

FEDSAS Comments on the Draft School Sport Policy for Schools in South Africa

1. Introduction

FEDSAS acknowledges receipt of the Draft School Sport Policy for Schools in South Africa. We appreciate the opportunity provided to us to comment on the contents of the draft.

2. Realities of school sport

Our submission is that policy must follow upon a very thorough determination of at least the following:

- 2.1 Existing law, policies, practices and procedures;
- 2.2 Realities relating to a number of aspects, such as availability, capabilities and accreditation of coaches; existing infrastructure, resources, equipment; funding and potential future funding;
- 2.3 The capacity of the system (consisting of 24 365 schools and approximately 700 000 people – teachers, school governors and departmental officials) to implement the policy;
- 2.4 Training and accreditation requirements of and for coaches;
- 2.5 Potential risks that may undermine or prevent successful implementation of the policy;
- 2.6 A proper delineation of legal competencies and of the implications of the principle of legality and the rule of law in general.

We are unaware of results of any study in this regard.

For the successful determination and/or implementation of any policy, it is of critical importance that the policy must actually be implementable. This presupposes that the policy maker/s know and understand existing realities, legal requirements and any potential risks to successful implementation of the policy. If this has not been established and addressed, execution and implementation of the policy is doomed.

The problem (particularly in the context of the South African schooling context) is quite simple: structures established in terms of the draft policy will be rendered absolutely powerless when confronted by the stark realities of schools (and individuals) without any infrastructure, capacity or funding to implement the policy. Most importantly, if the authority of any such structure established in terms of the policy, lacks juristic competency, jurisdiction or mandate to implement whatever it wishes to, it is in fact rendered powerless and meaningless. This poses a real danger and potential embarrassment. In this context (contrary to public perception) it must be remembered that policy does not constitute law and it is therefore unenforceable.

To be implementable (even on the basis that it does not constitute a legally enforceable instrument) any potential future policy must consider the following realities:

1. Learners are coached by volunteers/parents and teachers and in many cases the volunteers/parents are in the majority

The policy determines that teachers must “avail themselves for extra-curricular activities”. We do agree with the notion that educators must make themselves available for extra-curricular activities in pursuance of IQMS performance standards, but there is no provision for compensation should educators make themselves available outside the compulsory 1800 hours. It is also not explained to what extent games and sport at schools should be related to IQMS performance standards in relation to other extra-curricular activities such as e.g. art, music and culture.

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The policy must take into account that there are schools with a shortage of educators and educators will have to make themselves available for extra-curricular activities over and above their 1800 hours. And the teachers do not always have the necessary skills or expertise to coach properly. School sport involves physical activity and any kind of physical activity entails numerous risks with potential liability. If learners are to be subjected to sporting activities under the guidance, training, supervision, etc of untrained, unskilled or reckless people, such liability can even include criminal liability.

The reality also is that the majority of teachers in the country do not coach any sport, do not have the required knowledge and/or skills to coach sport and will probably fail/refuse to do so in any event. The development and implementation of any policy in this regard is doomed if this reality is not recognised and addressed before any attempt at development and/or implementation of the policy is made.

Another aspect that requires clarity is the issue of training of teachers and/or other coaches. It is common cause that the present teacher training institutions do not make provision for the training of teachers in physical education or sport programmes. Some kind of qualification or accreditation of sports coaches will be required as coaching of sport is an art of a very technical nature, requiring knowledge and skills relating not only to physical ability of the developing human body, but also of aspects such as nutrition, medical conditions, fitness, and the like.

In the cases where schools do have a shortage of appropriately knowledgeable or skilled teachers, volunteers or parents will and already do coach the teams and individual learners. Cognisance must be taken of the fact that such volunteers/parents are appointed by school governing bodies that have authority over them. No other structure can have authority over them.

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2. Infrastructure and resources – the majority of schools have no resources or infrastructures.

The draft policy makes no mention of the provision of resources from the DBE or Provincial Sport and Recreational Departments (PSRD). The policy merely states that the DBE and Sport and Recreation South Africa shall mobilise resources (paragraph 6(f)). It does not state where the resources will be obtained from in the first place or how such resources will be funded.

Once again, if there are no resources such as appropriate tracks, fields, buildings, equipment or whatever resources may be required to implement any policy, the policy is doomed.

The majority of public schools in South Africa do not have funds to either obtain the necessary resources or to maintain the required infrastructure.

3. Funding

The draft policy makes no provision for funding from the DBE or Provincial Sport and Recreational Departments (PSRD). The simple fact is that, at schools where any extra-curricular activities such as sport are offered, this is done at the exclusive expense of parents or donors. In most cases competitive sports at schools require travelling and transport of learners, sports clothing, equipment, facilities, resources and funding. All of this is presently provided by schools themselves, again within the local school's budget and at the exclusive expense of parents.

Under paragraph 11 regarding funding, the draft policy states that funding will follow on roles and responsibilities of the DBE and PSRD but under paragraph 9 (Roles and

Responsibilities of Stakeholders), the SGB's are burdened with the responsibility to draw up the budget and provide for physical education and school sport activities. No such responsibility is given to either the DBE or PSRDs. The majority of schools in the country are no fee schools and do not have the capacity or ability to draw up such budgets or raise funds for such activities. It simply does not make any sense to develop a policy that will be brought to naught by the realities of the schooling situation.

In terms of the provisions of section 38 of the South African Schools Act, a public school governing body has to prepare an annual school budget, which has to be approved by the majority of parents present at an annual parent meeting.

Therefore sports as extra-curricular activities have to be funded from parents' contributions and possibly other resources at the schools.

Should the public school concerned present sport as extra-curricular activity, it should obviously provide for the funding of school sport in this budget.

It is therefore ultimately the parents' decision whether or not to make available funds for school sports. When approving the budget, parents are also entitled to lay down certain conditions under which such sports budget is approved, for example:

- the kinds of sport;
- the amount to be spent on transport;
- the amount, if any, to be spent on membership or affiliation fees of sports governing bodies;
- the competitions in which learners are to participate; and
- Where and against whom they are to compete.

Given the astronomical costs associated with especially learner transport for school sports, a responsible school governing body would tread lightly when handling this part of the school budget, and will play open cards with parents in this regard. It is after all the parents who will have to pay for it. The simple reality is that outside agencies will not be able to dictate the terms and conditions of offerings of sport and sport codes to schools and participation of learners in such activities unless such agencies are prepared to fully fund these activities.

One fact remains: Provincial education departments do not provide the school governing bodies in question with funding for sports (or any other extra-curricular activities) at their respective schools.

If sport is to be presented as an extramural and/or extra-curricular activity in terms of a policy developed by the Ministry or the DBE, the Ministry or DBE must provide sufficient funding for the proper implementation thereof. This is not done in the policy. It appears as if the draft policy confuses physical education with the school sport programme. The reality is that school sport cannot merely be regarded as an extension of physical education and therefore part of the school curriculum. Incidentally, we are also not aware of any provision for physical education in the present curriculum. Even if such provision had been made, there is no way in law that any minor child can be compelled to participate in any physical activities without the consent of its parent/s. Naturally this also applies to participation in “games” (whatever such games might be) or school sport.

3. Conceptualisation and contents of the draft policy

FEDSAS is strongly supportive of a holistic approach to education. The academic programme remains the core business of a school and, for that matter, the DBE. However, FEDSAS believes that a holistic approach to education also entails the

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opportunity to participate in sport and cultural activities and other activities such as art and music. Every single aspect of activities other than the core curricular activities at schools are funded exclusively by the schools themselves and this mostly through parental contributions.

This principle forms the basis of a fundamental and foundational understanding of the role and place of sport and other extra-curricular activities at schools within the concept of a differentiated state under the rule of law, such as ours.

It is not clear on what basis the DBE or PEDs, who do not hold any discernable legal mandate for involvement in activities outside of the professional academic programme of schools, can develop policies relating to aspects outside of same. Even if such mandate existed, the question arises why the focus is on sports and not the other aspects of a holistic upbringing of children. The statement that the Minister of Basic Education is mandated by the Constitution and SASA to “ensure that all learners have access to quality school sport programme” (sic) is simply not sound in law or legally justifiable. The same applies to the statements relating to the role of the Minister of Sport and Recreation. These statements place the whole exercise on an unsound footing and may undermine the good intentions of the Ministries.

The Minister calls for comment to the policy in terms of the provisions of the National Education Policy Act (NEPA). It appears rather significant that no mention is made of NEPA under the heading **CONSTITUTIONAL, LEGISLATIVE AND POLICY MANDATES** in the draft policy itself. It seems debatable whether the Minister is in fact mandated to determine a policy on extra-curricular matters under the provisions of NEPA.

The existence and establishment of governance structures other than those provided for in SASA for the control of aspects of school activities must also be questioned within the confines of a constitutional dispensation under the rule of law. In terms of the law, schools (as juristic persons) and individuals can associate and disassociate with whomever they wish to. It is only on this basis that sports federations and other agencies involved in sport (including state departments) can be involved in sport in schools. The policy fails to take cognisance of this fact.

This underlying defect in conceptualisation makes it unnecessary to deal with each and every detail contained in the draft policy. The reason is simple: if the underlying juristic conceptualisation or foundation is flawed, the draft policy cannot be rescued by mere good intentions or any specifics contained in it.

4. Conclusion

Whilst FEDSAS appreciates and supports the principle of a well organised school sport environment for learners, we question the rationale behind attempts to publish a policy to regulate the delivery of school sport for all learners on the basis of a lack of legality. Sport and recreational activities of learners are not core business of the DBE and the DBE provides no support, funding or assistance to schools for such activities. We respectfully request the Minister to establish a task team consisting of experienced school governors, departmental officials and teacher union members to thoroughly re-consider the contents of the policy and to consult as widely as possible on the legal, practical and other requirements and implications for and of such policy. A necessary prerequisite for such consultation will obviously be a full and proper analysis of the aspects referred to in our introductory comment. Only once this has been done, other role-players such as SRSA and sports federations should also be consulted.

We must also express our serious reservations about the involvement of agencies, structures and institutions in affairs related to schools and clear intrusion into the field of competence of SGBs and departments of education.

A handwritten signature in black ink, appearing to read 'Paul Colditz', enclosed within a large, loopy oval.

Paul Colditz

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