

香港教育學院教學人員協會
向立法會教育事務委員會遞交
有關「大學教育資助委員會資助院校的管治架構和申訴及投訴機制」的意見書
2009年2月9日

我們重申本會 2008 年 7 月向立法會教育事務委員會遞交的意見書中的立場。該意見書附於本文之後，方便各位參考（LC Paper No. CB(2)2616/07-08(03)；只備英文本）。我們在此僅就議題的最新發展，作數點補充。

1. 香港教育學院校董會主席梁國輝博士，於 2008 年 12 月 31 日致函立法會教育事務委員會秘書（立法會 CB(2)606/08-09(02)號文件），表明教育學院支持和贊成提高本校管治的透明度。本會對此十分歡迎。我們亦知悉教育學院校董會會議的非機密議程和相關會議文件，已於教育學院內聯網發布。
2. 不過就梁主席信中規定發布文件必須不違反以下三項條件，我們認為值得仔細斟酌：（一）不會侵犯個人資料私隱或違反保密規定；（二）遏制校董會的自由討論；（三）侵犯院校自主權。我們認為這三項原則若運用不當，有可能被濫用，以達到扼殺管治透明度的目的。因此我們建議應設立機制，保證以上原則運用得宜。任何有關個別議程或文件是否不符合以上條件而應當保密的爭議，應該交給一個包括最少一位民選校董的專責委員會裁決。
3. 以下問題並未在我們去年的意見書中提及：民選教職員校董選舉的全民參選及投票權。香港教育學院條例現時規定，只有全職教務人員、及職級或級別相等於全職教務人員的行政人員，才有權透過互選，成為民選教職員校董。校董會最近曾討論放寬選舉參與權的建議。校長張炳良教授贊成應設法讓所有職級的員工，都能夠參與選舉，但校董會鑑於教育學院的大學稱號正在商討之中，認為現在並非修改香港教育學院條例的適當時候。我們當然期盼取得應有的大學稱號，但我們不接受部分同事的選舉權為等待大學稱號而被無限期剝奪。我們建議香港教育學院條例有關的選舉條款，應於本屆立法會任期內（即不遲於 2012 年）修訂。
4. 員方和管方有不同意見，是正常的事情。許多問題可以通過雙方會面溝通，得到解決。但也有員方無法說服管方作出改善的事情，聘用條件是其中突出的例子。現時教育學院的聘約一般都有這一句：「學院可以隨時更改聘約條款，只要改動帶來的薪津削減沒有追溯效力。」這條款令管方可以單方面削減僱員的薪津福利，毋須僱員同意。在現時經濟不景的情況下，這著實令員工擔憂。學院管理層未能解釋這條款會如何運用。他們提出保留這條款的惟一理由，乃是法律顧問忠告學院要安全至上。在此不平等條款的威脅下，員

工極之缺乏安全感。雖然此不合理的條款可能實際上無法生效、甚至違反僱傭條例，但管方可輕易利用它，令員工怯於爭取正當權益、噤若寒蟬。這反映了學院和員工強弱懸殊的談判實力。我們希望立法會教育事務委員會能仗義執言，呼籲取消這不合理和不義的條款。在這問題上，也反映出我們去年和今天兩份建議書提出有關改善管治架構和申訴及投訴機制的建議，實在有必要盡快落實。

香港教育學院教學人員協會

會長梁恩榮

幹事莊耀洸

2009年2月9日

Submission to Panel on Education, Legislative Council
Special Meeting on 17 July 2008

**Governance Structure and Grievance and
Complaint Mechanisms of the UGC-funded Institutions**

Academic Staff Association of The Hong Kong Institute of Education
15 July 2008

Guiding Principles:

1. Governance of higher education must comply with the constitutional requirement set out in article 137 of the Basic Law:

“Educational institutions of all kinds may retain their autonomy and enjoy academic freedom.”¹

2. **“Institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.”²**
3. The “Lima Declaration on academic freedom and autonomy of institutions of higher education” (Lima Declaration)³, at its clause 19, states that

“The autonomy of institutions of higher education shall be exercised by democratic means of self-government, which includes active participation of all members of respective academic communities. All members of the academic communities shall have the right and opportunity, without discrimination of any kind, to take part in the conduct of academic and administrative affairs. All governing bodies of institutions of higher education shall be freely elected and shall comprise members of different sectors of the academic community. The autonomy should compass decisions regarding administration and determination of policies of education, research, extension work, allocation of resources and other related activities.”
(emphasis added)

4. Clause 10 of the Lima Declaration provides that:

¹ The Basic Law contains a stronger message than the corresponding provision in the Sino-British Joint Declaration (Annex I, article 10): “Institutions of all kinds, including those run by religious and community organizations, may retain their autonomy.”

² General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights (1999), paragraph 40. Accessed on 15 July 2008 at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument).

³ In September 1986, the World University Service requested a human rights expert Manfred Nowak to draft a declaration on academic freedom and higher education institutions’ autonomy. This Declaration was adopted at the General Assembly of the World University Service in September 1988. The text of the Lima Declaration may be found in many books, e.g. John Daniel (ed.) (1993) *Academic Freedom 2 : a human rights report*, London: Zed Books, Annex 1. For details on international laws and domestic laws on academic freedom and institutional autonomy, see Submission to Panel on Education, Legislative Council, Special Meeting on 13 April 2007 by Chong Yiu Kwong dated 12 April 2007.

“All institutions of higher education shall guarantee the participation of students in their governing bodies, individually or collectively, to express opinions on any national and international question.”

5. Clause 5 of the Lima Declaration stipulates that:

“All States and institutions of higher education shall guarantee a system of stable and secure employment for teachers and researchers. No members of the academic community shall be dismissed without a fair hearing before a democratically elected body of the academic community.”

6. The American Association of University Professors (AAUP) developed an assessment tool to evaluate shared governance. For example, regarding institutional communication, the question is “[d]oes consultation by the administration with faculty leadership allow time and a mechanism for leadership to consult with their constituents before offering recommendations?”⁴

Recommendations

Governance Structure: General

7. The Administration should draft a law to **implement articles 34, 39 and 137 of the Basic Law** in order to protect academic freedom and institutional autonomy. In order to operationalize the legal protection of academic freedom and institutional autonomy, a more concrete definition of academic freedom and provisions for its protection should be incorporated in the relevant ordinances.
8. **Linkages between universities and the Hong Kong Government should be reduced.** First, the Government should not have powers to direct any institution of higher education.⁵ Second, no public servants or officers should be members or observers of the governing bodies. Third, the number of government-appointed council members of higher education institutions should be reduced to a small minority. Fourth, the chairperson of the governing bodies can only be elected among its independent members. Fifth, the Chief Executive should no longer be the Chancellor of any institution of higher education.
9. Institutions of higher education should formally **adopt the Lima Declaration**⁶ and establish their own policy statements on academic freedom and institutional autonomy.

Governance Structure: The Hong Kong Institute of Education

10. In addition to the above recommendations, the following are the main comments and recommendations specific to the Hong Kong Institute of Education.
11. A government official shall not be the head of the Institute.⁷

⁴ See “Governance of Colleges and Universities”. Accessed on the AASP website on 16 Jun 2008 at <http://www.aaup.org/AAUP/issues/governance/>

⁵ Section 5 of the HKIEd Ordinance.

⁶ In 1994, the HKU Senate considered the Lima Declaration and noted that it was consistent with the university’s mission and goals. Professor Carole Petersen considered formal adoption of the Lima Declaration to be necessary. See Carole Petersen, (2000) “Preserving Academic freedom in Hong Kong: lessons from the Robert Chung Affair” in 30 *HKLJ* 165, endnote 34.

⁷ Under section 6(2) of The Hong Kong Institute of Education Ordinance, Cap. 444, “The Chief Executive shall be the Chancellor of the Institute.” Under section 6(1), the Chancellor of the Institute shall be the head of the Institute.

12. Any public officer shall not be a member or observer in the Council.⁸
13. Council members appointed by the Chief Executive should be reduced to a small minority.⁹
14. The Chair, Deputy Chair and the Treasurer of the Council shall be elected among its members and without restriction to those members possessing relevant experience in commerce, industry or a profession in Hong Kong.¹⁰
15. The Government shall not have the power to give directions to the Institute.¹¹
16. Staff members and students in the Council shall have the same power as the other Council members in the selection of President and Vice President.¹²
17. The President of the Students' Union shall be a student Council member .¹³

Grievance and Complaint Mechanisms: General

18. Since 1999, we have supported the idea of establishing an independent mechanism to handle grievances and appeals by staff of all UGC-funded institutions.
19. Institutions of higher education should set up their commissions to monitor the situation by conducting an academic freedom impact assessment on their policy and practice on a regular basis, advise their governing bodies and Senate on matters affecting academic freedom and institutional autonomy, and launch regular promotion programmes both on their campus and addressed to the public. A proper set of **general grievance procedure** and mechanism to deal with complaints on infringement of academic freedom should be in place in all the higher education institutions.¹⁴

⁸ Section 8(1)(c) of The Hong Kong Institute of Education Ordinance provides for “at least one but not more than 3 public officers appointed by the Chief Executive.”

⁹ According to section 8(1)(f) of The Hong Kong Institute of Education Ordinance, 14 Council members (who are neither public officers nor employees of the Institute) shall be appointed by the Chief Executive. Together with the public officers appointed by the Chief Executive, the outsiders become the majority of the Council of the Institute. This suggestion, like many others in this submission, has been put forward by our Association on previous occasions: see Written Submission on the LegCo Secretariat's Research Report on Academic Freedom and Institutional Autonomy of Higher Education in the UK, New Zealand and HK by Academic Staff Association of The Hong Kong Institute of Education dated 31 Dec 2007.

¹⁰ Section 8(2) of The Hong Kong Institute of Education Ordinance stipulates that the Chair, Deputy Chair and the Treasurer of the Council shall be appointed by the Chief Executive among Council members who have relevant experience in commerce, industry or a profession in Hong Kong.

¹¹ Under section 5, “(1) The Chief Executive in Council may give to the Institute directions with respect to the exercise of its powers or the achievement of its objects, either generally or in any particular case. (2) In the exercise of its powers and the achievement of its objects the Institute shall comply with any directions given by the Chief Executive in Council under subsection (1).”

¹² Section 11(7) of The Hong Kong Institute of Education Ordinance shall be repealed. It states that “A member of the Council appointed under section 8(1)(d) or (g) or elected under section 8(1)(e) shall not participate in any deliberation or vote on the appointment or dismissal of the President or a Vice President.” Members appointed under s8(1)(d)(e)(g) are staff members and students. We hold that these members shall have the right to full participation in the selection of President and Vice President.

¹³ Section 8(1)(g) of The Hong Kong Institute of Education Ordinance provides for “a full-time student of the Institute appointed by the Council”. The Council may appoint any student it wishes under this provision. In practice, the Institute appoints the President of the Students' Union who is elected by all full-time undergraduates. We demand that this customary practice be formalized as a legal requirement.

¹⁴ One of the recommendations of the HKU Report from the Senate Task Force on Academic Freedom is to set up such a complaint handling mechanism in HKU. See the document “Academic Freedom Policy – Report from the Senate Task Force on Academic Freedom”. Accessed on the HKU website on 11 Apr 07 at www.hku.hk/acad_freedom/.

Grievance and Complaint Mechanisms: The Hong Kong Institute of Education

20. We offer the following comments and recommendations regarding the Hong Kong Institute of Education.
21. The staff handbook should be bilingual and be available in hard copy upon request.¹⁵ Staff members may choose to sign the Chinese or English version of their employment contract.¹⁶ All its employment contracts should contain the Institution's policy statement on the protection academic freedom.
22. The grievance and complaint procedure should comply with the rules of natural justice. This means that the Institute should not deprive any 'accused' of legal representation in case of serious allegation or consequence, such as dismissal or suspension from service.¹⁷ A staff member who is the subject of any disciplinary proceedings should be allowed to choose another staff member (who can be a lawyer) to accompany him/her during hearings.¹⁸ A substantial reason should be provided in the Institute's decision statement.¹⁹
23. The Institute should improve the grievance/complaint handling procedure by stipulating clearly the timeline of complaint handling, e.g., exchange of documents. The Institute should explain to the complainant and the 'accused' the mechanism, procedure and their rights.
24. The scope of the Staff Appeals Sub-Committee should not be limited only to those cases that might have been mishandled procedurally.²⁰ If a staff member challenges the Institute's decision through judicial review, the court may quash a decision that no reasonable decision-maker would have made. There should be an internal appeal mechanism to consider the merit of cases with reference to the fairness of the decision itself. Otherwise, staff members will be forced to seek justice by lawsuits.

Leung Yan Wing, President,
Chong Yiu Kwong, Exco Member,
Academic Staff Association of The Hong Kong Institute of Education
15 July 2008

¹⁵ There is only an online English version.

¹⁶ Employment contracts are available only in English.

¹⁷ Paragraph 28 of Chapter 3 of the Staff Handbook, under the section titled "*Conduct of the Enquiry by the Grievance Committee*". Accessed on the HKIED Intranet on 15 July 2008.

¹⁸ A lawyer colleague is specifically prohibited to accompany an accused during a hearing. See paragraph 19 of the Guidelines and Procedures for Disciplinary Matters., accessed on the HKIED Intranet on 15 July 2008.

¹⁹ In practice, the reason provided is so brief that the accused does not have any idea about the grounds of the decision or what evidence had been held against him/her.

²⁰ Paragraph 4 of the Procedures for Meetings and Quorum of the Staff Appeal Sub-Committee, the Hong Kong Institute of Education.