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TRAINING SCHOOL SPORT MANAGERS TO RESOLVE DISPUTES

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Nuno Delicado, Pluris Pte. Ltd.

Introduction

My name is Nuno Delicado. I work for Pluris, a negotiation and mediation consulting firm. My work is to help organizations of all sectors, including sports, improve their ability to deal with negotiations and conflict. I have been working in different areas of sports over time: as a sport federation director, sport marketing consultant, and a sport development officer for the International Olympic Committee.

I was, am and will always be an athlete. My sport career started in school, when I was 10 years old. I perfectly remember being identified as the fastest sprinter in my year and being selected for inter-school championships. With no doubt, the incredible support and motivation that Ana – my physical education teacher – provided in those days was key to make me an athlete for life. Some years later I became Portuguese champion in modern pentathlon, and now I continue competing in pentathlon, as well as in marathons and triathlons around the world.

10 years ago I had one of the most frustrating experiences in my sport career, when I was not selected to compete in the modern pentathlon world championships. I thought I deserved to be selected and felt disappointed, betrayed by the national federation. Some weeks later, at the end of that season, I decided to terminate my career as a competitive athlete, after considering many factors. My disappointment with the federation was not the main one, but it surely affected my decision.

Conflict generates costs to sports (for instance, lost athletes), not only at elite level, but also in school. If you're not motivated already, I'd like to motivate you to the importance of knowing and applying methods to prevent and resolve disputes.

Sport disputes

It is not difficult to think about examples of disputes that arise so often in sport. Some may be more frequent in elite and professional sports, such as the ones related with doping, employment, contracts, image and sponsorship rights. But many exist in any sport activity, from the most informal ones such as a football match between friends or in school, to the final of the Olympic Games: violence, discipline, harassment, team selection, referee decisions.

Most sports are a dispute by design! An individual or a team tries to beat other individuals or other teams, following certain rules. And where there are rules, there are broken rules. And broken rules lead to disputes. Disputes need to be resolved, sorted out, so that people can go on with their lives. How do we solve disputes?

Dispute resolution processes

There is a broad spectrum of processes used to resolve disputes. The key ones are:

- **Negotiation** is any situation in which we're trying to persuade someone about something. In negotiation, parties normally deal with each other either directly, without intermediaries. Lawyers may be involved, but not in most day to day negotiations.
- **Mediation** is assisted negotiation by a neutral third party, who facilitates the process but does not make any decision. Lawyers may be involved, but the process focuses on parties' direct communication as much as possible.
- **In arbitration** a neutral third party, typically an expert in the subject matter (sometimes selected by the parties), makes a decision (not always reasoned), after hearing the parties, any witnesses and proof. Lawyers are often involved.
- **In litigation** a judge decides in court, providing a reasoned decision after hearing the parties and any witnesses and proof. Lawyers typically play a key role representing the parties in litigation.

Let me point some key differences between these four processes, starting with the most amicable ones:

- **Negotiation** is a voluntary process that remains private unless parties decide to make public announcements. Normally there are no third parties involved (sometimes there may be agents or lawyers working with the parties), so the process is totally under the parties' control.
- The difference in **mediation** is the participation of a neutral third party: the mediator. However, it remains a voluntary process, in which parties have total control over any potential agreement. The mediator can never impose an agreement, so mediation by itself is not binding. But if the parties decide to agree, signed agreements are as binding as judge decisions.
- In **arbitration** the arbitrator has total control of the outcome – parties just have to accept the decision. The decision is binding, meaning that the parties are obliged by law to follow it, and there is no option to appeal.
- **Litigation** is a public process where a representative of the State – the judge – makes a binding decision. The key difference between arbitration and litigation is that litigation is public and parties have the right to appeal.

Litigation and arbitration follow typically much more formal processes, and tend to take much longer and cost much more than mediation and negotiation.

Negotiation, mediation and arbitration are part of what is called Alternative Dispute Resolution (or just ADR). Alternatives to litigation are growing in all sectors of society, including sports, and will be the focus of this discussion.

Dispute resolution in sport

How does this apply to sport?

- **Negotiation:** The first way we normally try to solve any type of dispute, including in sport, is by negotiating with the other party on our own.
- **Litigation,** as in other sectors, is the default system many people think about when figuring out how to deal with a more serious dispute. Its costs, complexity and delays

normally do not justify taking smaller disputes to court, but in professional sports this is a route that is often taken.

- **Arbitration:** When parties cannot resolve a dispute by themselves, they normally resort to other individuals or groups of individuals that may make, formally or informally, a decision:
 - The first arbitrators in a sport competition are the referees (called “arbitros” in Spanish), who are expected to enforce the rules of the game and sort out potential differences.
 - Often, in more important competitions, there is a Jury of Appeal to make final decisions on with disputes over referees’ decisions.
 - Many sport organizations’ have Disciplinary Committees that arbitrate disputes between members or between members and the organization.
 - And, of course, there is informal arbitration, by sport leaders (board members, managers, coaches, referees, captains, teachers, school principals, ...) who may intervene and make final decisions on disputes.
 - In 1983 the IOC created the Court of Arbitration for Sport (CAS), as an alternative, cheaper, faster and more private way (compared to litigation) to resolve sport disputes. International sport federations started adding clauses to their rules indicating CAS as the arbitrator for disputes that cannot be solved otherwise.
- **Mediation:** This was followed in 1999 by the introduction of Mediation in the CAS. Before going for arbitration, parties in sport disputes could now get a neutral third party to assist them in negotiating a potential agreement. Of course, mediation had been informally done at smaller scale by the same sport leaders that often arbitrated disputes (board members, managers, coaches, referees, captains, teachers, school principals...), who helped parties come together and facilitated their negotiation.

Since the end of the 90s onwards, a new trend started, with the creation of **national sport dispute centers**, sometimes created by National Olympic Committees, other times as a partnership between NOCs and the government sports institution, sometimes with other

organizations. These centers typically offer both mediation and arbitration services to parties involved in sport disputes in their country. National sport federations started including clauses in their rules to use these centers for dispute resolution.

To a smaller extent, the first **sport ombudspersons**ⁱ also started to appear – e.g., the Athlete Ombudsman of the United States Olympic Committee, in 1999. The ombudsperson is a role between negotiation and mediation: an independent person hired by an organization to deal with the grievances of their members or employees. They can try to negotiate a solution or sometimes work as a mediator if necessary.

Going forward, as is happening in other sectors of society, it is expected that Alternative Dispute Resolution methods (Arbitration, Mediation, Negotiation) become more used at all levels in sport, and Litigation decreases in relevance.

*Sport dispute centers*ⁱⁱ

With different degrees of success and different setups, sport dispute centers have been established in many countries since 1996. Australia created its sport dispute center in 1996 (but it was closed in 2006). Spain and Catalonia were pioneers in setting up their own sport tribunals in 1998 and 1999. Then the UK founded its own, US and Italy, New Zealand, Japan, Canada, more recently France and Singapore.

Why does all this matter?

Conflict has costs, not only in elite sports, but also at the school level. Short and long term. For example:ⁱⁱⁱ

- It is often a cause of stress, low morale, not only for students, but also for their family, teachers, etc.
- It may lead to losses of human resources, such as athletes giving up earlier (now and in the longer term: less students that may become elite athletes later on), or volunteers, employees, etc.

- It often generates wasted time and resources: not only direct financial costs, or the cost of management time dedicated to resolving conflict, but also secondary effects such as reduced brand equity and loss of sponsorships.

Costs can be minimized with appropriate initiatives:

1. Providing **training** to everyone involved in school sports, to develop relevant people and dispute management skills
2. Establishing dispute resolution **roles**, such as ombudsperson, mediator and arbitrator
3. Creating **dispute systems** that link rules and roles

Training

People involved in school sport would benefit from developing our

- **People skills**, such as communication, relationship building, and leadership
- And also our **dispute management skills**: the ability to define adequate rules/policies to prevent disputes, negotiation, and mediation^{iv} skills

This type of training not only benefits teachers, managers, coaches, referees... but also students/athletes, and their parents or other relatives, anyone that may be involved as a mediator or arbitrator, or in general anyone with some level of interest in school sport (e.g., government officials, the media).

Training in these “soft” skills is becoming more and more common in management studies (undergrad and graduate). Most management degrees now include courses on communication skills, leadership, and negotiation. Elite sport managers have been getting used to dealing with conflict and developing the required skills. School sport managers need to build similar skills.^v

Roles

Assigning dispute resolution roles to those involved in school sport can help better deal with disputes early on, often preventing them from escalating:

- The **ombudsperson**, has no decision making power. As commented before, it is a role between negotiation and mediation, whose typical responsibilities include:
 - Listening to grievances and providing independent advice to students and to the school or organization, directing issues to the right person or procedure
 - Facilitating communications and negotiations (eventually as a mediator between students, or between students and a teacher or the school, for example)
 - Creating and implementing policy or rules to help secure students' rights
- **Mediator**: If there is no ombudsperson or the ombudsperson is not able to solve a situation, a mediator may assist the parties in the dispute negotiate a potential agreement. The mediation can be done by:
 - Peers^{vi}: for instance, students mediating between other students
 - Or others: e.g., an adult (teacher, parent, coach, principal) mediating between students; if the dispute is between individuals from different groups (e.g., a student and a teacher), the mediator should be from a third group, to avoid questions about neutrality
- **Arbitrator**: If mediation does not solve the dispute, an arbitrator, or a group of arbitrators, may make a decision to settle the dispute (for instance, based on rules or precedent). The arbitration can be done by:
 - A group of students (e.g., a “students’ arbitration committee”) – probably appropriate for student disputes
 - And individual or group, potentially from mixed categories: students, teachers, parents, coaches, principal, ...

These three roles, appropriately defined and performed, can typically resolve the great majority of disputes arising in a school sport system.

Dispute systems

How can all these skills and roles be linked together? An effective system should enable dispute resolution in the most amicable and cost-effective way:

- **Prevention:** Of course, at the base of any dispute system there should be prevention measures, such as clear rules and guidelines, effectively communicated to all concerned people: sport rules, selection procedures, codes of conduct, behavior guidelines, etc.
- **Negotiation:** A dispute system should be designed in a way that parties start trying to sort out their differences in the most amicable and empowered possible way, ideally on their own, only resorting to processes involving third parties if necessary.
- An independent, neutral **ombudsperson** may provide assistance by providing information that allows parties to feel satisfied, or may direct them to the right person for the issues they're concerned with; if appropriate, the ombudsperson can try to negotiate or mediate the dispute
- Parties may decide to go back to negotiation after talking with the ombudsperson, given the extra information, may decide to give up the dispute, or may still be unable to sort it out
- **Mediation:** Parties may then benefit from the assistance of a neutral third party, facilitating the negotiation.
- Hopefully, mediation will help sort out the case. If not, the parties may again decide to go back to negotiation, since although they haven't reached an agreement, they often progressed in the discussion and may be closer to one.
- If necessary and helpful, the parties may have the opportunity to go through a second mediation, with a different third party.
- **Arbitration:** Or they may go for arbitration, asking an individual (such as the School Principal) or a panel to provide a decision about the dispute. This is the situation where the parties are most disempowered, they stop owning the outcome of the dispute – they can no longer decide on the final agreement, they just have to accept and follow the arbitration decision.

Summarizing: a dispute system is a group of dispute resolution processes linked by rules that determine when each process should be applied. Typically processes are ordered from higher disputants' empowerment and lower costs towards lower empowerment and higher costs.

Case study: School Sport Australia

School Sport Australia provides a good example of how a dispute system may look like (here in a simplified description):

- Several documents contribute to dispute **prevention**:
 - Sports, facilities, events, student eligibility, team selection **rules**, often at school level, through a “School Sport Manual”^{vii}
 - **Codes of Conduct** (“Code of Behavior”) defining how students, parents, coaches, managers, spectators, and the media, are expected to behave
 - **Student Participation Agreements** that students have to sign before taking part in events, to ensure they have read and agree to respect the rules and codes of behavior
- Team management is in charge of managing disputes, with measures that may range from **negotiation** to **arbitration**, including **mediation**:
 - When disputes arise, the team management investigates, interviewing student(s) and other relevant people
 - Students are assured access to an advocate of their choice during the interview process
 - If offences are proven, team management informs the event organizer, parents, and school sport association, as appropriate
 - There are currently no clauses establishing formal **mediation**, which doesn’t mean it doesn’t happen in an informal way, as is normal: team management as mediator between students in a dispute, or perhaps a student intervening between two colleagues, a teacher or a coach doing the same, the school principal being asked to see disputants, etc.
 - As appropriate, team management consults with the school sport association executive officer and makes a decision on the dispute. Given that this decision may be subject to appeal, this is not exactly **arbitration** (which is not subject to appeal), but perhaps closer to litigation (there is a variety of dispute resolution processes – what is important is to select the ones that make more sense in each context and clearly define them to all stakeholders)

- A School Sport Australia Welfare Committee may recommend further action
- Finally, the dispute may be brought to an **appeal panel** for a final decision. The panel's constitution depends on whether the event where the dispute started was national or international:
 - International events: School Sport Australia President, student's School Principal, representative of student's school sports regional association
 - National events: appeal process determined by the state/territory school sports association of the student/s involved

What can we do?

Summarizing, what can each one of us do to improve the way school sport deals with disputes?

If we are school **sport managers**, we can:

- Look for formal and informal **training**, both on people & dispute management skills
- Focus on being **excellent communicators** with everyone we work with, in particular students and parents, managing expectations, being transparent about all decisions, etc.
- Contribute to school sport **rules and policies**, proposing amendments or new rules as appropriate to prevent future disputes
- Act and develop as a **mediators**, looking for formal training and focusing on practical application in day to day work

If we are **School Principals**, we can focus on:

- Creating **training** opportunities for teachers, students, and everyone involved in school sport
- Publishing a **Sport Manual** for your school. This should be a collaborative process, with participation by all stakeholders (e.g., through a blog or a wiki, leveraging information technologies). The process should ensure great communication of all rules and policies to students, parents, teachers, etc. – all interested people. The Sport Manual may include:
 - Sport rules, and rules on usage of facilities, equipments, uniforms, team selection, etc.

- Codes of Conduct, defining the expected behavior for all key people, and requiring students and other stakeholders (parents, teachers, coaches...) to acknowledge and agree to respect them by signing a Participation Agreement
- Dispute resolution clauses, determining who does what, in what conditions, therefore starting to create a dispute system
- Hiring a school **ombudsperson**, not only to listen to the grievances of athletes but to be also available for any student, as the trusted, preferred contact for any suggestion, question, or complaint
- If it doesn't exist already, launching a **student mediation project** – a school project to train students as mediators, provide them with space and time, and help them promote their services, not only for sports but also for other disputes

If we are managers in a **school sport organization** (for example in the government, or another organization with some relationship with school sport), we can develop broader initiatives, as appropriate:

- Implement a **training program** targeting all schools in a region
- Propose standard **Codes of Conduct** to serve as a reference or to be directly adopted by each school
- Publish a **Dispute Manual** with best practices, describing what has been tried in some schools or in other countries that has been effective in preventing or resolving disputes
- Launch a **school sport dispute system**, for instance creating regional mediation and arbitration bodies, to deal with disputes that cannot be solved at school level (e.g., involving several schools)

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ⁱ The role was originally created in Sweden in 1809 (200 years ago) to investigate the grievances of citizens against government bureaucracies. Also called “Defensor del Pueblo” in Spain. Today many companies hire independent ombudspersons to listen to their employees, and it is increasingly being used in sport as well.

ⁱⁱ *Complementary notes on sport dispute centers*

Names of sport dispute centers:

- Australia: National Sports Dispute Centre (established in 1996)
- Spain: Tribunal Español de Arbitraje Deportivo (1998)
- Catalonia: Tribunal Català de l'Esport (1999)
- UK: Sport Resolutions (2000)
- USA: American Arbitration Association (AAA's sports panel was created in 2001 only, although the AAA started managing sport disputes in 1978)
- Italy: Camera di Conciliazione e Arbitrato per lo Sport (2001)
- New Zealand: Sports Tribunal (2003)
- Japan: Japan Sports Arbitration Agency (2003)
- Canada: Sport Dispute Resolution Centre (2004)
- France: Chambre Arbitrale du Sport (2007)
- Singapore: ADR Sports (2008)

The way sport dispute centers are organized varies:

- Some are “departments” of the National Olympic Committee – e.g., France
- Others are overseen by the National Olympic Committee and the government sports institution – e.g., Spain
- Others involve more parties – e.g., Australia: National Olympic Committee, Confederation of Australian Sport, Australian Sports Commission (Government arm for sport), ANZSLA (Australian and New Zealand Sports Law Association); each owns equal share and operates the center, with a director from each organization
- Others are independent but may be funded by the government – e.g., Canada, funded by Canadian Heritage - [Sport Canada](#); UK funded by UK Sport

Earlier initiatives in the US, France and China:

- The earliest institutionalized system was created in the United States in 1978, when the *Amateur Sports Act* directed certain types of amateur sports disputes to the American Arbitration Association
- In France conciliation is offered by the NOC since 1984
- China introduced provisions for dealing with sports disputes in the *Sports Law of the People’s Republic of China* in 1995 (but it hasn’t created a Sport Arbitration Tribunal or something similar yet)

Some international sport federations also have their own dispute resolution initiatives:

- The IAAF had an Arbitration Panel, discontinued in 2000 due to raising costs (\$600 thousand per year) of appeals in civil courts after arbitration decisions; IAAF decided to start sending all cases to the CAS
- FIFA Arbitration Tribunal for Football and Dispute Resolution Chamber (2001)
- FIBA Arbitral Tribunal (2007)

ⁱⁱⁱ A good example is Nelson Piquet Jr., who last year crashed his F1 car against a wall in the Singapore Grand Prix, to help his Renault team mate win the race (and later the World Championship). Apparently, he received orders from the team manager and he argues he was feeling his job in the team threatened so he decided to obey. The consequences have been not only the immediate loss of sponsorships for the Renault team, but also, among others, a loss of credibility for the F1 sport, implying a loss of public interest, hence a loss of economic interest (sponsors, TV broadcasters) and a probable devaluation of the whole sport.

^{iv} Most of you are probably aware and perhaps have gone through training programs to promote mediation in school. These programs were started in the US in the 60s, and in Spain about 10 years ago, with increasing application around the country.

^v Of course, I am not suggesting students, parents, teachers, coaches, etc., should obtain complete degrees to develop these skills. This can be done with formal training such as small workshops, classroom activities, school programs. But often these soft skills are developed with informal, on-the-job training, where supervisors, colleagues or teachers help others improve.

^{vi} In Spanish “mediación entre iguales”

^{vii} The Onehunga High School Sport Manual (New Zealand school) even includes job descriptions for coaches, managers, officials, etc., clarifying roles and responsibilities