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Secretary for Education and Manpower
Education and Manpower Bureau
(Attn: Mrs S M YU
SEO (EOR & C))
Rm 1417, 14/F
Wu Chung House
213 Queen's Road East
Wanchai, Hong Kong

By Fax (2834 7365) and By Post

3 April 2003

Dear Mrs YU

Education (Miscellaneous Amendments) Bill 2003

I am scrutinizing the above Bill with a view to advising Members on its legal and drafting aspects.

I send you herewith my observations set out in the attached Schedule for your consideration.

I would be grateful if you could let me have the Administration's response on or before 8 April 2003, so that it may be reflected in our report to the House Committee.

Yours sincerely

(KAU Kin-wah)
Assistant Legal Adviser

Encl (2 pages)

c.c. DoJ (Attn: Ms Carmen CHU, SGC)
LA

Schedule

Education Ordinance

Section 22(1) (clause 4)

Please clarify the need for the proposed paragraph (ca). The proposed paragraph seems to suggest that a school could maintain its existing "double registration" if it chooses not to cancel its existing registration or provisional registration pursuant to section 10(2). Double registration could be dealt with more directly by declaring that all registration and provisional registration pursuant to section 10(2) shall cease to have effect on the appointed date. The Education Department would have the opportunity to ascertain whether any "double registration" is really such upon the registration or provisional registration is due for renewal.

Proposed section 22(3) (clause 4)

If it is decided that the proposed paragraph (ca) of section 22(1) may be dispensed with, the proposed section 22(3) is also not required.

Proposed section 59(3) (clause 5)

The provision may have been drafted under the conception that the Appeal Boards Panel (ABP) is similar to the Lands Tribunal or the Small Claims Tribunal. This is not so. In cases of the Tribunals, the jurisdictions are vested in the Tribunals. Here it is the Appeal Boards that have the jurisdiction. ABP is only a pool of persons from which Appeal Boards may be appointed. It has no part in any appeal proceedings. Either the Appeal Boards could regulate their own procedure or the APB could do it for them. Please consider amending the proposed subsection.

Section 61 (clause 6)

References are made to "appeal to Appeal Boards Panel". The fact is that appeals are heard by Appeal Boards. The Panel is the pool from which members of Appeal Boards may be appointed. It does not seem to be the Administration's policy that the Panel is to hear any appeal. Please therefore consider whether the references to "appeal to Appeal Boards Panel" need to be amended.

Proposed section 62(1B) (clause 7)

The provision would allow the secretary of the Appeal Boards Panel to appoint substitute for any number of members at any stage of appeal proceedings. Please consider whether this is appropriate.

Section 66 (clause 11)

References are made to "appeal to Appeal Boards Panel". In the light of the observations made in relation to section 61 above, please consider whether the references to "appeal to Appeal Boards Panel" need to be amended.

Clause 14(1)(a)

Please clarify whether the deeming would include the chairman of the existing Appeals Board. If not, please consider whether any provision is required to put this beyond doubt.

Education Regulations

Regulation 104 (clause 17)

Reference is made to "appeal to Appeal Boards Panel". In the light of the observations made in relation to section 61 above, please consider whether the reference to "appeal to Appeal Boards Panel" needs to be amended.

Clause 19

Reference is made to "Appeal to Appeal Boards Panel". In the light of the observations made in relation to section 61 above, please consider whether the reference to "Appeal to Appeal Boards Panel" needs to be amended.