

立法會
Legislative Council

LC Paper No. CB(2)860/07-08
(These minutes have been seen by
The English Schools Foundation)

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**Bills Committee on
The English Schools Foundation (Amendment) Bill 2007**

**Minutes of the fifth meeting
held on Monday, 17 December 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Dr Hon YEUNG Sum, JP (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon Albert Jinghan CHENG, JP
Hon TAM Heung-man
- Member absent** : Hon Emily LAU Wai-hing, JP
- Attendance by invitation** : Item II
The English Schools Foundation

Professor Felice LIEH MAK
Chairman

Mrs Heather Du Quesnay
Chief Executive

Mr Jonothan Abbott
Barrister and Legislative Drafting Consultant

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Stanley MA
Senior Council Secretary (2)6

Miss Carmen HO
Legislative Assistant (2)6

Action

I. Confirmation of minutes

[LC Paper No. CB(2)614/07-08]

The minutes of the meeting held on 1 December 2007 were confirmed.

II. Meeting with The English Schools Foundation

[LC Paper Nos. CB(2)613/07-08(01) & (02), CB(2)636/07-08(01) - (03) and CB(2)639/07-08(01)]

2. The Bills Committee deliberated (index of proceedings at **Annex**).

Definition of Special Educational Needs

3. Mr Tommy CHEUNG briefed members on his revised Committee Stage amendments (CSAs) to section 4(1) with a proposed definition of "students with special educational needs" (SEN students). He highlighted that parents of students with SEN (SEN parents) were concerned about the interpretation of the definition to be adopted by The English Schools Foundation (ESF) for the purpose of electing a SEN parent representative to the Board of Governors (the Board).

4. Mrs Heather Du Quesnay indicated that ESF accepted the definition of SEN students as provided in Mr Tommy CHEUNG's CSA. The definition conformed to that accepted by the Education Bureau and the international practice. ESF would invite nominations for two categories of parent members of the Board, one for parents generally and the other for SEN parents. The eligibility of parent candidates to stand for the SEN parent category would be verified by the school principal concerned and the SEN Advisor of ESF. Should there be dispute on the candidates' eligibility, an appeal could be made to the Chief Executive of ESF. ESF would also set up a mechanism to handle complaints on election matters including the eligibility of parent candidates.

Action

5. Mrs Heather Du Quesnay added that ESF intended to adopt a broad definition for SEN parents. So long as the student had been identified to require special support by the SEN Coordinator in the school, his/her parent would be eligible to stand for the SEN parent category. This would cover about 5% to 10% of the student population of ESF. If the interpretation was restricted to parents of students in the Learning Support Class or to those in the Jockey Club Sarah Roe School (Sarah Roe), only about 180 parents of students with more severe SEN, i.e. about 1.5% of the student population, would be covered. This would exclude students with mild or temporary SEN attending mainstream class and those SEN students who were capable of following the mainstream class.

6. Professor Felice LIEH MAK added that there were three groups of SEN students in ESF schools, namely, the students in Sarah Roe, students in learning support classes, and students with mild or temporary SEN (collectively referred to as students with individual needs) in ordinary schools. ESF considered that parents of all these students should be eligible to stand for the election of the SEN parent representative on the Board. A restrictive definition of SEN parents would result in a disproportionate representation of a small group of SEN parents on the Board.

7. Members in general expressed support for the definition of SEN as provided in Mr Tommy CHEUNG's CSA. They, however, considered the interpretation of the definition by ESF too broad. Mr Albert CHENG and Mr Abraham SHEK opined that the interpretation of the definition should be consistent with the spirit of the CSA to elect a SEN parent representative to the Board. Mr Tommy CHEUNG said that parents eligible for nomination for the SEN parent category had to be accepted by SEN parents as genuinely understanding the SEN of students and could represent SEN parents, otherwise it would defeat the purpose of electing a SEN parent to the Board. Mr Albert CHENG, Mr Abraham SHEK and Mr Tommy CHEUNG were of the view that parents of students with temporary SEN such as students with short-term emotional problems should not be eligible for nomination for the SEN parent category.

8. Dr Fernando CHEUNG considered it acceptable to exclude parents whose children with SEN had recovered after treatment from being nominated for the election of the SEN parent representative on the Board. This could address ESF's concern that the SEN of some students might not be permanent.

9. Ms Audrey EU indicated her support for Mr Tommy CHEUNG's proposed CSA. As ESF would set out guidelines on election matters and set up a mechanism to deal with complaints, she had confidence in ESF concerning the election of SEN parents.

Action

10. Senior Assistant Legal Adviser 2 (SALA2) advised that the definition of SEN in Mr Tommy CHEUNG's CSA would form the basis for the interpretation of SEN in case of disputes over the eligibility of a parent to stand for the election of the SEN parent representative to the Board. As SEN students meant only those students with a significantly greater difficulty in learning in the present drafting of the definition, students with mild SEN or affected by short-term emotional problems might not be covered.

11. To address the concern of members, Professor Felice LIEH MAK suggested that the eligibility of parents to stand for the election for the SEN parent category be stipulated in the English Schools Foundation (General) Regulation which would be subject to the scrutiny of the Legislative Council (LegCo). SALA2 confirmed that the Regulation would be subject to negative vetting by LegCo.

12. Members requested ESF to provide the draft regulations on the procedures and arrangements for the election of the SEN parent representative to the Board. Professor Felice LIEH MAK agreed.

Objects of ESF

13. Dr Fernando CHEUNG briefed members on his revised CSA to the proposed section 4(1) concerning the objects of ESF to reflect the mission of ESF in the provision of education for English-speaking students without regard to disability.

14. Mrs Heather Du Quesnay said that ESF would oppose any CSA to the proposed section 4(1) as it would expose ESF to possible judicial review of its decisions on student administration in the future. Dr CHEUNG's proposed CSA would not achieve the intended effect as it would be wrong not to take into account the SEN of students in providing education. Moreover, the proposed definition of SEN made no reference to the age of student which was very important as any comparison should be made between students of the same age.

15. SALA2 agreed that there was ambiguity on the present drafting of Dr Fernando CHEUNG's proposed CSA to section 4(1).

16. Ms Audrey EU considered Dr CHEUNG's proposed definition of SEN too loose. She suggested that Mr Tommy CHEUNG's proposed definition of SEN be adopted with modification to cater for the possibility of his proposed CSA being voted down. She also considered that adding the word "disability" after the phrase "without regard to race and religion" in section 4(1) would be tidier than the present version proposed by Dr CHEUNG. Dr CHEUNG agreed to reconsider the drafting of his CSA in the light of the views of SALA2 and Ms EU.

Action

17. The Chairman and Ms Audrey EU questioned why ESF could accept the provision of education for English-speaking students without regard to race or religion but not disability in its objects in section 4(1).

18. Mr Jonothan Abbott responded that any requirements set out in the objects of ESF in proposed section 4(1) would carry statutory obligations that would put ESF at risk of being challenged in court. The inclusion of "race and religion" in section 4(1) carried no on-going implication for ESF for the provision of education as no special adaptation to its facilities and teaching methods, etc would be required. This would not be the case should "disability" be included in section 4(1).

19. Mr Abraham SHEK said that he would not support Dr CHEUNG's CSA. Mr Tommy CHEUNG said that the Liberal Party did not consider it necessary to add "without regard to disability" in section 4(1) as it would expose ESF to unnecessary judicial review. Moreover, his proposed amendment would add a SEN parent to the Board.

III. Clause-by-clause examination of the Bill

[[LC Paper Nos. CB(3)583/06-07, CB(2)2324/06-07(01), CB(2)450/07-08(01), CB(2)460/07-08(01), CB(2)477/07-08(01) and CB(2)613/07-08(02)]

20. Members agreed to start clause-by-clause examination of the Bill at the next meeting.

IV. Any other business

Date of next meeting

21. Members agreed to hold the next meeting on Thursday, 17 January 2008 at 10:45 am.

[*Post-meeting note* : The next meeting was subsequently rescheduled to Saturday, 26 January 2008, at 9:30 am.]

22. There being no other business, the meeting ended at 12:50 pm.

**Proceedings of the fifth meeting of Bills Committee on
The English Schools Foundation (Amendment) Bill 2007
on Monday, 17 December 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000912	Chairman	Confirmation of minutes	
000913 - 001017	Chairman	Chairman's welcome to The English Schools Foundation (ESF) representatives and his drawing of members' attention to Mr Albert CHENG's withdrawal of his proposed Committee Stage amendment (CSA).	
001018 - 001528	Chairman Mr Tommy CHEUNG	Mr CHEUNG's briefing on his proposed CSAs to remove the Legislative Council (LegCo) representation from the Board of Governors (the Board), add a parent representative of students with special educational needs (SEN) who would be elected among all eligible parents and include the definition of "students with special educational needs" (SEN students).	
001529 - 002457	Chairman Chief Executive of The English Schools Foundation (CE(ESF)) Mr Tommy CHEUNG Mr Abraham SHEK SALA2	<p>CE(ESF)'s response that ESF accepted the definition of SEN in Mr Tommy CHEUNG's CSA which was in line with that adopted by the Education Bureau and the international standard.</p> <p>Mr CHEUNG's enquiry about the need to set up a mechanism to verify the eligibility of parents to stand for the election for the SEN parent category.</p> <p>The Chairman's suggestion that ESF should establish a special committee to verify the eligibility of parent candidates for nomination for the SEN parent category.</p> <p>CE(ESF)'s response that the principal of the ESF school concerned and the SEN Adviser of ESF would verify the eligibility of parent candidates and the decision would be subject to appeal to the Chief Executive of ESF.</p> <p>SALA2's advice that the definition of SEN in the CSA would form the basis for the interpretation of SEN in case of disputes over the eligibility of a parent.</p> <p>Mr SHEK's expression of support for the definition of SEN students in Mr CHEUNG's CSA. His view that a mechanism should be established for</p>	

Time marker	Speaker	Subjects	Action required
		<p>verifying the eligibility of parents to stand for election as the representative of SEN parents in the Board.</p>	
<p>002458 - 004504</p>	<p>Chairman Mr Albert CHENG CE(ESF) Chairman of ESF Mr Abraham SHEK SALA2 Mr Tommy CHEUNG</p>	<p>CE(ESF)'s explanations on the existing arrangements adopted by ESF to identify students with SEN. Teachers would identify students with SEN through classroom observations and assessments, and provide appropriate support. If the SEN could not be met, the students would be referred to the SEN Coordinator of the school concerned. Should further support be required, a formal assessment by the Education Psychologist (EP) would be conducted. Should it be considered necessary to remove the student from the mainstream class, a review panel would be convened.</p> <p>CE(ESF)'s advice that ESF would aim to adopt a broad definition for SEN so that more SEN parents would be eligible for election as the representative of SEN parents in the Board. If only the students in learning support classes or Jockey Club Sarah Roe School (Sarah Roe) were classified as students with SEN, only about 180 parents of students with severe SEN would be eligible. Such classification would exclude parents of students with temporary or mild SEN attending mainstream class.</p> <p>Chairman of ESF's further explanation of the classification of SEN students in ESF schools into three groups, namely, students in Sarah Roe, students in support learning classes, and students with mild or temporary SEN arising from short-term emotional problems. It was necessary to include the last group of students with SEN for the purpose of election of the SEN parent to the Board.</p> <p>Mr CHENG's view that the spirit of Mr CHEUNG's CSA to elect a SEN parent to the Board was to enable the views of parents of students with severe SEN be heard. Parents of students with temporary SEN should not be included.</p> <p>Chairman of ESF's response that a restrictive definition of SEN parents would result in a disproportionate representation of a small group of SEN parents in the Board. CE(ESF)'s comments that a differentiation between students in Sarah Roe or learning support classes and other SEN students was inconsistent with ESF's philosophy on the provision of education for students with SEN.</p>	

Time marker	Speaker	Subjects	Action required
		<p>Mr SHEK's view that parents of students with temporary SEN should not be eligible for standing for election as the SEN parent representative in the Board.</p>	
004505 - 005107	<p>Chairman Mr Jasper TSANG CE(ESF) Chairman of ESF</p>	<p>Mr TSANG's enquiry about the arrangements for the identification of a student with SEN and his suggestion that SEN students should refer to those who had been formally assessed as having SEN.</p> <p>Chairman of ESF's response that students who had been assessed to have SEN might recover after effective treatment. CE(ESF)'s advice that students suspected to have SEN would only be referred to EP for a formal assessment should the additional support provided by teachers and relevant specialists be found not meeting the students' need.</p>	
005108 - 011503	<p>Mr Albert CHENG CE(ESF) Mr Tommy CHEUNG Chairman Dr Fernando CHEUNG Mr Abraham SHEK</p>	<p>Mr CHENG's elaboration on the need for a SEN parent representative on the Board. His view that parents of students with temporary SEN should not be eligible for election for the SEN parent category.</p> <p>CE(ESF)'s response that in line with the ESF's philosophy on the provision of education for students with SEN, students with individual needs should be included under the definition of SEN.</p> <p>Mr CHEUNG's emphasis that the SEN parent representative should be a parent who was accepted by SEN parents as familiar with the SEN of students, and his view that ESF should provide the draft regulations on the procedures and arrangements for the election of the SEN parent for members' consideration.</p> <p>Dr CHEUNG's view that the definition of SEN should follow that adopted by EDB, i.e., students who had been formally assessed as having SEN. Parents of students with SEN who had recovered after treatment should cease to be eligible for election.</p> <p>Mr SHEK's emphasis on the need to elect a SEN parent representative to the Board who would be able to reflect the views and needs of SEN parents.</p> <p>Mr CHENG's enquiry about the feasibility of specifying in the Bill the students in Sarah Roe or attending the learning support classes as SEN students for the purpose of electing the SEN parent representative.</p> <p>Mr SHEK's view that the suggestion was not</p>	

Time marker	Speaker	Subjects	Action required
		<p>feasible as some students with SEN might prefer to study in ordinary schools. CE(ESF)'s provision of an example to explain how Mr CHENG's suggestion might exclude students with genuine SEN.</p> <p>Dr CHEUNG's expression of support for the definition of SEN in Mr CHEUNG's CSA, and his view that the definition should not be broadly interpreted to include students with temporary SEN or short-term emotional behaviour.</p>	
011504 - 012138	Chairman Chairman of ESF Mr Albert CHENG	<p>Chairman's view that the definition of SEN was important for the smooth implementation of the Bill.</p> <p>Chairman of ESF's suggestion that the nomination criteria for the election of SEN parent representative to the Board be specified in The ESF (General) Regulation (the Regulation).</p>	
012139 - 012317	Chairman Mr Abraham SHEK Dr Fernando CHEUNG CE(ESF)	CE(ESF)'s clarification in response to members' enquiry that the funding mechanism for students with SEN in ESF schools was completely different from that for public sector schools.	
012318 - 012627	Ms Audrey EU CE(ESF)	<p>Ms EU's enquiry about the representation of parents associations in ESF schools, and CE(ESF)'s response that these associations were not formally established and were independent from one another.</p> <p>Ms EU's expression of support for the definition of SEN in Mr CHEUNG's CSA.</p>	
012628 - 013053	Chairman SALA2	SALA2's confirmation of the Chairman's advice that the Regulation would be subject to negative vetting by LegCo.	
013054 - 013612	Mr Tommy CHEUNG Chairman Chairman of ESF Mr Albert CHENG Mr Abraham SHEK	Mr CHEUNG's suggestion that ESF should provide the draft regulations on the election of the SEN parent representative for members' consideration. Mr CHENG's and Mr SHEK's expression of support for Mr CHEUNG's suggestion. Chairman of ESF's agreement to provide the draft regulations.	See para 12 of the minutes
013613 - 013700	Chairman Mr Tommy CHEUNG	Mr CHEUNG's explanation on the election of SEN parent to the Board in his proposed CSAs to section 6(1)(b).	

Time marker	Speaker	Subjects	Action required
013701 - 020203	<p>Chairman Dr Fernando CHEUNG SALA2 CE(ESF) Ms Audrey EU Mr Jonothan Abbott Mr Abraham SHEK Mr Tommy CHEUNG</p>	<p>Dr CHEUNG's briefing on his revised CSAs to section 4(1) concerning the objects of ESF [LC Paper No. CB(2)639/07-08(01)].</p> <p>SALA2's advice that the definitions of SEN in the CSAs proposed by Mr CHEUNG and Dr CHEUNG were in order and independent of each other.</p> <p>CE(ESF)'s emphasis of ESF's opposition to any CSA to the proposed section 4(1) as it would expose ESF to possible judicial review, highlighting the ambiguity of Dr CHEUNG's CSA and the absence of an age reference in the definition of SEN.</p> <p>Ms EU's view that the definition of SEN in Dr CHEUNG's CSA should follow that proposed by Mr CHEUNG; and the addition of the word "disability" after "without regard to race and religion" in section 4(1) would be tidier than the present version proposed by Dr CHEUNG.</p> <p>Dr CHEUNG's indication to reconsider the drafting of his CSA.</p> <p>Mr Abbott's advice that any requirements set out in section 4(1) concerning the objects of ESF would carry a statutory obligation, and the inclusion of "disability" in section 4(1) would have on-going implication for ESF for the provision of education and require special adaptation to its facilities and teaching methods, etc .</p> <p>Mr SHEK's indication of not supporting Dr CHEUNG's CSA</p> <p>Mr CHEUNG's indication that the Liberal Party did not consider it necessary for Dr CHEUNG's CSA as it would bring about unnecessary judicial review.</p> <p>Dr CHEUNG's clarification of the intention of his CSA to reflect the efforts of ESF in the provision of education for students with disability.</p>	
020204 - 020520	Chairman	Date of next meeting	