third for parents in UK. I opine that the addition of 1 SEN Parent Governor would not tip the managerial and strategic balance within the Board.

(B) Re: Para. 4.1.3

I trust most SEN parents are delighted to learn of this open response from ESF to include one SEN Governor in the Board as recommended by most LegCo members in the Bills Committee. I personally opine and trust most SEN parents would concur that the SEN Governor should be defined **within** the "Composition of the Board of Governors" in Section 6(1) of the ESF Bill.

(C) Re: Para. 4.1.4

I applaud ESF's consideration and proposal on the Advisory Committee of SEN Parents to CEO. I consider this advisory committee an important facility to work **alongside** with the SEN Governor and through which the communication among SEN parents, SEN Governor and ESF would be significantly enhanced.

I note that the wordings in ESF's proposal are already in line with Clause 12(1) of the ESF Bill and trust thorough consideration has been put forth on this proposal by ESF. I am strongly in favour if ESF would include this proposal into the amendments **together** with the proposed SEN Governor.

(D) Re: Para. 4.1.1 to 4.1.2

I consider the inclusion of one SEN Parent into the School Council essential and necessary for the council to properly carry out its function in Clause 13(2)(a) to (k) of the ESF Bill. It is very difficult if not impossible for mainstream parents to understand or apprehend the needs and difficulties of SEN parents/students (as Hon. Albert Cheng correctly pointed out during the Bill Committee meeting on the 8th of Oct). The effective representation from a SEN parent alongside with parents from mainstream would enable the council to receive thorough considerations and inputs from both mainstream and SEN while discharging its function.

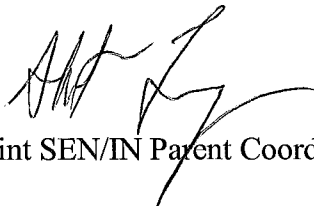
The voting power of the SEN Parent School Councilor is at best 1 out of 9 (i.e. minimum of 8 as stated in Para. 4.1.2 + the proposed SEN Parent member) and should not be viewed as dominating power within the council.

(E) Re: Para 5.4

Upon making my response, I make reference to the legal advise prepared by Arthur Cheung (LC Paper No. LS10/07-08). Despite I am no legal expert nor I fully apprehend the derivation of the conclusion in para. 12 of the legal advise, I note from the legal advise that:

- (1) Decision of ESF relating to its objects would be reviewable by the court;
- (2) Should the legal review be based on the objects of the ESF Ordinance (Section 4, Cap. 1117), I further note that:
 - (i) objects of ESF may be interpreted as a target duty of ESF. Failure to achieve a target duty will not constitute a justiciable breach;
 - (ii) Although financial and budgetary constraints are relevant considerations in the determination of the range and level of services provided, the balance of the target duty within ESF's constraints would be a matter of ESF's judgment and experience call. The court would rarely be competent to intervene on the ground of irrationality on such judgment and experience calls.
- (3) Should the legal review be based on the Disability Discrimination Ordinance (Cap 487), the provisions on "unjustifiable hardship" (Section 4 and 24(4)) would ensure the manageability of the financial commitments and resource control of ESF.

Henceforth, I encourage ESF to include the "irrespective of disability or special educational needs" into its object as a way of demonstrating its commitment and determination on special education.



(Albert MW Leung, ESF Joint SEN/IN Parent Coordinator, 2 November 2007)