

立法會
Legislative Council

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by the Administration)

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**Bills Committee on
Education (Amendment) Bill 1999**

**Minutes of Meeting
held on Monday, 14 February 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon YEUNG Yiu-chung (Chairman)
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon SZETO Wah
- Members Absent** : Hon Cyd HO Sau-lan
Prof Hon NG Ching-fai
Hon CHOY So-yuk
- Attendance By Invitation** : Hong Kong Association of Sponsoring Bodies of Schools

Mr Timothy HA Wing-ho
Chairman

Mr Michael WONG
Representative

Grant Schools Council

Mrs Rosalind CHAN
Chairman

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Hong Kong Special Schools Council

Mrs Laura LING
Chairman

Hong Kong Subsidized Secondary Schools Council

Mr Stephen HUI Chin-yim
Chairman

Mr John FAN Kam-pin
Ex-Officio Executive Committee Member

Hong Kong Subsidized Primary Schools Council

Mr FUNG Man-ching
Chairman

**Public Officers :
Attending**

Mr Joseph LAI
Deputy Secretary for Education and Manpower 3

Mr Gordon LEUNG
Principal Assistant Secretary for Education
and Manpower (6)

Mr K K CHONG
Senior Assistant Director of Education (Operations)

Mr CHENG Man-yiu
Assistant Director of Education (Schools)

Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting and Administration)

**Clerk in
Attendance :**

Miss Flora TAI
Chief Assistant Secretary (2) 6

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Miranda LEUNG
Senior Assistant Secretary (2) 9

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I. Meeting with deputations

[LC Paper Nos. CB(2)783/99-00(01) and CB(2)1066/99-00(01)]

The Chairman welcomed representatives of the deputations to the meeting. Members noted that the Hong Kong Association of Sponsoring Bodies of Schools, Grant Schools Council, Hong Kong Special Schools Council, Hong Kong Subsidized Secondary Schools Council and Subsidized Primary Schools Council had made a joint submission on the Bill [Paper No. CB(2)783/99-00(01)].

Hong Kong Subsidized Secondary Schools Council (HKSSSC)

2. The Chairman of HKSSSC said that it was inappropriate to legislate for the retirement age of a small group of employees by seeking amendments to the Education Ordinance (Cap. 279) which provided the legal foundation for all educational institutions in Hong Kong. The Chairman of HKSSSC expressed concern that as the proposed legislation would have retrospective effect, it was tantamount to nullifying the ruling of the High Court in the case of Lau Chi Fai and Wong Chi Kin v. Secretary for Justice and Director of Education (HCMP No. 1198) ("the Court ruling"). He also pointed out that according to paragraph 15 of the Administration's paper [Paper No. CB(2)1066/99-00(01)], an incumbent principal or teacher reaching the age of 60 should retire if there was a candidate meeting the minimum requirements for the post. Given the prevailing manpower market, the chance of the Director of Education (D of E) granting approval for continued service of a retiring principal or teacher would be extremely slim.

3. The Chairman of HKSSSC opined that Government had a hidden agenda in amending the Education Ordinance and that was to overturn the Court ruling by legislative means, and also to force all principals and teachers reaching the age of 60 to retire.

Grant Schools Council (GSC)

4. The Chairman of GSC said that Government had targeted only at aided primary, secondary and special schools in the application of the retirement policy. She queried the rationale for exempting private schools from the regulation. The Chairman of GSC stressed that the School Management

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Committee (SMC) was the employer of principals and teachers and other staff members. It had responsibilities for making decisions on all personnel matters including appointment, promotion and dismissal. She failed to see why the SMC's power should be curtailed on retirement matters. The Chairman of GSC considered that the Government's argument of linking the retirement age of aided school employees to that of the civil service was a gross misrepresentation. She pointed out that the terms of employment in aided schools were never linked to those of the civil service until just recently.

Hong Kong Special Schools Council (HKSSC)

5 The Chairman of HKSSC was of the view that the Government's proposal of curtailing the SMC's power on personnel matters was in contradiction to the principles of school-based management. She expressed concern that special schools would face operational difficulties, as the retention of experienced principals and teachers with special qualifications was of vital importance. She remarked that the Bill would result in many experienced teachers being forced to retire which was detrimental to the quality of teaching.

Hong Kong Association of Sponsoring Bodies of Schools (HKASBS)

6 The Chairman of HKASBS stressed that SMCs and the sponsoring bodies needed time for succession planning. He expressed grave concern that schools with principals and teachers retiring in the next few years would be caught unprepared by the sudden enforcement of the retirement policy, giving rise to operational difficulties. He therefore advocated for a transitional period of three to five years before the new arrangements took effect.

Subsidized Primary School Council (SPSC)

7. The Chairman of SPSC said that 65 years old was a reasonable retirement age and the final authority for approving extension of service should rest with the SMC. He suggested that the new legislation should only apply to new appointees and not to serving teachers and principals.

II. Meeting with the Administration

[Paper No. CB(2)1066/99-00(01)]

8 Deputy Secretary for Education and Manpower 3 (DS(EM)3) referred members to the paper setting out the Administration's response to the various issues raised at the meeting on 31 January 2000, and the joint submission made by the deputations [Paper No. CB(2)1066/99-00(01)]. DS(EM)3 reiterated that the retirement policy, as currently stipulated in the Codes of Aid, had been followed by aided schools for many years. The spirit of the legislation was not something new to the schools.

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Application of the retirement policy

9. Responding to the deputations' views, DS(EM)3 explained that the purpose of the Bill was to provide a clear statutory basis for Government to enforce its policy on the retirement age of principals and teachers in aided schools. The scope of the Bill therefore did not seek to cover other types of schools. He added that Government had never set any retirement policy for private schools.

10. Referring to the possible difficulties experienced by special schools in retaining experienced principals and teachers, DS(EM)3 said that whilst the Administration appreciated the concern expressed, there was already an effective built-in flexibility in the proposed mechanism which allowed for the extension of service for principals and teachers on a yearly basis up to a maximum of five years under justifiable circumstances.

11. Mr SZETO Wah queried the rationale for prohibiting the employment of principals/teachers beyond the age of 60 where no Government grant was involved. Mr CHEUNG Man-kwong added that it was unreasonable that while employment of teachers beyond the age of 60 was not allowed where no public fund was involved, Direct Subsidy Schools which were publicly funded were not subject to the regulation. At members' request, DS(EM)3 agreed to reconsider the need for the Bill to provide for an exemption allowing teachers, whose employment did not involve Government grant, to continue to be employed after they had reached the age of 60.

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12. Mr LEUNG Yiu-chung observed that there was an inconsistency in the enforcement of retirement policy that could arise in the same aided school. He explained that while principals and teachers must retire at the age of 60, other categories of employees, such as clerks and janitors, could retire at 65. DS(EM)3 responded that conditions of employment for principals/teachers and minor staff in aided schools were governed by separate provisions in the Codes of Aid. He undertook to provide information on the retirement age for school minor staff for members' reference.

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Retrospective effect of the Bill

13. Responding to the deputations' view that the Bill sought to overturn the Court ruling, DS(EM)3 said that the Bill would take effect from the date of its enactment to govern the retirement of principals/teachers subsequent to that date. It would follow that any principal or teacher who had been granted extension prior to that date could continue to serve until the end of the current school year (i.e., until the end of August 2000). Serving principals/teachers who had reached 60 by 1 September 2000 and would like to continue to be employed from that day onwards would have to apply for D of E's approval.

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14. Deputy Law Draftsman (Bilingual Drafting and Administration) (DLD(BDA)) explained that the purpose of the Bill was to accord legal backing to the retirement policy and not to nullify the effect of the Court ruling. He pointed out that the Bill did not have retrospective effect; and even if it was the case, it would be permissible for a piece of legislation in civil law to have retrospective effect.

15. The Chairman informed members that subsequent to the Court ruling, respective SMCs had re-appointed a total number of 24 principals who had reached the retirement age. The Chairman asked and DLD(BDA) replied that if the Bill was passed, these principals could continue to serve until the end of the current school year. Should the SMCs concerned wish to seek further extension from September 2000 onwards, they would need to comply with the new procedure and submit applications for extension to the D of E for approval. Assistant Legal Adviser 1 said that she agreed with the DLD(BDA)'s opinion.

Need for a transitional period

16. Responding to the deputations' concern about succession planning, DS(EM)3 said that the Administration recognized the importance of succession planning and had already urged SMCs to plan well ahead before the incumbent principals/teachers reached the age of 60. SMCs could also make use of the built-in flexibility to seek approval for extension of service if necessary.

17. Dr YEUNG Sum asked and DS(EM)3 responded that given that the Bill sought only to enshrine in law a policy that had been in practice for many years, the Administration did not see the case for a transitional period. If an SMC had genuine difficulties in finding a suitable replacement for a principal or teacher reaching 60, the Bill already provided a mechanism for the submission of an application to the D of E for extension of service.

Assessment mechanism for applications for extension of service

18. Responding to a deputation's comment on the minimum requirement for the appointment of principals and teachers in paragraph 15 of the Administration's paper, DS(EM)3 said that in the selection process, apart from academic qualifications and years of experience, considerations including the candidate's potentiality, leadership and other non-quantifiable attributes were also important factors. Senior Assistant Director of Education (Operations) (SAD/E(O)) added that regardless of whether the candidate was a serving staff member or an outside applicant, qualities such as personality, professionalism, leadership, beliefs and outlook would be taken into consideration in addition to academic qualifications. The Administration would in due course draw up a list of these core attributes for a selection panel to consider in assessing an applicant's suitability for appointment as a principal/teacher. Dr YEUNG

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Sum suggested that the Administration should consult the relevant educational bodies in drawing up the list of core attributes.

19 Mr CHEUNG Man-kwong said that he too was very dissatisfied with the wording of paragraph 15 of the Administration's paper given the Administration's explanation above. Mr CHEUNG considered paragraph 15 to be a misrepresentation and needed to be revised. He remarked that the paragraph as presently worded was totally unacceptable because it meant that any applicant meeting the minimum requirements was suitable for appointment as a principal/teacher. The Chairman shared Mr CHEUNG's view. The Chairman pointed out that for example, the phrase "the SMC should accept this candidate" should be amended as "this candidate was eligible to apply". DS(EM)3 undertook to take account of members' comments in revising the wordings .

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20. With reference to the chart showing the number of persons reaching retirement age over the last five years [Annex to Paper No. CB(2)1066/99-00(01)], Mr LEUNG Yiu-chung said that no information was available on the basis of assessment adopted by the D of E in individual cases. He reiterated his concern that it would be even more difficult for principals and teachers reaching retirement age to obtain approval for extension of service in the future. In response to Mr. CHAN Kam-lam's enquiry, SAD/E(O) explained that the Administration did not make public all the factors being taken into consideration in processing applications for extension in order to avoid speculation by principals and teachers. All cases would be reviewed by a panel which formulated its recommendations to the DE on the basis of a set of criteria. Mr SZETO Wah pointed out that an applicant for extension was never given any reasons in the case of disapproval. Assistant Director of Education (Schools) informed members that more information had been provided in the notification letters from the D of E to SMCs as from 1998.

21. Mr CHAN Kam-lam reiterated his view that the SMC concerned would have already considered the interest of the school as well as the performance of the serving teacher or principal and his physical fitness before making its recommendation. The Administration should provide SMCs with flexibility in retaining the service of experienced teachers or principals. DS(EM)3 stressed that introduction of the Bill was a necessary measure to give legal backing to the retirement policy. There was no intention whatsoever to question the decision-making ability of SMCs. He did not rule out the possibility that SMCs would ultimately be given the power to extend the employment of a serving teacher or principal reaching the retirement age when school-based management had matured. In the meantime, the Administration was obliged to ensure consistency in aided schools' application of the retirement policy.

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22. The Chairman remarked that some SMCs might be at a more advanced stage of development than others. He asked whether the Administration would consider drawing up a schedule for progressive delegation of authority to SMCs on the basis of their development in accordance with the principles of school-based management. DS(EM)3 replied that there might be co-ordination and monitoring problems to implement. However, he expected that D of E would consider how advanced a school was in school-based management as a factor in considering the applications.

23. Dr YEUNG Sum said that he was satisfied with the proposed composition of the panel tasked to advise the D of E on extension of service of principals and teachers, as described in paragraph 17 of the Administration's paper. Mr CHEUNG Man-kwong suggested that similar to the Appeals Board, the role of the panel tasked to advise the D of E should be stipulated in the legislation. DS(EM)3 replied that the Administration did not see the merit to provide in law the role of the panel as its set up was merely an administrative arrangement. Moreover, any change would need to be made by legislative means which would render the mechanism inflexible.

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24. To facilitate members' discussion, Mr CHEUNG Man-kwong requested and DS(EM)3 agreed that the Administration would explain in greater detail

- a) the recommended criteria and procedures to be adopted for selecting replacement for the serving principal/teacher before an application for extension of service was to be made; and
- b) the operation of the panel tasked to advise the D of E in reviewing the applications.

III. Date of next meeting

25. Members agreed that the next meeting would be held on Tuesday, 22 February 2000 at 10:45 am to discuss the Administration's response to issues raised by members at the meeting.

IV. Any other business

26. There being no other business, the meeting ended at 6:15 pm.

Legislative Council Secretariat
4 May 2000