

HIS Joint Executive Board (EB) and Board of Councilors (BC) Meeting:
26 September 2017

Meeting called to order at 19:06

Halversen nominated as BC Chair. All in favor.

Seaton nominated to take minutes. All in favor.

Members Present:

EB: Katayama, Nickel, Ratzliff, Midorikawa, Bossaer, Wakabayashi, Rafter, Seaton.

BC: Halversen, Nickel, Barton, Ima, Hamilton, Riggins, Sakai, Kawahara-Park, Cooke, Bossaer, Wakabayashi, Mernin, Neilsen, Wright.

Proxy votes by email: Takahashi, Takase, Walker, Tobe.

Observers/Guests: Kaufmann, Tanaka

Nikel motions to approve the agenda. Seconded by Wakabayashi. All in favor.

Presentation by Tanaka (HIS's lawyer)

Files:

The following verbal explanation supplements the document distributed at the meeting.

Tonight I will make an important explanation. The union (HIS Labor) was formed in February of this year. I learned that union members were on BC. When I looked at the HIS Articles of Incorporation (hereafter "constitution") carefully and was surprised. The BC has great power. Section 19 (hereafter "S19") says that the budget, planning, EB chair and constitutional changes must be approved by BC. But, BC is an advisory body. This is stipulated in Japanese private school law. At HIS, the BC is above the EB. According to the constitution, there needs to be a 2/3 majority from EB to approve a decision, but this can then be refused by a majority vote in BC. The important point is that the EB has responsibility for the management of the school. BC has no authority or responsibility for management. So, in the constitution it stipulates that officers are on the EB. BC does not have this authority. BC should state advice and ideas. They give opinions to the EB chair. These opinions go to management via the Board Chair and EB. So, S19 is irregular and contradictory. This meeting is to help people understand the irregularity, and what to do about the matter will be decided

in the next meeting.

Members of BC comprise staff at the school (x 2), graduates or parents of current students (x 8), and academics (x 11). These councilors express opinions as BC members. They have no management responsibility. But, in the current constitution they have more power than the Board Chair or EB. This is the reason to change S19.

When I saw this as a lawyer, I was bewildered that the constitution could be written in this way. I would like to understand why. I also want both boards to individually vote on the amendment.

EB and BC Chairs: We will now have three minutes per person for questions or comments.

Nikel: We pay for specialized legal advice and Tanaka's long experience is important. If we have a legal situation arising from this constitutional issue, we will need his support. We should defer to his expertise.

Ratzliff: The final decision on this issue is up to the boards. This is an accreditation year, so it is a concern. Governance issues can lead to cautions from the accrediting body. We want to resolve this issue so that the accreditation process goes smoothly.

Wakabayashi: Has the structure of the constitution ever been questioned in an accreditation process before?

Ratzliff: No. But, a governance problem can occur if other things are not going smoothly. These issues can surface at a later date (an example of a Korean school where a governance issue was picked up second time around during accreditation).

Barton: It was explained that BC is an advisory board. There has been no intent on the part of BC to usurp the EB. This is a remnant in the constitution from a previous issue. It seems a logical change to make.

Ima: Who wrote the article and when was the article written?

Riggins: 29 years ago when HIS was in the old building, conditions were different. The school was in the middle of various changes. People were caught unaware. The composition of EB changed. In the old building there were two floors. A preschool opened in the basement (not part of HIS). There was wrangling because HIS wanted the space. Suddenly the space was

returned to HIS, but 150 3-4 year olds became HIS responsibility. EB struggled and perhaps made some mistakes. Then, the next year some bylaws were changed to protect the school. At the time, there was no independent audit or school lawyer. There were no training programs. We are much further forward now, and much has changed.

Tanaka: I heard the EB chair was powerful and was going to do illegal things, and this was why S19 was changed/added.

Riggins: I cannot say either way, but it's possible.

Tanaka: I heard the EB could not control the chair, so they gave BC power to control the EB. That's why the constitution is irregular.

Riggins: That could well be part of it.

Katayama: So is this the first time a lawyer has looked over the constitution?

Riggins: Yes.

Ima: Thank you.

Midorikawa: Riggins has answered most of my questions. I am for the change as suggested.

Hamilton: My questions have been addressed by Riggins. Tanaka has mentioned two BC members in the union. Are they involved in this discussion?

Tanaka: There is conflict of interest between BC and the union, so they are observers in the BC now. But, if we change this article they can be full members of BC.

Ratzliff: Correction. The two teachers resigned at the last meeting.

Katayama: So now Mernin and Cooke are here representing the staff (they are administrators and have no conflict of interest).

Halverson: But the minutes of meetings are public. So, anyone is welcome to read them.

Katayama: EB minutes are on the web. BC minutes in the office in hard

copies. They are available to teachers.

Sakai: It is understandable why we need to readjust the relationship. I agree with the change.

Kawahara-Park: From a long time back I have had many questions about the board meetings. This discussion helped me understand the issues.

Rafter: Reading this I understood why Tanaka felt uneasy about the constitution. My questions have been clarified. It's been a long time, but time to change this.

Cooke: Being an accreditation year, I echo Ratzliff's concerns and want to clarify governance procedures.

Bossaer: The school is small, so sometimes I wonder why there are two boards. Perhaps in the past there were problems. But now there are checks and balances. If the BC only meets twice a year, how much counciling can be done? Are two boards even needed? If the boards can work together then great. There seems to be a working system and there is no absolute power in the EB chair.

Tanaka: It is important to understand why BC exists. The tatemae of Japanese law is that there is an institution which can advise the board chair. This is why the composition of the BC is written in the constitution. The most important point is that BC has no legal binding force. Therefore, why is the BC? At a women's university where I have sat on the BC I have thought the same. But, private school law states this is the role of BC.

Katayama: So, because of Japanese law we need both EB and BC?

Tanaka: Yes. BC is required in various organizations, not only schools.

Sakai: Are there places where the BC has the power to choose the Executives?

Tanaka: Yes, but other places have BC appointed by EB.

Rafter: Is it OK for individuals to belong to both boards?

Tanaka: This meeting is a setusmeikai (explanation session) with no vote, so it's OK.

Rafter: But what about being a member of both boards?

Tanaka: No problems.

Wakabayashi: My point is about conflicts of interest. If I have already voted for something as a member of EB, but then I vote again for the same thing on BC, isn't that redundant?

Tanaka: BC is only an advisory body.

Wakabayashi: It depends how you look at it. Let me give some observations from my three terms on BC. I have observed guidance. But, I have never seen an EB proposal rejected. For all practical purposes, BC works as planned. But I can see that if there is a BC rejection of EB decision, we would be in trouble. So the articles do need to be changed.

Tanaka: Let me expand on what would happen if there's a BC rejection of an EB decision. If the two boards have a difference of opinion, there's no provision in the articles over what to do. So EB chair cannot do anything.

Wakabayashi: In which case, why not have provisions for that rather than change S19?

Tanaka: We can delete S19. It's not practical to add in other provisions for conflict situations. There hasn't been a problem thus far, but that's by luck. This came to light because union members were on BC.

Wright: Sorry I came late. If we delete S19 who has power? Shouldn't the larger body should have power (analogy with the UK parliamentary system).

Tanaka: According to Japanese law the BC advises and the EB has executive power.

Wright: So need the best EB. I remember in the past there were some discussions about investment. The EB got their way, but what happens if the EB makes mistakes? Should there be a minimum number of members on EB. What happens if friends just elect friends onto the board.

Tanaka: The EB chair is responsible for appropriate management. EB checks the board chair, and there are also auditors. The auditors have responsibility. In the constitution, BC are not required to check the work of the EB chair. If the EB has mismanaged, EB members are legally liable.

Wright: But who can sue the Board?

Tanaka: Auditors can also advise the EB chair not to commit illegal acts. Auditors can file suits.

Wright: Is this strong enough to stop EB from going ahead on unwise but legal projects?

Tanaka: I agree with your point, but that's not the role of BC.

Wright: So we are a voice without power?

Tanaka: Yes.

Wright: I hope the BC's opinions are respected.

Mernin: I have been here for two years. I have had the same questions about BC. I didn't understand its role. I see it more now. But as a school we need to have decisive management. I hear your point about checks on the decision makers. But, we do not need drama over the respective roles of the boards.

Seaton: No comment at this point

Neilsen: There's a contradiction because there are two decision bodies rather than one. Under the proposed revision, the BC is losing its oversight mechanism. So, what's the point of BC? We talk but the decisions are already made. Will this get us into trouble in the future? There are various big decisions about buildings coming up. If we do agree to remove S19, then the teachers can attend BC, right?

Tanaka: Yes

Kaufmann: Have been on the BC and/or EB for over 22 years. I only know HIS, but then when the new union was formed I learned what we do is not normal. But looking at the legalities, S19 needs to be changed. There have been times when EB work has been slowed by the constitution. We need to be "normal" under the law. We can discuss checks and balances. I agree with Tanaka. EB can listen to BC and should.

Tanaka: People are worried about what happens if the EB is out of control after S19 is deleted. Private school law suggests having an accountant as an

auditor. HIS already does this, but it's only once a year. Therefore, it's better to have other entities to check school management. But such professionals cost money. It could be contradictory to use money earmarked for children in that way. Ways of getting more external checks and balances can be discussed. But, it is still irregular for BC to have more power.

Katayama: I have been on BC for 9 years and EB for 7 years. I have been impressed with the democratic nature of things. I didn't know of the legality issues. It is a good thing that EB could be checked if it goes down the wrong path. It is good to have BC asking questions and then have those views sent back to the EB.

Tanaka: That's the ideal.

Halversen: What will happen to BC role regarding who gets to serve on EB?

Tanaka: What happens if the chair of EB is rejected by BC? This is the nejire kokkai ("twisted parliament"). HIS is in trouble.

Katayama: There is a nominating committee.

Neilsen: But what is the composition of the nominating committee?

Katayama: They draw up a short list of nominees. BC agrees on who would be a good person. Up to now BC has had final say on nominations.

Ratzliff: Value of BC. First, many private schools would have an AGM, but the BC fills that role (twice a year) at HIS. Second, we spot people who have expertise within the community who could then move to EB. Third, we rely on BC to fill committee roles for EB committees. Therefore BC members can be involved in governance as members of committees.

Nikel: Regarding legal responsibility, every EB member has responsibility and can be sued. BC members cannot be sued.

Halversen: As BC members we can still vote and express disapproval, but this is not binding on the EB, right?

Neilsen: Then there is the problem of slowing down the system (only two BC meetings a year).

Seaton: Based on my experience in EB committees, teachers have various voices in the committees e.g Board and Grounds.

Katayama: I always feel at BC meetings that I am checking the EB is not going off at a tangent. We have various discussions, so it's always worth doing.

Tanaka: I agree. The role of BoC is to receive reports. [Reading from private school law]. "BC is an advisory body. Its role is to state opinions, answer questions, and receive reports."

Neilsen: We can resolve the problem of union members on BC by making this change to S19.

Katayama: If we remove S19 do we need to replace it with something?

Tanaka: Before next time let's work out which parts of S19 to put into S20. I will prepare a document for next time.

Katayama: There's no vote today, but are there things that we can move forward on today? Our next meeting is in November so we need to have things in place for that.

[Coffee Break]

Halversen: Feel free to leave if necessary, but the meeting is open for general comments.

Upcoming meetings agreed:

Next BC meeting: Wednesday November 8 @ 19:00

Next EB meeting: Wednesday November 8 @ 17:00

Neilsen: If the article is removed, when does it go into effect?

Ratzliff: At the next meeting. Then the revised constitution is submitted to the government.

Katayama: Let's discuss the document sent by Tobe.

Tanaka: His comments are based on a misunderstanding, so there is no point in responding.

Neilsen: Will we see any revised draft of S19 before the next vote?

Ratzliff: Yes, it will be sent out 2 weeks before the next meetings.

Neilsen: I would like BC to have a say on big budget things e.g. buildings.

Seaton: How about a fixed day twice a year for BoC + ExB meetings at which EB members are present to receive advice directly from BC. For long term agendas and strategies, BC can provide good input.

Tanaka: I agree. Joint meetings can be included not as part of the constitution but as part of HIS practice.

Katayama: It will be good to have long term strategic discussions with both EB and BC.

Closing statement: Tanaka will provide documents in preparation for the next meeting.

Meeting adjourned @ 21:15

Minutes by Philip Seaton, September 26, 2017.