

The Education (Amendment) Bill 1999

Submission Two

Further to our first paper of 5th January, 2000 and in reply to the Administration's response dated February 2000 [CB(2) 1066/99-00(01)], we would like to present our views to the Bills Committee of the Legislative Council. Our main points are:

1. It is wrong to seek to utilize the Education Ordinance which provides the legal underpinning for all educational institutions in Hong Kong to achieve what is really a hidden agenda, that is, the forcing of teachers and principals of aided schools to retire at 60. It is also unjust to attempt to overturn the decision of the High Court in the case referred to (Lau Chi Fai and Wong Chi Kin v. Secretary for Justice and Director of Education HCMP No. 1198) by using legislative means.
2. It is unsafe in principle to seek to include what is basically just a small part of the Code of Aid, that is, a section concerning the retirement age of one group of employees, teachers and principals, into the Education Ordinance. The Ordinance is a serious document which covers all types of institutions ranging from independent schools, international schools, aided schools, caput schools, direct subsidy schools, tutorial schools and all age levels from kindergarten, primary and secondary to pre-university and adult education. It is therefore most inappropriate and sets a poor precedent to elevate just a small section of the Code of Aid which is relevant to only one type of schools to the level of such an important and all-embracing document as the Education Ordinance.
3. An important question needs to be asked and answered: "Who is the employer of the teachers and the principal concerned?" There can only be one answer and one that has consistently been confirmed by the Education Department itself, and that is, the employer is the School Management Committee (SMC). The SMC is responsible for the hiring and firing of all school employees as well

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as all matters related to the smooth operation of the school. It is incomprehensible why the Education Department insists on robbing the power to extend service from the SMC. Does it not imply distrust?

4. The Administration hints that the retirement age of aided school employees is linked to that of the civil service. This is a gross misrepresentation. The retirement arrangements in aided school have never been linked to the civil service. Up to just recently and for decades previously, civil servants had retired at 55. Then the retirement age was changed to 60. During this entire period, aided schools have always been treated as a separate system of its own. In any case, some categories of staff in aided schools retire at 65 or beyond, and among other subvented bodies, such as universities and technical institutions under the Vocational Training Council, entirely different arrangements apply. Extensions of service are not primarily viewed as benefits accorded to staff by the SMC. The chief consideration is what is in the best interests of the students and of the school.

5. SMCs and their parent sponsoring bodies need time for manpower planning, especially in selecting and preparing suitable successors. As the statistics provided by the Administration confirm, the Director of Education abruptly and unilaterally changed the policy for the worse about two years ago, thereby breaking a long-standing understanding with sponsoring bodies and SMCs and creating insuperable gaps in staff planning. The Administration gives the impression that the retirement policy it now proposes has been in practice for a long time and that it is just seeking to give a legal basis to an existing policy. In fact the very opposite is true.

6. The present proposal by the Administration is full of inaccuracies and imperfections and it would be most unsafe to rush it through into legislation. No

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great problem will arise in a more natural pacing of the whole process, thereby allowing more time for clearer thinking. In any case sponsoring bodies and SMCs will need to have a transitional period of three to five years before any new arrangements can be taken on board.

7. We would reconfirm that we are strongly opposed to the suggested new and additional restriction on temporary teachers and teachers who are not remunerated from government subsidy.

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