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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)

30 June 2003

Dear Mrs YU

**Education (Miscellaneous Amendments) Bill 2003**

I refer to your letter dated 8 April 2003 attaching the Administration's response.

Having perused the Administration's response, I have the following observations for your further consideration:-

Clause 4 - section 22(1) & (3)

The Education Department would, after enactment of the Bill and as its policy, permit schools which day and evening sessions are managed by separate managers to be separately registered even if there is only one school. Please clarify the legal basis for such registration after the repealing of the existing section 10(2).

Clause 5 - proposed section 59(3)

Please clarify whether the Administration will introduce Committee Stage Amendments in respect of the proposed section 59(3). If yes, please let us have the proposed amendments in due course.

Clauses 6, 11, 17 and 19 - appeal to Appeal Boards Panel

The comparison with section 20 of the Housing Ordinance (Cap. 283) is not justified. The Housing Ordinance has very clearly vested jurisdiction to hear appeals in the panel. The tribunal that is appointed to hear the appeal is a procedural provision governing the actual hearing of a particular appeal. Here it is the other way round. The jurisdiction to hear the appeal is vested in the Appeal Board. The Appeal Boards

Panel is but a pool from which members of an Appeal Board may be appointed. it seems therefore inappropriate to make the proposed amendments. If the Administration wants to adopt the arrangement in the Housing Ordinance as model, then the provisions should be similarly drafted, and not in the present unsatisfactory hybrid form. Please consider the necessary modification.

Clause 7 - proposed section 62(1B)

Our concern is not whether the secretary of the Panel should have such power. We are concerned that the principle of fairness may not be sufficiently honoured when a new member may come in at *any* stage of the appeal proceedings. The consent of the appellant is no guarantee that the addition of a new member would be fair. An appellant may have been influenced by a lot of other considerations in giving his/her consent to the continuation of the appeal hearing.

Clause 14(1)(a)

The Administration's response has not resolved the doubt that whether *the present drafting* is sufficiently clear to deem the chairman of the existing Appeals Board to become a member of the Appeal Boards Panel. It is also not clear whether he would also be deemed to be the chairman of the Appeal Boards Panel or a reappointment as chairman under the new provisions is required. Please clarify.

I would be grateful if you would let me have the Administration's response to the above before the first meeting of the Bills Committee on 7 July 2003.

Yours sincerely

(KAU Kin-wah)  
Assistant Legal Adviser

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