



Comments on Draft Provincial Policy

Name of Department:	Western Cape Education Department		
Matter: <i>(Title of Legislation)</i>	Draft Western Cape Education Department Policy on Vetting of Persons Visiting or Accessing a Public School or its Premises		
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INTRODUCTION

1. This is a joint submission made by Equal Education (“**EE**”) and the Equal Education Law Centre (“**EELC**”).
2. EE is a membership-based, democratic movement of learners, parents, teachers and community members striving for quality and equality in education in South Africa. Core to EE’s work is identifying and analysing systemic and localised problems affecting the quality of education being provided to learners throughout South African schools and undertaking strategic actions to remedy these problems.
3. The EELC is a public interest law centre which specialises in education law and works closely with its client, EE, in pursuit of an equal education system and quality education for all
4. EE and the EELC welcome the publication by the Western Cape Education Department (“**WCED**”) of a draft policy relating to the Vetting of Persons Visiting or Accessing a Public School or its Premises (“**Draft Policy**”) and the opportunity to provide preliminary input on the Draft Policy.
5. It is our view that in its current form, the overall Draft Policy, and many of the individual provisions contained therein, are problematic for being vague and lacking sufficient detail and clarity to ensure effective implementation and to achieve the stated purposes of the Draft Policy. Moreover, whilst the Draft Policy seeks to serve an important purpose; most importantly, the protection of learners, there appear to be certain key aspects relating to

the vetting of persons and organisations accessing learners at schools which have not been considered in the Draft Policy.

6. The vagueness of the Draft Policy as well as the key aspects which have been wholly omitted, indicate a failure on the part of the WCED to properly apply its mind to the issues the Draft Policy seemingly seeks to address. It is therefore our view that the Draft Policy must undergo a complete redraft and overhaul in order to adequately to achieve its purposes.
7. As required, we have completed the “COMMENTS” table below, addressing each of the proposed provisions individually. Unless stated otherwise in the table, we do not object to the overall spirit and purpose of the Draft Policy, which we understand to be the protection of learners. That said, whilst the table allows for suggestions to be made for amendments, deletions or additions in respect of each provision, this format does not allow us to address the underlying vagueness and inadequacy of the Draft Policy. Accordingly, our suggestions must be read as a guiding framework to facilitate the overhaul process.
8. Over and above the guidance provided in the “COMMENTS” table, we also address general concerns relating to the the Draft Policy in our “GENERAL COMMENTS”. These general comments are offered as further guidance for facilitating the proposed redraft and overhaul of the Draft Policy.
9. Finally, EE and the EELC are willing to provide more detailed input to the WCED in any further drafting process the WCED may undertake in respect of the Draft Policy.

GENERAL COMMENTS ON THE DRAFT POLICY

Vagueness of the Draft Policy

10. At its core, a policy document must set out “[a] proposed course of action or guidelines to follow to reach particular goals and objectives”.¹ A policy ought to articulate provisions so that key role players and their respective duties are identified, and there is sufficient direction provided for role players to execute these duties and to give effect to the purpose of the policy.
11. In many respects, the Draft Policy falls short of these requirements and fails to set out clear guidelines in order to achieve its stated purpose and objectives. In particular:

¹ Roux, N.L., Public policy-making and policy analysis in South Africa amidst transformation, change and globalisation: Views on participants and role players in the policy analytic procedure. *Journal of Public Administration*, vol 37 no 4, December 2002 at 425.

11.1. The requirements for organisations carrying out vetting processes or performing background checks are not clearly described in the Draft Policy. Similarly, circumstances under which heads of department (HODs), principals or governing bodies may take steps to safeguard of learners and staff, including directing that certain persons may only enter a school with the permission of the HOD, principal or governing body, are unclear. This lack of clarity may result in the exercise of unfettered discretion by implementers of the Draft Policy, and vetting requirements and preventative steps being arbitrarily applied. This may in turn have the result of certain organisations being unreasonably prevented from accessing schools, learners and staff.

11.2. It is unclear whether the Draft Policy is meant to be adopted by schools across the Western Cape, or to serve as a guide for schools to devise their own vetting and access policies. If the latter, the lack of adequate detail means that schools policies are also in danger of being arbitrarily applied.

11.3. The Draft Policy fails to delineate the specific roles of schools, principals, governing bodies or HODs in facilitating its implementation. Poor coordination and the failure to clearly identify roles may result in confusing mandates and may muddy the waters when it comes to allocating responsibilities and holding parties accountable for implementation of the Draft Policy.

12. Accordingly, we recommend that:

12.1. the Draft Policy be clarified regarding the requirements for vetting and carrying out background checks;

12.2. the circumstances under which principals, HODs and governing bodies may exercise the powers granted to them in sections 5(1) and 5(2) of the Draft Policy must be clarified;

12.3. proper guidance be provided to schools needing to implement the Draft Policy; and

12.4. clear roles and responsibilities of key role players be articulated.

Omissions from the Draft Policy

13. In addition to being vague, the Draft Policy is completely silent on certain key elements relevant to regulating access to school premises. We address some of the key omissions below:

- 13.1. The Draft Policy fails to consider the resources and capacitation required to monitor and implement. Further, the Draft Policy fails to specify what role the WCED plays in supporting schools to implement the Draft Policy, and in supporting organisations that may be doing critical work in public schools, but may not be able to bear the costs of carrying out background checks or extensive vetting. Linked to this, the Draft Policy is silent on questions of budget and resource allocation for purposes of the WCED being able to provide the requisite support.
- 13.2. The Draft Policy does not carve out any exclusions or exceptions for certain categories of people who may not need to be vetted when accessing schools or learners. For example, where persons or representatives of organisations have already obtained clearance on a previous occasion. Linked to this, the Draft Policy fails to provide for retention of records of previous vetting checks. Surely, persons vetted in the last, for example, 12 months, and whose records are retained by the relevant school need not be vetted again.
- 13.3. Furthermore, the Draft Policy does not address the procedures relevant to pre-employment vetting of teachers and non-teaching staff. Whilst we acknowledge that pre-employment vetting of educators and staff is likely to be regulated in an employment agreement or separate policies, it would be appropriate for these processes to at least be referenced in the Draft Policy.
14. The above omissions are indicative of the WCED's failure to properly apply its mind to the scope and implications of the Draft Policy.
15. In fact, it is interesting to note that the majority of the wording in section 6 of the Draft Policy, which relates to "Vetting of Persons Visiting Public Schools", was simply lifted from a "Vetting & Volunteers Policy" adopted by the Drumahoe Primary School in Northern Ireland (the "**Drumahoe Primary Policy**").² Whilst a standalone section was copied from the Drumahoe Primary Policy, it is important to note that the Drumahoe Primary Policy also dealt more comprehensively with vetting processes in the remainder of that policy. This level of detail was not transferred into this Draft Policy.
- 16. Accordingly, we recommend that:**
- 16.1. **the Draft Policy addresses resource allocation and the provision of training by the WCED to schools for the implementation of this Draft Policy;**

² "Vetting and Use of Volunteers Policy" of Drumahoe Primary School, pages 1 - 5.

- 16.2. **the Draft Policy addresses the requirement for support to be provided by the WCED to organisations unable to bear the costs of conducting extensive background checks and vetting;**
- 16.3. **certain exclusions be articulated in the Draft Policy; and**
- 16.4. **the requirement that vetting records be retained be included.**

COMMENTS:

Clause <i>(Indicate clause/ regulation Number)</i>	Comment <i>(State why the clause/regulation or proposed amendment is not supported or what the problem is with the provision)</i>	Suggestion <i>(Suggested deletion/amendment/ addition)</i>
As mentioned above, this table format does not allow us to properly address the underlying vagueness and inadequacy of the Draft Policy. Accordingly, our suggestions must be read as a guiding framework to facilitate and direct a complete overhaul of the Draft Policy.		
Section 1 – Definitions	<p>“Vetting” is defined as <i>“the process of performing a background check on a person by the <u>relevant organisation</u> before offering him or her employment or permission to come into contact with learners and/or staff at a public school”</i>.</p> <p>This definition does not allow for vetting to be carried out by schools or governing bodies who may employ persons to carry out educational and other services at the school or who permit individuals to access schools on some other basis.</p> <p>Further, this definition does not envisage persons accessing or visiting learners and/or staff as individuals, individual proprietors or service providers, not affiliated with or employed by any organisation.</p>	<p>The definition of “vetting” must be amended, for example, by adding the following underlined wording, <i>“the process of performing a background check on a person by the relevant organisation, <u>the head of department, principal or governing body or other relevant vetting authority, as the case may be...</u>”</i></p>
	<p>The term “organisation” is used in the definition of “vetting” and throughout the Draft Policy. This term is not defined. Instead only definitions for “non-governmental organisation” and “non-profit organisation” have been provided. The Draft Policy does not make provision for private and for-profit organisations which may access schools and learners. Such private, for-profit organisations may include</p>	<p>The term “organisation” must be defined more widely. Specifically, the definition must also take into account private and for-profit companies that may access school premises.</p>

	companies providing education-related or other services.	
	The term " background check " is used in the definition of "vetting", but has not been defined. This means that it is not clear what organisations must do or what information they must obtain to comply with the vetting requirement.	The term "background check" should be defined with reference to reasonable requirements.
	The term " school time " is used throughout the Draft Policy and has not been defined.	The term "school time" should be defined, for example, as "from 07h30 until the end of the final lesson in the school day".
	The "Definitions" section has not been alphabetised, making the list of definitions difficult to navigate.	The "Definitions" section to be alphabetised.
	To the extent that this may be necessary, the "Definitions" section must be amended and expanded to accommodate all other changes recommended in this submission, and in line with any later redraft of the Draft Policy.	
Section 2 – Legislative Framework	<p>When setting out the relevant legislative framework, the Draft Policy does not include the Children's Act, 38 of 2005 or the Employment of Educators Act, 76 of 1998. The Children's Act deals with the protection of children and the Employment of Educators Act deals with the appointment and misconduct of teachers and the role of the South African Council for Educators (SACE).</p> <p>We note that all relevant legislation in cases of sexual offences, child abuse and neglect, have mandatory reporting provisions. This Draft Policy must take account of, and where appropriate reference appropriate reporting requirements as failure to report carries serious consequences.</p>	<p>The Children's Act and the Employment of Educators Act must be added to the legislative framework.</p> <p>The Draft Policy must expressly provide and ensure that all requirements contained therein are aligned with with all relevant extant policies and legislation relating to child protection and school safety.</p>
Section 3 – Purpose	<p>Section 3(a) of the Draft Policy provides that the purpose of the Draft Policy is to protect learners from falling victim to sexual offenders or persons not fit to work with children "<u>as declared under the Criminal Law (Sexual Offences and related matters) Amendment Act, 2017</u>". This wording implies that only those persons declared under the above-mentioned Act are prevented from accessing the school.</p> <p>Subsections 3(b) and 3(c) of the Draft Policy refer, respectively, to preventing unauthorised persons from</p>	<p>Subsection 3(a) of the Draft Policy should be amended to include the underlined wording following: "<u>as declared under the Criminal Law (Sexual Offences and related matters) Amendment Act, 2017 or any relevant law or policy</u>".</p> <p>The Draft Policy must provide details of the preventative</p>

	accessing schools and putting in place preventative measures to control access to schools. The Draft Policy fails to provide details of these preventive measures. In the absence of such details, schools will have a hard time implementing the Draft Policy and putting adequate measures in place.	measures which should be put in place.
Section 4 – Scope	The scope of the Draft Policy extends to “ <i>all persons or <u>organisations</u> visiting or accessing learners and/or staff at public schools in the province <u>during school time</u> or <u>during any school activity</u>”.</i>	
	As mentioned above, the scope of the Draft Policy is limited to “ <i>all persons or “<u>organisations</u>”</i> . The Draft Policy does not define, and therefore does not appear to regulate private or for-profit organisations, individual volunteers, or other persons who may visit or access learners and/or staff (and who do not fall into the category contemplated by section 6.3 of the Draft Policy; that is, parents attending schools for meetings or events, or persons performing maintenance tasks).	The definition of “organisations” must be amended according to the suggestions made above in these submissions.
	We note that the scope of the Draft Policy covers vetting for purposes of accessing “learners <u>and/or staff</u> . Surely, a higher degree of care must be exercised when interacting with minor learners than will apply in respect of staff members. Moreover, where the focus is clearly on the interests and protection of the child, the interests of teachers can be dealt with in other appropriate policies and other documents. For example, SACE guidelines.	It is suggested that, where possible, distinct processes be adopted for instances where organisations only interact with staff, and not with learners.
Section 5- Access to Public Schools	Subsection 5(1)(a) of the Draft Policy allows the Head of Department, principal or governing body “ <i>for such timeframes as may be necessary</i> ” to take “ <i>such steps as he or she may consider necessary</i> ” for the protection of learners and staff. Subsection 5(1)(b) read with subsection 5(2) allows the Head of Department, principal or governing body to direct that a school only be entered with their permission, which may require the persons to provide their name address and “ <i>any other relevant information</i> ” and to produce proof of identity. The above subsections grant the Head of Department, principal or governing body wide discretionary powers, which in the absence of proper guidelines, may result in unreasonable requirements being imposed	The types of steps available to the HOD, principal or governing body must be listed in the Draft Policy as must the circumstances under which such steps would be warranted. The types of information which may be requested in terms of the direction made by the HOD, principal or governing body in terms of subsections 5(1)(b) and 5(2), should also be clarified in the Draft Policy. Additionally, the HOD, principal or governing body must also be

	<p>arbitrarily, with the effect that persons and organisations providing important services are unable to comply, and are excluded from being able to access schools and learners. The danger also exists that if organisations or persons are prevented from accessing schools for long periods of time, this may hinder the work they are doing which may be time sensitive.</p>	<p>required to provide reasons for the direction and for the timeframes stipulated.</p>
<p>Section 6 – Vetting of Persons Visiting Public Schools</p>	<p>Subsection 6(1) provides that <i>“the organisation must vet any person who visits public schools to determine if such person is suitable to interact with the learners and/or staff at school”</i>.</p>	
	<p>Whilst the Scope of the Draft Policy refers to <i>“all persons and organisations”</i>, section 6(1) refers only to the “the organisation”.</p> <p>The reference to “the organisation” is confusing. We assume that it is reference to any organisation wishing to access or visit learners and/or staff, and not to a particular organisation responsible for carrying out vetting activities; however, this is not clear.</p> <p>Further, as mentioned above, reference to “the organisation” does not envisage persons accessing or visiting learners and/or staff as individuals, individual proprietors or service providers, not affiliated with or employed by any organisation.</p>	<p>Wording to section 6(1) should therefore be amended as follows: <i>“any organisation or person visiting or accessing learners and/or staff at public schools in the province during school time or during any school activity must vet or be vetted to determine....”</i></p> <p>The Draft Policy should also make it clear who is responsible for vetting in respect of persons acting as individuals, not affiliated with or employed by any organisation wanting to access and visit learners and/or staff.</p>
	<p>As mentioned above, the Draft Policy is unclear on the what is needed for organisations to meet the requirement of “vetting” persons or the information required for adequate background checks.</p> <p>Does this mean organisations need only comply with their internal vetting policies or with the requirements provided by the WCED through this Draft Policy?</p> <p>It is also not clear whether proof of such vetting clearance must be presented to the school at each visit or simply at the first visit.</p>	<p>Clear requirements must be provided regarding vetting; including, but not limited to, whether compliance simply means compliance with internal organisational vetting or employment policies and whether proof of vetting clearance must be presented at every meeting or will be kept on record after an initial meeting.</p>

	<p>The responsibility for completing the vetting process is placed squarely on the shoulders of “the organisation” wanting to access the school to interact with both learners <i>and/or</i> staff. As mentioned above in our discussion of the “Scope” of the Draft Policy, we pointed out that a distinction must be drawn between the requirements when engaging with staff as opposed to learners. Less stringent requirements should be applied here.</p>	<p>A distinction must be drawn, where possible, in the Draft Policy between the requirements when engaging with staff as opposed to learners.</p>
	<p>For organisations like EE, obtaining official clearances and background checks will be a costly exercise. As an organisation whose mandate is to assist the WCED in facilitating the realisation of equal and quality education in the province, it is reasonable that the WCED provide organisations such as EE's with assistance, where required and to the extent that such vetting requirements exceed EE's own internal procedures.</p>	<p>In the case of non-governmental organisations such as EE, the WCED must undertake to assist in meeting the vetting requirement to the extent that such vetting requirements exceed the organisation's own internal procedures, or must accept alternative forms of 'vetting', such as, for example, consent forms which parents may sign granting their children permission to participate in EE activities/ interact with EE staff.</p>
<p>Section 7 - Persons who have committed sexual offences against children</p>	<p>The Draft Policy states that a person convicted of the commission of a sexual offence against a child or who is facing such an allegation, <i>and</i> whose particulars are contained on the National Register for Sex Offenders, may not be employed to work with learners or come into contact with them.</p> <p>Where there is an allegation, but no conviction, it will be difficult to police and implement this provision. Of course, the provision also requires that the name of the alleged offender be recorded on the National Register for Sex Offenders. However, this register only records the names of persons convicted of an offence and moreover, is not regularly updated.</p>	<p>The Draft Policy should be amended to include the following underlined wording: <i>“a person who has been convicted of the commission of a sexual offence...or <u>who is undergoing formal disciplinary or criminal investigation for an alleged sexual offence against a child....”</u></i></p>
<p>Section 8 - General</p>	<p>The Draft Policy requires schools to display signage at the entrance of the school notifying persons that they may be subjected to a random search. There are no details of the requirements the signs must comply with and no details regarding the nature and execution of the random search.</p>	<p>The Draft Policy should indicate the requirements for the signage to be displayed; for example, the size and visibility. It should also detail the limits of any random search in accordance with existing</p>

	<p>Further, the Draft Policy requires that a person in contravention of this provision be removed from the premises. The provision is silent on who is responsible for removing the person and fails to consider whether schools have the capacity or resources to enforce this.</p>	<p>legislation dealing with conducting of random searches.</p>
<p>Section 9 - Review</p>	<p>The Draft Policy provides for its review as the need arises or subject to budgetary constraints.</p>	<p>The Draft Policy should allow for more frequent review, for example, every five years, or when required by legislative or regulatory amendments.</p> <p>The reference to “<i>budget constraints</i>” must be deleted. The Draft Policy is otherwise silent on budget and resource allocation. In any event, the WCED cannot justify leaving in place outdated policies purely on the basis of budget constraints.</p>