

立法會
Legislative Council

LC Paper No. CB(2)1883/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/6/99

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

**Minutes of Meeting
held on Monday, 28 February 2000 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon YEUNG Yiu-chung (Chairman)
Hon Cyd HO Sau-lan
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon SZETO Wah

Members Absent : Prof Hon NG Ching-fai
Hon CHOY So-yuk

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)

Ms Betty CHOI
Senior Government Counsel

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 the Administration [Paper No. CB(2)1208/99-00(01)]

Members noted the paper setting out the Administration's response to issues raised at the last meeting on 22 February 2000. Members further noted that the Administration had proposed some textual amendments to clauses 2, 4, 5 and 6 to improve the drafting of the Bill. [Annex B to Paper No. CB(2)1208/99-00(01)].

2. With reference to the outline of the core attributes a selection panel should consider in assessing an applicant's suitability for appointment as a principal/teacher, Mr CHEUNG Man-kwong said that he was pleased that the term "minimum requirements" had been substituted by "core attributes".

3. Mr. CHEUNG Man-kwong also agreed to the draft Committee stage amendments (CSAs) to be proposed by the Administration to the effect that aided schools could employ a person who was over the age of 60 on a temporary basis; or where the person filled a post that fell outside the teaching staff establishment of the school approved by the Director of Education (D of E). In this connection, Assistant Legal Adviser (ALA) advised that members might wish to consider whether it was necessary to specify the maximum employment period of a temporary replacement. Deputy Secretary for Education and Manpower (3) (DS(EM)3) pointed out that it would not be feasible to do so because the employment period should depend on the operational need of individual schools. ALA further reminded members that the term 'teaching staff establishment' had not been defined.

4. Referring to the query raised by members at the last meeting as to why there was a provision for a representative of the Education Department (ED) to join the selection panel as an observer in the proposed procedures on the selection of new principals and teachers, Mr. CHEUNG Man-kwong said that he found it acceptable if D of E would normally only send his officers to observe the selection exercise under the following three circumstances as described by the Administration -

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- a) ED had been invited by the School Management Committee (SMC) to observe the selection exercise;
- b) ED had received reports that the selection exercise was not conducted in an open, fair and/or transparent manner; or
- c) The school concerned had been the subject of previous complaints of not selecting staff in an open, fair and/or transparent manner.

At Mr. CHEUNG's request, DS(EM)3 agreed that the Secretary for Education and Manpower would reaffirm that an ED officer would normally be sent to observe the selections exercise only under these circumstances in his speech to be made during the resumption of the Second Reading debate on the Bill.

5. Mr SZETO Wah expressed disappointment that the Government's position of not extending the application of the Bill to Direct Subsidy Scheme schools had remained unchanged. He informed members that he would consider moving CSAs to such effect.

II. Clause-by-clause examination

6. The Bills Committee proceeded to study the Bill clause-by-clause, together with the Administration's draft CSAs as set out in Annex B to the paper. The gist of discussion is summarised below.

Clauses 1 - 6

7. Members did not raise any queries.

Clause 7

8. Members noted "school year" was defined in proposed section 58C to mean the first day of September of a year to the last day of August of the following year. Mr. CHEUNG Man-kwong pointed out that the definition might not be consistent with the normal employment period of principals/teachers. Mr. CHEUNG explained that while the service of a serving principal would terminate on the last day of August, a new principal would normally assume office on the first working day of September, and not necessarily on 1 September. He expressed concern that there would be a vacuum period between the incumbent's termination of service and the arrival of a new principal. DS(EM)3 said that the definition had been accepted by the education sector for a long time and had not caused any operational difficulties to schools. However, he undertook to ascertain whether there was any possible inconsistency between the definition of a "school year" and the normal employment period of principals/teachers.

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9. Members expressed concern that there might be insufficient time for the SMC of an aided school to make an application for extension or for D of E to determine whether or not to permit such application before the commencement of the next school year following the passage of the Bill. ALA advised that members might wish to consider the need for a transitional provision.

10. DS(EM)3 informed members that the Administration had already compiled a tentative work plan on the assumption that the Bill would resume Second Reading debate on 15 March 2000. Once the Bill was passed, ED would issue a circular requesting SMCs of aided schools which wished to apply for the continued service of their principals/teachers beyond the age of 60 to follow the new procedures for the recruitment and application for extension of service. The work plan would allow two months for SMCs to complete the new procedures and two weeks for D of E to decide on the recommendations of the SMCs. He therefore envisaged that the procedures for the recruitment and application for extension would be completed by the end of May 2000. In response to Mr. SZETO Wah's enquiry, Senior Assistant Director of Education (Operation) said that it would be unrealistic to draw up a work schedule for appeals because an appeal case could conceivably drag on for a long period of time. Mr CHEUNG Man-kwong was of the view that a transitional period was needed because the whole process of recruitment and applications for extension of service including the determination of appeals might not be completed by 1 September 2000. Dr YEUNG Sum shared his view and added that a one-off transitional provision was needed for the smooth implementation of the new procedures.

11. DS(EM)3 responded that about 400 principals/teachers would reach the age of 60 by September 2000 but the number of appeals was expected to be small. In any case, the Bill had provided that in the event of an appeal the teacher might continue to teach pending the outcome of the appeal, and so there should not be a need for a transitional provision in the Bill. He also expressed concern that provision of a transitional period would render the retirement policy without legal backing during that period.

12. The Chairman requested the Administration to reconsider the matter as deputations had expressed a similar concern. DS(EM)3 agreed to consider members' suggestion.

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Clause 8

13. Members did not raise any queries.

Clause 9

14. Members expressed concern as to whether there would be reasonable time for the aided school concerned to make arrangements in the event of an

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appeal straddling over two school years. Mr. CHEUNG Man-kwong was of the view that legislative or administrative measures should be used to avoid any disruption to school management or teaching activities. He proposed that the principal or teacher concerned should be allowed to serve until the end of the academic year if the Appeals Board was unable to make a decision on an appeal before the commencement of a school year.

15. Senior Government Counsel (SGC) responded that D of E was empowered under the proposed section 66(1)(e) and the existing section 66(2) of the Education Ordinance (Cap. 279) to permit the principal/teacher concerned to continue to be employed until the determination of the appeal or until such later date as deemed appropriate. DS(EM)3 pointed out that any person who felt aggrieved by the D of E's decision could appeal to the Appeals Board under section 61 of the Ordinance. He added that while D of E or the Appeals Board might allow the continued employment of the principal/teacher concerned for a reasonable period, such period did not necessarily have to last until the end of a school year. The Chairman reminded the Administration that it would be very difficult to find a replacement if the service of a serving principal/teacher ended in the middle of a school year.

16. Miss Cyd HO proposed that the proposed section 66(1)(e) should be amended to the effect that D of E was expressly required to allow the continued employment of the principal/teacher concerned for a reasonable and appropriate period. SGC responded that a public officer was required at law to exercise his discretionary power reasonably on the basis of relevant factors. She also pointed out that the appeals procedure under section 61 was designed to cover different kinds of appeals, and it might not be appropriate to introduce changes to the provision only to deal with cases on the retirement of principals/teachers. DS(EM)3 also expressed concern that the proposed amendment would render the provision inflexible and ineffective.

17. Mr. CHEUNG Man-kwong asked whether the Administration could give an assurance that all serving principals/teachers would be allowed to serve until the end of the school year, or at least the end of a school term, if it considered Miss Cyd HO's proposal not feasible. DS(EM)3 responded that he was in no position to give such assurance because the Appeals Board, which was the final authority to make the decision, operated entirely on an independent basis. However, he undertook to consider Miss HO's proposal.

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Clauses 10 -13

18. Members did not raise any queries.

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III. Any other business

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19. DS(EM)3 reiterated that the Administration intended to resume the Second Reading debate on the Bill on 15 March 2000 so that the new procedures as proposed in the Bill could be implemented immediately. He undertook to provide a prompt reply, including the CSAs to be proposed by the Administration, to all the issues raised at the meeting for the Bills Committee to consider. Members agreed that if the Bills Committee was agreeable to the CSAs to be proposed by the Administration, it would report to the House Committee on 3 March 2000, and recommend that the Bill to resume Second Reading debate on 15 March 2000.

20. There being no other business, the meeting ended at 6:25 pm.

Legislative Council Secretariat

4 May 2000