

## **Measures for Strengthening the Protection of Students: Appointment Matters of Schools**

### **Questions and Answers**

**Q.1 Is it mandatory for schools to implement the enhanced measures put forward / proposed by the Education Bureau (EDB)?**

A.1 The proposed enhanced measures are meant to help schools identify and guard against improper persons serving as teachers / staff members, with a view to safeguarding the well-being of students. Schools are advised to adopt the measures as soon as possible.

**Q.2 May a school reject an applicant who declares that he/she has committed an offence?**

A.2 The requirement that applicants declare whether or not they have been convicted of criminal offence(s) is meant to enable schools to consider their applications on a fully informed basis, thus ensuring that suitable candidates will be selected to fill teaching vacancies. Selection of school staff members must still be determined on the basis of qualifications and experience according to a set of criteria relevant to the requirements of the work to be performed. If an applicant has been convicted of a criminal offence, the school concerned should prudently consider whether he/she is fit for employment with regard to the nature and gravity of the offence and such other factors as the nature and requirements of the work to be performed.

**Q.3 Is it lawful for a school to require an applicant to declare whether he/she has any criminal convictions or whether his/her registration as a teacher has been cancelled/ refused before?**

Q.3 We have sought legal advice on the enhanced measures. As a matter of fact, quite a number of organisations have adopted the practice of requiring applicants to declare their criminal records to them as prospective employers. Since school staff members may, by the nature of their work, come into close contact with students, it is necessary for a school to adopt reasonable and responsible practice by background check to determine the suitability of an applicant. On completion of the recruitment process, the school should act in accordance with the Personal Data (Privacy) Ordinance, retain any personal data thus collected in a proper manner within a reasonable period of time, and destroy them thereafter with due care. [For details, see Appendix 8 of Chapter 7, *School Administration Guide*.]

**Q.4 If an applicant refuses to declare whether he/she has any criminal convictions or whether his/her registration as a teacher has been cancelled/refused before, can the school concerned refuse his/her application on such ground?**

A.4 Schools should, on the application form, state the consequences if the applicant refuses to provide such information. For the protection of students, it is a reasonable and responsible practice for schools to require applicants to do so. Accordingly, if the applicant refuses to make such declaration, the school concerned is entitled not to consider his/her application.

**Q.5 In what ways should schools consult an applicant's previous employer(s) about his/her performance? Would the Personal Data (Privacy) Ordinance be contravened if a school discloses any information on the performance of its employee(s) in the past to another school?**

A.5 Under the Personal Data (Privacy) Ordinance, the data user (the employer) may only disclose data to a third party with the prescribed consent of the data subject (the employee). As such, the employing school should obtain the consent of the applicant before consulting his/her previous employer(s). On the other hand, any data on work performance of individuals concerned provided by their previous employers should be based on objective facts. To reduce unnecessary administrative works, both schools may, with regard to actual circumstances, adopt appropriate ways for accessing and providing such data.

**Q.6 How should a school verify the criminal record declared by an applicant?**

A.6 If an applicant declares his/her criminal record, the school concerned may require him/her to provide further details, for example, the criminal record summary issued by the Police.

**Q.7 If there are criminal proceedings instituted against a teacher, is he/she required to declare such to his/her school irrespective of what offence is involved? Is he/she required to report even a charge of a parking offence or the likes?**

A.7 This requirement does not extend to fixed penalties demanded under Section 3 of the Fixed Penalty (Criminal Proceedings) Ordinance, Cap. 240, i.e. a teacher is not required to make a report to his/her school if he/she is permitted by the Police to discharge his/her liability to conviction for the offence he/she has committed by payment of a fixed penalty. However, a teacher is required to report to his/her school once he/she is charged with and summonsed for a criminal offence, even if the offence is committed outside his/her normal duty hours and is not duty-related. This measure will enable schools to take appropriate follow-up actions to safeguard the well-being of students, including suspending a teacher charged with a serious offence from his/her duties during the course of the criminal proceedings.

**Q.8 Is it mandatory for schools to require serving teachers to declare their past criminal records?**

A.8 The proposed declaration arrangement mainly applies to job applicants with a view to preventing improper persons from gaining positions at schools. For serving staff members, since their schools have been keeping a good track record of their conduct and performance, there is no pressing need to extend the coverage of this arrangement to include existing employees at this stage. This is in line with the Law Reform Commission's recommendations about sexual offences records checks.

**Q.9 What actions should be taken if a serving teacher is found to have been convicted of a criminal offence?**

A.9 As employer, the school may consider disciplinary action proportionate to the nature and gravity of the offence. If it comes to the notice of the school that the offence is of a serious nature, it should report such to EDB, which will consider cancelling his/her registration as a teacher through the mechanism for handling teachers found to have committed an offence or misconduct.

**Q.10 If a serving teacher is convicted of a criminal offence, can his/her school dismiss him/her on such ground?**

A.10 Under the Employment Ordinance and the Codes of Aid, a school shall only dismiss a staff member on sufficient and reasonable grounds. If a staff member has committed a serious offence, the school concerned may, having taken into account such factors as the well-being of students and the professional conduct of teachers, consider dismissing him/her, provided that it is reasonable and lawful to do so. As advised in the *School Administration Guide*, schools should formulate a policy on disciplinary measures in consultation with staff and keep all staff informed about the relevant arrangements, with a view to avoiding unnecessary disputes.

**Q.11 If a school, after it has employed a teacher, finds out that he/she has intentionally provided false information / withheld any material information, can the school dismiss him/her?**

A.11 If, before employment, a teacher has understood the consequences of withholding any material information and, after employment, has been found by the employing school to have intentionally provided false information / withheld any material information, it is legitimate for the school to proceed with disciplinary action. As a good employer, a school should, in accordance with the principles of lawfulness and reasonableness and its prescribed policy on disciplinary measures, take appropriate action to deal with staff misconduct. If it has been ascertained that an appointee has intentionally provided false information / withheld any material information, the school should carefully decide on the disciplinary action to be taken in proportion to the nature and gravity of the case, rather than resorting to dismissal indiscriminately. Moreover, the teacher concerned might also be subject

to certain liabilities.

**Q.12 If it comes to the notice of a school that a teacher is involved in a serious offence and the school suspends him/her from his/her duties during the course of the criminal proceedings, is he/she entitled to payment of salaries during the period of suspension?**

A.12 If it comes to the notice of a school that a teacher is involved in a serious offence, the school management committee / incorporated management committee (IMC) may, in accordance with the relevant Code of Aid and/or the Employment Ordinance, suspend him/her from his/her duties during the course of the criminal proceedings. Payment of salaries will be suspended during the period he/she is suspended from duties (a school that has not established an IMC may, depending on special circumstances of the case, consider whether or not to seek the approval of the Permanent Secretary for Education for payment of salaries to a teacher suspended on half pay).

**Q.13 If it comes to the notice of a school that a teacher has allegedly committed an offence or professional misconduct, is it mandatory for the school to report such to EDB?**

A.13 In principle, schools are only required to report alleged serious offences or misconduct cases to EDB. Here are some examples of must-report case types that might either threaten the well-being of students or have a negative impact on the image of teachers.

- Sexual offences
- Child abuses
- Alleged misuses of powers by teachers that would, if substantiated, seriously undermine the integrity of teachers
- Cases that would lead to suspension of teachers' duties by their schools
- A teacher charged with any such offences or misconducts would be dismissed / dismissed summarily if conviction or substantiation of the charge results.

The above listed is by no means exhaustive. Schools should make decisions in consideration of the seriousness of cases and the impact on students. In case of doubt, schools may contact EDB for assistance.

**Q.14 How long will it take for a reply to an application made by a prospective teacher for the release of his/her teacher registration information to the school applied?**

A.14 It is expected that, for most applications, a reply will be received within one week.

**Q.15 In order to facilitate schools to check the registration status and other relevant**

**information of their prospective teachers, can schools open e-Services accounts for them before they have been offered appointment?**

- A.15 The e-Services system is designed to collect information concerning serving teachers teaching in schools. A school cannot cancel an e-Services account once it has been opened for a teacher. As such, a school should not open an e-Services account for a teacher before he/she has been offered an appointment.

Education Bureau

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