

J. Y. Interpretation No. 702 (July 27, 2012) \*

【Lifetime disqualification from teaching due to conduct that is inconsistent with teachers' morals and dignity】

**ISSUE:** If a person commits an act that is inconsistent with teachers' morals and dignity, the Act Governing Teachers prohibits him/her from teaching again in his/her lifetime and ends his/her employment if he/she is currently employed as a teacher. Is such a provision unconstitutional ?

**RELEVANT LAWS:**

Article 15, 23, 158 of the Constitution ( 憲法第十五條、第二十三條、第一五八條 ) ; J. Y. Interpretations Nos. 521, 545, 584, 649, and 659 ( 司法院釋字第五二一號、第五四五號、第五八四號、第六四九號、第六五九號解釋 ) ; The Act Governing Teachers as amended and promulgated on November 25, 2009: Article 11; Article 14, Paragraph 2; Article 14, Paragraph 1, Subparagraph 6; Article 14, Paragraph 3; Article 17 ( 教師法第十一條、第十四條第二項、第十四條第一項第六款、第十四條第三項、第十七條 ( 中華民國九十八年十一月二十五日修正公布 ) ) ; The Act Governing Teachers as amended and promulgated on January 4, 2012: Article 14, Paragraph 1, Subparagraph 7; Article 14, Paragraph 3 ( 教

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\* Translated by Chi Chung.

\*\* Contents within frame, not part of the original text, are added for reference purposes only.

師法第十四條第一項第七款、第十四條第三項（一〇一年一月四日修正公布）；Articles 20 and 21 of the University Act（大學法第二十條、第二十一條）；Article 31 of the Act Governing the Employment of Teachers（教育人員任用條例第三十一條）；Articles 4 and 6 of the Regulations on the Evaluation of the Teachers Working at Public High Schools, Public Junior High Schools, and Public Elementary Schools（公立高級中等以下學校教師成績考核辦法第四條、第六條）；The Regulations Establishing Committees for the Evaluation of the Teachers Working at Public High Schools, Public Junior High Schools, and Public Elementary Schools（高級中學以下學校教師評審委員會設置辦法）。

**KEYWORDS:**

Right to work（工作權），freedom to choose one's vocation（職業選擇自由），subjective requirements (or qualifications)（主觀條件），Act Governing Teachers（教師法），principle of clarity（明確性原則），principle of proportionality（比例原則），incapable teachers（不適任教師），teachers' morals and dignity（師道）。\*\*

**HOLDING:** Article 14, Paragraph 1 of the Act Governing Teachers, as amended and promulgated on November 25, 2009, provides that “a teacher may not be dismissed by his/her employer unless one of the following conditions is satis-

**解釋文：**中華民國九十八年十一月二十五日修正公布之教師法第十四條第一項規定，教師除有該項所列各款情形之一者外，不得解聘、停聘或不續聘，其中第六款（即一〇一年一月四日修正公布之同條第一項第七款）所定

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fied.” One such condition, as provided in Article 14, Paragraph 1, Subparagraph 6, is met when a relevant government agency finds a teacher has committed an act that is inconsistent with teachers’ morals and dignity. (Subparagraph 6 became Subparagraph 7 when the Act Governing Teachers was amended on January 4, 2012.) Article 14, Paragraph 1, Subparagraph 6 is consistent with the constitutional requirement that the meaning of the law be clear to the public. Article 14, Paragraph 3 of the Act Governing Teachers requires that schools, after reporting to the government agency in charge of education administration and securing its approval, dismiss teachers whom a relevant government agency has found to have committed an act inconsistent with teachers’ morals and dignity. (Article 14, Paragraph 3 was not fundamentally changed when the Act Governing Teachers was amended on January 4, 2012.) Article 14, Paragraph 3 restricts the right to work, but is consistent with the principle of proportionality guaranteed by Article 23 of the Constitution and the constitutional protec-

「行為不檢有損師道，經有關機關查證屬實」之要件，與憲法上法律明確性原則之要求尚無違背。又依同條第三項（即一〇一年一月四日修正公布之同條第三項，意旨相同）後段規定，已聘任之教師有前開第六款之情形者，應報請主管教育行政機關核准後，予以解聘、停聘或不續聘，對人民職業自由之限制，與憲法第二十三條比例原則尚無牴觸，亦與憲法保障人民工作權之意旨無違。惟同條第三項前段使違反前開第六款者不得聘任為教師之規定部分，與憲法第二十三條比例原則有違，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

tion of the right to choose an occupation. However, the prohibition on teaching after committing an act inconsistent with teachers' morals and dignity contradicts the principle of proportionality guaranteed by Article 23 of the Constitution and shall become invalid within a year of the date on which this interpretation is announced.

**REASONING:** Article 15 of the Constitution protects the right to work, including the right to choose and pursue an occupation. If the law imposes some conditions on the right to choose and pursue an occupation, such conditions constitute restrictions on those rights. The principle of clarity requires that such restrictions be set out clearly in laws and regulations. Moreover, the principle of clarity allows the legislature, after weighing the complexity of society and the propriety of application in specific cases, to use general terms in the statutory language as long as the meanings of such terms are (a) not difficult to understand, (b) foreseeable for the people affected, and (c) subject to judicial review. (Inter-

**解釋理由書：**憲法第十五條規定，人民之工作權應予保障，其內涵包括人民之職業自由。法律若課予人民一定職業上應遵守之義務，即屬對該自由之限制，有關該限制之規定應符合明確性原則。惟立法者仍得衡酌法律所規範生活事實之複雜性及適用於個案之妥當性，適當運用不確定法律概念或概括條款而為相應之規定，苟其意義非難以理解，且為受規範者所得預見，並可經由司法審查加以確認，即不得謂與前揭原則相違（本院釋字第五二一號、第五四五號、第六五九號解釋參照）。另對職業自由之限制，因內容之差異，在憲法上有寬嚴不同之容許標準，若所限制者為從事一定職業所應具備之主觀條件，則需所欲實現者為重要之公共利益，且其手段屬必要時，方得為適當之

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pretations Nos. 521, 545, and 659) The question of whether a particular restriction on the right to choose and pursue an occupation is constitutional is governed by various standards. Whether a particular standard governs the constitutionality of a restriction depends on the content of the restriction. If a particular restriction sets out subjective requirements for an occupation, the principle of proportionality, as provided for in Article 23 of the Constitution, requires the purpose to be important to the public interest and the means to be necessary. (Interpretations Nos. 584 and 649)

Article 14, Paragraph 1, Subparagraph 6 of the Act Governing Teachers, as amended on November 25, 2009, provides that “a teacher may not be dismissed by his/her employer unless... he/she is found by a relevant government agency to have committed an act that is inconsistent with teachers’ morals and dignity.” (hereafter referred to as the First Disputed Provision) (Subparagraph 6 became Subparagraph 7 after the Act Governing Teachers

限制，始符合憲法第二十三條比例原則之要求，迭經本院解釋在案（本院釋字第五八四號、第六四九號解釋參照）。

九十八年十一月二十五日修正公布之教師法第十四條第一項第六款規定：「教師聘任後除有下列各款之一者外，不得解聘、停聘或不續聘：……六、行為不檢有損師道，經有關機關查證屬實。」（一〇一年一月四日修正增訂同條第一項第三款，原條文移列同項第七款；下稱系爭規定一）其以「行為不檢有損師道，經有關機關查證屬實」為解聘、停聘或不續聘之構成要件，係因行為人嚴重違反為人師表之倫理規範，致

was amended on January 4, 2012.) The First Disputed Provision was enacted because an individual had violated the ethical norms so seriously that it was no longer appropriate for him to be employed as a teacher.

As it is impossible for the Legislative Yuan to set out comprehensive rules for ethical norms and the circumstances of every violation, the Legislative Yuan chose to set out the rule using “broad legal concepts” (*unbestimmte Rechtsbegriffe*). The specific meanings of such broad legal concepts may be spelled out in each case by institutions that are properly constituted and unbiased according to both their professional knowledge and the general consensus of society. An example of such an institution is the teacher evaluation committee of each school, established by Article 11 and Article 14, Paragraph 2 of the Act Governing Teachers; Article 20 of the University Act; and the Regulations Establishing Committees for the Evaluation of the Teachers Working at Public High Schools, Public Junior High

已不宜繼續擔任教職。

惟法律就其具體內涵尚無從鉅細靡遺詳加規定，乃以不確定法律概念加以表述，而其涵義於個案中尚非不能經由適當組成、立場公正之機構，例如各級學校之教師評審委員會（教師法第十一條、第十四條第二項、大學法第二十條及高級中等以下學校教師評審委員會設置辦法參照），依其專業知識及社會通念加以認定及判斷；

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Schools, and Public Elementary Schools .

In addition, through education and the many statutes, regulations, and voluntary commitments made by members of the teaching profession (Article 17 of the Act Governing Teachers; the Regulations on the Evaluation of the Teachers Working at Public High Schools, Public Junior High Schools, and Public Elementary Schools; and the Self-Regulation Commitments Made by All Teachers in the Nation), teachers are able to foresee whether a particular act or omission is inconsistent with teachers' morals and dignity. In addition, many cases in which teachers have behaved in a way inconsistent with the morals and dignity of their profession have arisen in practice, including engaging in sexual harassment, corporal punishment, cheating on examinations, and plagiarism. These cases allow teachers to foresee whether a particular act or omission is inconsistent with the morals and dignity of their profession.

而教師亦可藉由其養成教育及有關教師行為標準之各種法律、規約（教師法第十七條、公立高級中等以下學校教師成績考核辦法、全國教師自律公約等參照），預見何種作為或不作為將構成行為不檢有損師道之要件。且教育實務上已累積許多案例，例如校園性騷擾、嚴重體罰、主導考試舞弊、論文抄襲等，可供教師認知上之參考。

In conclusion, the meaning of “inconsistency with teachers’ morals and dignity,” as provided for in the First Disputed Provision, is (a) not difficult to understand, (b) foreseeable for the people who are affected, i.e., teachers, and (c) subject to judicial review. Therefore, the First Disputed Provision is consistent with the principle of clarity. However, in light of the clear patterns established in cases of behavior inconsistent with teachers’ morals and dignity, these types of behavior should be set out clearly in a statute to ensure the highest level of foreseeability. Such a statute should be reviewed and amended as society changes over time.

Article 14 of the Act Governing Teachers sets out the legal effects of the First Disputed Provision. The first half of Article 14, Paragraph 3 prohibits any teacher who commits any act or omission inconsistent with teachers’ morals or dignity from being hired as a teacher again in his/her lifetime. (The same is provided for in the first half of Article 14, Paragraph 3 of the Act Governing Teachers as

綜上，系爭規定一之行為不檢有損師道，其意義非難以理解，且為受規範之教師得以預見，並可經由司法審查加以確認，與法律明確性原則尚無違背。惟所謂行為不檢有損師道之行為態樣，於實務形成相當明確之類型後，為提高其可預見性，以明文規定於法律為宜，並配合社會變遷隨時檢討調整，併此指明。

前開教師法第十四條就有系爭規定一情形，以同條第三項前段規定：「不得聘任為教師」（一〇一年一月四日修正公布之教師法第十四條第三項前段之意旨相同，以下即以該前段適用於系爭規定一之情形為系爭規定二）；其已聘任者，則以後段規定：「應報請主管教育行政機關核准後，予以解聘、停聘或不續聘」（一〇一年一月四日修正公布之教師法第十四條第三項後段之意旨相

amended on January 4, 2012, which is referred to hereafter as the Second Disputed Provision.) The second half of Article 14, Paragraph 3 obliges all schools to fire any teacher who commits any act or omission inconsistent with teachers' morals or dignity. (The same is provided for in the second half of Article 14, Paragraph 3 of the Act Governing Teachers as amended on January 4, 2012, which is referred to hereafter as the Third Disputed Provision.) In other words, any teacher fired by any school for violating the First Disputed Provision may not be hired by any school as a teacher in his/her lifetime.

The obligation of a school to fire a teacher for violating the First Disputed Provision and the prohibition against employing the individual again as a teacher are subjective restrictions on the freedom to choose one's occupation. The question of whether such restrictions are consistent with the principle of proportionality depends, first, on the question of whether the restrictions serve the public interest in an important way. Article 158 of the

同，以下即以該後段適用於系爭規定一之情形為系爭規定三)。以致因系爭規定一之原因而被解聘、停聘或不續聘為教師者，亦不得再次聘任。使教師於有系爭規定一之情形，不僅應受三種強制退出現任教職方式之一之處置，且終身禁止再任教職。

不論無法保留教職或無法再任教職，均屬對人民職業選擇自由所為主觀條件之限制，是否符合比例原則，首應審查其所欲實現之公共利益是否重要。憲法第一百五十八條宣示之教育文化目的，包括發展國民之「自治精神」及「國民道德」，其意無非以教育為國家百年大計，為改善國民整體素質，提升國家文化水準之所繫，影響既深且遠。

Constitution of the Republic of China admonishes the government to formulate and realize educational and cultural policies that, among other things, develop the spirit of self-governance and morals among the citizenry. Such an admonition is recognition of the foundational importance of education, as education is the key to improving the overall quality of the citizenry and raising the level of the culture of a nation.

The Second and Third Disputed Provisions, requiring all schools to fire any teacher whose conduct is inconsistent with teachers' morals and dignity, are promulgated for the purpose of ensuring students' right to receive good education and realizing the admonition provided for in the Constitution of the Republic of China. In other words, the purpose of the Second and Third Disputed Provisions is indeed important to the public interest and therefore a legitimate purpose. (See also Interpretation No. 659)

系爭規定二、三明定教師於行為不檢有損師道時，即可剝奪其教職，係為確保學生良好之受教權及實現上開憲法規定之教育目的，其所欲維護者，確屬重要之公共利益，其目的洵屬正當（本院釋字第六五九號解釋參照）。

Respecting teachers is a long tradition of our country, and students respect teachers for more than their knowledge and skills. If a teacher's conduct seriously deviates from the common moral standards and good customs of the majority of society, he/she sets a bad example both for his/her students and for society. The Second and Third Disputed Provisions impose serious punishment on teachers whose conduct is inconsistent with teachers' morals and dignity in order to achieve the aforementioned purposes. As to the questions of whether the means are necessary and whether the restrictions are too strict, the Second and Third Disputed Provisions should be examined separately.

Under the existing law, there are various punishments for teacher misconduct. For example, Article 4 of the Regulations on the Evaluation of the Teachers Working at Public High Schools, Public Junior High Schools, and Public Elementary Schools punishes any teacher who commits minor misconduct by freezing his/her salary level. In addition, Article 6

我國素有尊師重道之文化傳統，學生對教師之尊崇與學習，並不以學術技能為限，教師之言行如有嚴重悖離社會多數共通之道德標準與善良風俗，若任其擔任教職，將對眾多學子身心影響至鉅；其經傳播者，更可能有害於社會之教化。系爭規定二、三對行為不檢有損師道之教師施以較嚴之處置，自有助於上開目的之達成。至於手段是否必要與限制是否過當，系爭規定二、三則有分別審究之必要。

現行教育法規對於教師行為不檢之各種情形，已多有不同之處置，以公立高級中等以下學校教師成績考核辦法而言，其第四條即有就「品德生活較差，情節尚非重大」為留支原薪，同辦法第六條就「有不實言論或不當行為致有損學校名譽」為申誡，就「有不當行為，致損害教育人員聲譽」為記過，或就「言行不檢，致損害教育人員聲譽，

punishes any teacher whose false speech or misconduct harms the school's reputation by formal admonition, any teacher who commits misconduct that harms the reputation of the teaching profession as a whole by making formal records of such misconduct, and any teacher who commits misconduct that seriously harms the reputation of the teaching profession as a whole by making formal records of such *serious* misconduct. The misconduct punishment system indicates that the nature of a teacher's misconduct has to be very serious to constitute "an act that is inconsistent with teachers' morals and dignity." As a result, teachers' misconduct must be serious enough to amount to "adversely affecting teacher's morals and dignity."

The Act Governing Universities does not provide for a similar evaluation mechanism. However, through the Regulations on Teachers' Evaluation, a self-governance mechanism authorized by Act 21 of the Act Governing Universities, various types of punishment also exist for teachers' misconduct that does

情節重大」為記大過等不同程度之處置，顯然「行為不檢」之情節須已達相當嚴重程度，始得認為構成「有損師道」。

大學法雖未規定類似之成績考核制度，但通過授權各校訂定之教師評鑑辦法（大學法第二十一條可參），對於教師行為不檢但未達有損師道之情形，亦可以自治方式為不同之處置。另按教師法第十四條第三項之規定，有同條第一項所列與行為不檢相關之事由者，既生相同之法律效果，解釋上系爭規定一

not reach the level of “adversely affecting teacher’s morals and dignity.” In addition, Article 14, Paragraph 3 of the Act Governing Teachers provides for the same legal consequences for all the types of misconduct listed in Article 14, Paragraph 1. Therefore, the misconduct referred to by the First Disputed Provision should be as serious as the other types of misconduct listed in Article 14, Paragraph 1. The Third Disputed Provision, which requires schools to fire teachers who commit serious misconduct, is a restriction as to the subjective requirements (or qualifications) that is the most lenient measure to achieve the same purpose. Therefore, the provision is consistent with the principle of proportionality as provided for in Article 23 of the Constitution and does not violate the constitutional protection of the right to work.

The Second Disputed Provision prohibits all schools from rehiring a teacher who has committed misconduct and therefore deprives such teachers of any opportunity to become a good teacher

之嚴重性自亦應達到與其他各款相當之程度，始足當之。故系爭規定三對行為不檢而有損師道之教師，予以解聘、停聘、不續聘，其所為主觀條件之限制，並無其他較溫和手段可達成同樣目的，尚未過當，自未抵觸憲法第二十三條之比例原則，與憲法保障人民工作權之意旨尚無違背。系爭規定二限制教師終身不得再任教職，不啻完全扼殺其改正之機會，對其人格發展之影響至鉅。倘行為人嗣後因已自省自新，而得重返教職，繼續貢獻所學，對受教學生與整體社會而言，實亦不失為體現教育真諦之典範。

系爭規定二一律禁止終身再任教職，而未針對行為人有改正可能之情形，訂定再受聘任之合理相隔期間或條件，使客觀上可判斷確已改正者，仍有機會再任教職，就該部分對人民工作權

and adversely affects the development of their character. If the teacher, after being punished by the school and relevant authorities, repents and can become a good teacher, such a transformation would exemplify the benefits of education for students and society as a whole. However, the Second Disputed Provision prohibits any such teacher from teaching again in his lifetime without providing for any exception under which such an individual can teach again, after the passage of a reasonable period of time and after satisfying certain conditions that indicate his/her repentance. The lack of such an exception restricts the right to work beyond the extent necessary; therefore the provision is inconsistent with the principle of proportionality as provided for in Article 23 of the Constitution. The relevant authorities should review and revise the Second Disputed Provision within one year of the promulgation of this interpretation. If the relevant authorities fail to complete such a review and revision within one year of the promulgation of this interpretation, the Second Disputed Provision loses its

之限制實已逾越必要之程度，有違憲法第二十三條之比例原則。有關機關應依本解釋意旨於本解釋公布之日起一年內完成系爭規定二之檢討修正，逾期未完成者，該部分規定失其效力。

legal effect from that date.

Justice Chang-Fa, Lo filed concurring opinion.

Justice Yeong-Chin, Su filed concurring opinion in part and dissenting opinion in part.

Justice Chen-Shan, Li filed dissenting opinion in part.

Justice Mao-Zong, Huang filed dissenting opinion in part.

Justice Pai-Hsiu, Yeh filed dissenting opinion in part.

Justice Shin-Min, Chen filed dissenting opinion in part

### EDITOR'S NOTE:

Summary of facts: Article 14, Paragraph 1 of the Act Governing Teachers, as amended and promulgated on November 25, 2009, provides that "a teacher may not be dismissed by his/her employer unless one of the following conditions is satisfied." One such condition is, as provided in Article 14, Paragraph 1, Sub-Paragraph 6, that a teacher is found by a relevant government agency to have committed

本號解釋羅大法官昌發提出之協同意見書；蘇大法官永欽提出之部分協同部分不同意見書；李大法官震山提出之部分不同意見書；黃大法官茂榮提出之部分不同意見書；葉大法官百修提出之部分不同意見書；陳大法官新民提出之部分不同意見書。

### 編者註：

事實摘要：98.11.25 修訂之教師法第 14 條第 1 項規定，教師聘任後，除有該條各款所列情形外，不得解聘、停聘或不續聘。其中第 6 款規定「有行為不檢有損師道，經有關機關查證屬實」者，亦屬之（101.1.4 修正移列為第 7 款）。又有前述第 1 項第 6 款之情形，依同條第 3 項前段規定，終身不得聘任為教師；其已聘任者，依同項後段規定，應報請主管機關核准後，予以解聘、停

an act inconsistent with teachers' morals and dignity. (Sub-Paragraph 6 became Sub-Paragraph 7 when the Act Governing Teachers was amended on January 4, 2012.) The second half of Article 14, Paragraph 3 of the Act Governing Teachers requires that schools, after reporting to the government agency in charge of education administration and securing its approval, dismiss teachers found by a relevant government agency to have committed an act inconsistent with teachers' morals and dignity. The first half of Article 14, Paragraph 3 of the Act Governing Teachers prohibits such persons to teach again in their lifetime.

The applicant was a married male who had taught at a public senior high school. While employed as a teacher, he had served as a counselor at the summer camp held by his school in July 2009, during which time he had been accused of raping a student. After an investigation, his school terminated his employment effective September 2010 on account of violating Article 14, Paragraph 1, Sub-

聘或不續聘。

聲請人為公立高中已婚教師，於 98 年 7 月間該校暑期營隊活動擔任輔導員，被檢舉於活動期間對服務學員發生疑似違反其意願之性行為。該校隨即調查，調查結果並無性侵害情事，嗣該校教師評審委員會以上述第 1 項第 6 款規定為由，決定自 99 學年度起不予續聘；教育部亦核准該處分。聲請人不服，經申復、申訴及行政訴訟，均遭駁回，乃認上述各規定違反憲法比例原則及工

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Paragraph 6 of the Act Governing Teachers. When the Ministry of Education affirmed his school's decision to terminate his employment, the applicant duly objected and litigated his school's decision in administrative courts. After exhausting all administrative remedies, the applicant applied for a Constitutional Interpretation, asserting that the provisions aforementioned were inconsistent with the principle of proportionality as provided for in the Constitution and the right to work protected by the Constitution.

作權保障，聲請解釋。