

Executive Summary of the Investigation Report on the Enforcement of Education Ordinance on Universal Basic Education

Background

There have been reports of children of school age (six to 15) being kept from school and local children of ethnic minorities not getting school places. To examine whether there are deficiencies in the enforcement mechanism and to help safeguard the interests of Hong Kong children, The Ombudsman decided to conduct a direct investigation under Section 7(1)(a)(ii) of The Ombudsman Ordinance.

Methodology

2. We analysed relevant papers and statistical data provided by the Education and Manpower Bureau (EMB) and the then Education Department (ED); examined views of educationalists, concern groups and the public; and studied dropout cases over the past seven years with which EMB had served attendance orders.

Current Enforcement Mechanism

3. EMB is responsible for enforcing compulsory education. The Education Ordinance empowers EMB to order a parent to send a child of the relevant age to school. Any parent who without reasonable cause fails to comply with an attendance order commits an offence carrying a fine of \$10,000 and imprisonment for three months.

Dropouts

4. EMB requires heads of schools to advise a dropout to resume school. If such efforts fail, the heads are required to report urgently through the “Early Notification System” to EMB.

5. The Student Guidance Section (SGS) of EMB deals with dropout cases. Every means available within and outside EMB with the involvement of educational psychologists, counsellors, family workers and school social workers will be deployed to persuade dropouts to resume school.

6. Difficult cases which remain unresolved after six months will be referred to EMB’s Internal Review Board for taking such action as issuing warning letters and statutory attendance orders.

Pre-school children

7. Parents will be reminded through publicity programmes to let their children start school. There is no mechanism to keep track of pre-school children, but enrolment statistics shows that most are attending kindergartens or primary schools.

Children of ethnic minorities

8. EMB has no record of any child of ethnic minorities not placed in school. Those who claim to have encountered difficulties in securing places may have been trying to transfer to their preferred schools. EMB has asked those schools to refer excess applications to EMB for follow-up action. EMB will strengthen collaboration with non-governmental organisations (NGOs) serving ethnic minorities.

Observations and Opinions

9. This Office accepts that absenteeism of pre-school children is insignificant according to enrolment statistics. Reminding parents of their legal obligation to send their children to school through publicity programmes is quite appropriate and adequate.

10. We welcome EMB's assurance that there are sufficient school places for children of ethnic minorities. However, more publicity is needed for promoting awareness of Government's offer of assistance in school placement.

11. We note EMB's reservations over the issue of warnings and orders in dropout cases, but we are of the view that legislation has been introduced to safeguard children's right to education and the law should be observed. Undue leniency puts such right at risk and the law in disrepute.

12. We note that schools have not always complied with EMB's guidelines in notifying SGS of dropouts through the "Early Notification System".

13. Counselling is at times clearly most unlikely to be fruitful. Requiring SGS to carry on counselling for six months before referring the case to the Internal Review Board simply delays enforcement. With EMB's apparent hesitation (or, in its view, "cautiousness") towards stronger action even after referral, some difficult dropout cases have dragged on for years.

14. The Internal Review Board takes months to issue a warning letter. It is even more reluctant to issue attendance orders: in the four cases studied, the Department of Justice had to comment on two occasions that the time lapse between the dropout and the recourse to legal action had been far too long. Careful planning is no excuse for dilatoriness.

15. Many believe that compulsory education was prompted by exploitation of child labour. These days, our community is more affluent, labour legislation more comprehensive and Government assistance to the needy and vulnerable much enhanced. We see this as an appropriate time for Government to review the need for enforcing schooling by law and to go for an administrative policy of “free universal basic education”. However, this is an issue of education philosophy and Government policy and we leave it to EMB and the community.

Recommendations

16. The Ombudsman makes the following recommendations to the Permanent Secretary for Education and Manpower for more effective enforcement of the Education Ordinance regarding compulsory education –

(a) General

Regularly review and repeat publicity programmes to promote:

- i) awareness of the law on compulsory education; and
- ii) benefits of schooling.

(b) Children of Ethnic Minorities

- i) Inform ethnic minorities, through such channels as schools, relevant NGOs and the media, of Government’s offer of assistance in school placement.
- ii) Strengthen collaboration with relevant NGOs to better understand the needs of the ethnic minorities in regard to education.

(c) Dropouts

General

Work out, as a general guide, a reasonable and realistic timeframe and flow chart for bringing students back to school:

- i) by counselling; or
- ii) by firmer legal measures.

Guidelines to Schools

- i) Review the guidelines to schools for reporting dropouts to cut delay in follow-up action; and to institute early warning for non-compliance.
- ii) Issue reminder to heads of schools to reiterate the importance of complying with the requirements of the “Early Notification System” in the interest of students concerned.

Counselling

- i) Where counselling is unlikely to work, refer to the Internal Review Board without delay.

Warning and Legal Action

Require the Internal Review Board:

- i) to be firm and decisive in issuing warning letters early;
- ii) on non-compliance with warning letters, to decide on timely service of attendance orders.

(d) Statutory School Attendance

- i) Review the need for enforcing compulsory education by law.

Comments from EMB

17. Comments from the Permanent Secretary for Education and Manpower are positive. It is encouraging to see that implementation of some of our recommendations -- (a) & (b) -- is already underway. She has pledged, in connection with recommendation (c), that EMB will re-engineer the existing procedures and practices to cut short the time taken for intervention and provision of support services for non-attendance cases.

18. On Recommendation (d), EMB has reaffirmed Government’s position on the need to enforce compulsory education by law. It will, therefore, not review the policy.

19. EMB sees considerable value in counselling and has indicated it will continue to be cautious in taking legal action. EMB has undertaken to monitor closely all non-attendance cases to ensure counselling be completed within six months after the case is made known to them.

Final Remarks from The Ombudsman

20. The Ombudsman appreciates EMB's prompt response to our findings and offers the concluding observations below.

21. The value of counselling is not questioned. However, where it is "clearly most unlikely to be fruitful" (para. 13), we see little point in continuing counselling as such attempts would delay the child's return to school. If it is a question of family problem, as EMB has suggested in commenting on the report, that aspect should be separately dealt with and not be allowed to defer action to bring the child back to school. Otherwise, the purpose of the law is frustrated.

22. As for caution in taking legal action, The Ombudsman reiterates her view (para. 14) that legal action warrants careful planning but is no excuse for dilatoriness.

23. On recommendation (d), The Ombudsman maintains her view but respects EMB's professional judgement and prerogative on how universal basic education should be enforced.

A Further Note

24. On Government's policy for integrating children of ethnic minorities into the local community, we are aware of considerable concern amongst these minorities over the children's difficulties in taking up the regular curriculum. There are some suggestions:

- that Chinese be taught as a second language; and
- that their own language be also taught.

In this light, there is a case for Government to review the curriculum for these children. We recognise that this is a matter of policy whether and how improvement should be made. Our observations here aim to generate discussion.

25. Lastly, The Ombudsman expresses appreciation to EMB (and, earlier ED) for cooperation and assistance throughout this investigation.

Office of The Ombudsman

Ref. OMB/DI/104

May 2003