FEDSAS comments on the Basic Education Laws Amendment Bill [B36–2010]

Introduction

FEDSAS wishes to express its sincere appreciation to the Portfolio Committee for the opportunity to submit these comments on the Basic Education Laws Amendment Bill, B36–2010.

Our approach

Our comments are limited to those clauses in the bill that have an impact on the functions of school governing bodies (SGBs). Where we do not comment on particular provisions, it is because we either support the proposed amendments or insertions, or do not have particular views on them.

Clause 6

We support the principle that there should not be any unfair discrimination in respect of the offering of official languages as subject options. However, this provision will undoubtedly be counterproductive and will have a negative impact on the promotion of multilingualism. Where schools do offer more than one additional language as subject, they do so without any support. Additional educators have to be appointed and learning and teaching material has to be acquired with schools' own funds. The state renders no support for schools' efforts to promote the offering of more languages as subjects. This lack of support makes it impossible for all but the schools in the most affluent societies to offer more than one additional language as a subject. If SGBs are to be forced to ensure that there is no discrimination with regard

to the level at which additional subjects are offered, it would necessitate the following:

- Appropriately qualified and/or experienced teachers will have to be appointed.
- Appropriate learning and teaching material will have to be developed or obtained.

All of the above will have to be funded by schools themselves.

This approach is clearly lopsided. The proposed obligation imposed upon SGBs to ensure compliance with the envisaged provision can be justified only if the required concomitant support is provided to SGBs. Failure to provide such support will simply lead to reluctance on the part of SGBs to promote the offering of additional subjects.

The solution is the drafting of provisions to the following effect:

- In accordance with the state's obligation in terms of section 6 of the Constitution, the state must provide additional funding and/or teachers to encourage schools to offer more than one additional language as subject.
- If, under these circumstances, SGBs decide to offer more than one additional language as subjects, the proposed section 6B will be appropriate.

Clause 7

FEDSAS supports this provision, but would like to propose the creation of a right of appeal for SGBs as well. At present, only the learner has a right to appeal the decision of the Head of Department to expel the learner. We propose that SGBs should be given an equal right to appeal to the Member of the Executive Council (MEC) against the Head of Department's refusal to expel a learner.

Clause 8

We support the fact that this provision seeks to clarify the existence of schools with a specialised focus, and schools for learners with barriers to learning.

There are, however, fundamental problems with the approach adopted in this proposed insertion.

Without exception, existing schools with a specialised focus (technical schools, agricultural schools, etc) are in fact 'ordinary public schools'. Importantly, this implies that their SGBs are composed in accordance with the provisions of section 23, and not section 24, of the South African Schools Act (SASA).

FEDSAS would like to propose the following three amendments to SASA in order to draw a more appropriate distinction:

- The amendment of section 12(3) to read as follows:

  A public school may be an ordinary public school, a public school that provides education with a specialised focus, or a public school that provides education to learners with barriers to learning.

- The amendment of section 23 by the inclusion of the words *or a public school that provides education with a specialised focus* following the words *of an ordinary public school* in subsection 1.

- The replacement of the words *for learners with special education needs* in the heading and subsection 1 of section 24 with the words *that provides education to learners with barriers to learning.*

If accepted, the above proposed amendments would render it unnecessary for the Minister to determine (separate) norms and standards for the funding and governance of these schools. After all, the approach of determining separate norms

and standards for the funding and governance of a separate category of school is inappropriate in an act that envisages a single and unitary schooling system, and actually causes quite the opposite, i.e. fragmentation of the system.

Clause 9

This amendment seeks to add to the functions and responsibilities of the school principal. The management of school funds is a competence that peculiarly falls under the authority of the SGB. However, the addition of a new subsection 2(h) seems like a rather disconcerting attempt by the Department to prescribe to a particular SGB. The subsection is clothed in equivocal language. It starts with the word *assist*, which creates the impression that the principal must merely assist the SGB, but then proceeds to qualify such assistance so as to include "*the provision of information relating to any conditions imposed or directions issued by the Minister, the MEC or HOD in respect of all financial matters of the school".* This is very different from assistance. Also, there clearly is no restriction on the conditions or directions that may be imposed or issued, which is strongly reminiscent of the authoritarian and undemocratic past of our country.

Significantly, the commentary provided in the accompanying memorandum on the objectives of the bill seeks to gloss over the underlying intention. It dwells only on the principal being afforded "... *greater accountability in respect of advising the Governing Body in financial matters. It is envisaged that a Principal should participate in both the executive and financial committee."*

The apparent implication of the proposed amendment is that the Department, through the principal, will be in a position to dictate to the SGB on its financial affairs.

In its most extreme interpretation, the section in its amended form could put the entire control of the school's finances in the hands of the Department, thus completely marginalising the SGB.

Clause 11

We strongly support the insertion of this new provision. However, SASA does not define the concept *school time*. We therefore propose that the term *school time* in the heading of the proposed section and in the proposed subsection 33A(1) be replaced with the term *school activities,* which are defined in section 1 of SASA as *"any official educational, cultural, recreational or social activity of the school within or outside the school premises"*.

Also, the present wording of the proposed section 33A(1) could be construed as if (i) party-political activities are only prohibited during normal school time, exposing social activities, excursions and sporting events of the school, which usually take place outside normal school hours, to party-political exploitation; and (ii) party-political activities are only prohibited at a school, likewise leaving those school activities taking place outside the school premises open to hijacking for party-political purposes. These potential pitfalls could be sidestepped by inserting the qualifying conjunction *or* in subsection 33A(1), i.e. *No party-political activities may be conducted at a school or during school activities* (assuming that *school time* has been replaced with *school activities* as proposed above). This minor adjustment would leave no room for misinterpretation.

Clause 12(b)

The accompanying memorandum is silent about the objective of inserting these provisions in SASA. *Prima facie,* there does not seem to be any rational grounds for the proposed addition.

Everyone wants communities to support schools, particularly in a financial sense. In many parts of our country, the school is in fact the centre of community life because of a lack of other structures, and the lack of capacity to establish or provide other structures. However, community organisations and corporate and financial institutions all insist on an enduring relationship with a school before they are prepared to invest in it.

By these premises, consider the following:

- To limit the use of school facilities by external parties (and thereby the relationship between a school and possible external financial contributor) to a period of 12 months at a time, as proposed in paragraph (b), may act as a deterrent to many potential long-term investors. Many schools rely heavily on such assistance from outside the school. As long as allowing the reasonable use of the facilities of the school does not interfere with its core business, there can be no justification for this provision. The Deeds Registries Act provides sufficient protection for landowners with regard to the leasing of property.

- To limit the conducting of business on school property in the manner proposed by the current wording of paragraph (c) also seems ill-conceived. Innumerable activities taking place at schools make a very positive and important contribution to education and community life. Schools that cultivate community gardens conduct business. Schools with hostels that cultivate or produce their own vegetables, fruit, meat, bread, etc, and sell any potential surplus produce to the community, conduct business. Schools with specialised foci (agriculture, technology), which, as part of in-service training, provide services to the community, conduct business. Schools that offer Hospitality Studies must

provide for in-service or practical training, and should therefore be allowed to conduct business. In order to be able to pay for their much-needed photocopying machines, some schools provide photocopying services to the public, who in many cases have no other access to such services, at a fee, thereby conducting business. Clearly, it would be detrimental to schools if this provision should be included in the law.

- As far as paragraph (d) is concerned, all sports activities are *"potentially dangerous"*. Is it envisaged that governing bodies may not even allow sport activities at schools? Restricting this provision to *hazardous or disruptive activities* will suffice.
- The proposed subsection 5 amounts to expropriation, and is completely unjustified and probably unconstitutional.

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