



## Education and schools

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## Introduction

Education in South Africa is governed by two national departments. The Department of Basic Education (DBE) is responsible for managing primary and secondary education (from Grade R to Grade 12, as well as adult literacy programmes and Early Childhood Development (ECD). The Department of Higher Education and Training (DHET) is responsible for tertiary education, including universities and colleges.

One of the most important aspects of basic education is the *South African Schools Act* (No. 84 of 1996), which is the law relating to school governing bodies. At the heart of this is the idea of a partnership between all people with an interest in education. Schools will be improved only through the joint efforts of parents, educators, learners, members of their local communities, and various education departments.

In terms of higher education, an important addition to the law has been the introduction of the National Student Financial Aid Scheme (NSFAS) which was established in terms of the *National Student Financial Aid Scheme Act No. 56 of 1999*. NSFAS provides financial aid to students who qualify at TVET colleges and public universities.

## Types of schools

South African schools have traditionally been classified as either independent (also known as 'private') or public schools. While both types of schools receive funding from the state, private schools generally demand much higher school fees from the parents of children who attend, with the result that they are much wealthier schools.

Public schools are designed to be more inclusive because the fees they charge are much lower. Most public schools that serve poor learners charge no fees at all. Schools are divided into five quintiles (20% of schools) according to the levels of income of parents. The three lowest quintiles (so 60% of all schools) are not allowed to charge school fees.

Public Schools can be further categorised as “Section 20 or Section 21” Schools. This refers to the section in the Schools Act which allows for the establishment of the Schools Governing Body. Section 20 schools receive little money directly but get services and textbooks paid for by the provincial department. Section 21 schools can manage their own finances and purchases, usually charge school fees, and get money from the department.

# School Governing Bodies (SGBs)

## Functions of SGBs

The SA Schools Act Section 20 describes the functions of the school governing body. This includes:

- Promoting the best interests of the school and its development
- Adopting a constitution and mission statement
- Introducing a code of conduct
- Providing support to educators and the principal in carrying out their duties
- Determining times of the school day
- Administering and controlling the school's property, buildings and grounds
- Involving parents and others to undertake voluntary duties and tasks
- Recommending to the Head of Department the appointment of educators and non-educator staff at the school, subject to the relevant legislation *Educators Employment Act, 1994 (Proclamation No. 138 of 1994)*, and the *Labour Relations Act, 1995 (Act No. 66 of 1995)*
- Managing and allowing the use of school facilities for fundraising, community, and social uses
- Maintaining and improving the school's property, buildings and grounds
- Deciding on the extramural curriculum and the choice of subject options according to provincial curriculum policy
- Buying textbooks, educational material and equipment for the school
- Paying for services to the school

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## Who sits on an SGB?

There are three groups represented on a governing body:

- **Elected members** who can be parents of learners at the school, educators at the school, staff members who are not educators, such as secretaries and gardeners and/or learners at the school who are in grade 8 or above (they must be elected by the representative council of learners, which is made up of class representatives)
- **School principal**
- **Optional co-opted members** who don't have the right to vote, for example, members of the community or former learners with specific expertise like accounting.

The number of parents on a governing body must be one more than half of all of the members who may vote. Parents who are employed at a school can only be elected as a representative of staff members, not as a representative of parents.

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## **Rules guiding SGBs**

Each governing body must draw up a constitution that says how it will work. The constitution must fit into the minimum requirements given by the provincial MEC for Education. The constitution must say:

- The governing body will meet at least once every school term
- A separate meeting will be held with each of these groups at least once a year: parents, learners, educators and other staff
- The governing body will report to parents, learners, educators and other staff at least once a year
- How minutes of governing body meetings must be kept

The provincial minister of education will publish these details:

- How the governing body will be elected
- How long members and office bearers may serve on a governing body
- How to remove a member from the governing body if there is a good reason For doing this
- How to fill a vacancy
- What sub-committees must be set up, for example, an executive for day-to-day decisions, committees for fund-raising, finance, sport, staff appointments, school environment and health

Each committee chairperson must be a member of the governing body, but other committee members need not be on the governing body.

## **CODE OF CONDUCT FOR SGBS**

The provincial MEC for Education must draw up a code of conduct for the members of the SGB after consultation with associations of governing bodies in each respective province. All members are required to comply with the code of conduct.

The code of conduct must include provisions that allow for disciplinary action to be taken against a member of the governing body and also protect the member who is being disciplined. The Head of Department may suspend or terminate the membership of a governing body member for breaking the code of conduct once proper disciplinary procedures in terms of the code have been followed. A member

may appeal to the provincial MEC against a decision of the Head of Department regarding a suspension or termination of membership as a governing body member.

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## **Responsibilities of SGBs**

The governing body must:

- Decide on an admissions policy that doesn't go against the National Constitution
- Decide on the language policy of the school
- Decide on what religious practices will be followed at the school (attending any religious practices must be free and voluntary for learners and staff)
- Adopt a code of conduct for learners after consulting with learners, parents and educators
- Promote the best interests of the school and encourage its development by providing quality education for all learners
- Adopt a constitution
- Adopt the mission statement of the school (this sets out the values and beliefs of the school)
- Decide the times of the school day
- Administer the school property, buildings and grounds
- Encourage parents, learners, educators and other staff to offer voluntary services
- Recommend to provincial heads of departments on the appointment of educators at the school
- Allow school facilities to be used by the provincial education department
- The governing body can allow the community to use its facilities for community, social and school fund-raising purposes

## **ADOPTING SCHOOL POLICIES**

There are various policies and codes of conduct that an SGB must adopt for the school.

## **ADMISSIONS POLICY**

The SGB must decide on an admissions policy that does not go against the Constitution. This means there must be no unfair discrimination against anyone on any grounds of discrimination, including race, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age, disability, religion, language, or culture. For this reason, schools cannot require learners to do a test to decide if they qualify for admission. The principal of a school will only make a decision provisionally on behalf of the provincial Head of Department. The MEC in each province is the political head of the provincial education department, has the final

say in decisions on admission, and has the power to overturn decisions. The MEC has the final say in admission decisions and they must exercise this power in a fair and reasonable way. The Department of Basic Education sets national norms and standards for admissions, which the SGB's admission policy must comply with.

### **CODE OF CONDUCT FOR LEARNERS**

The SGB is responsible for creating a code of conduct in consultation with learners, parents and educators. The Code of Conduct must not go against the Constitution. SGBs can use the guidelines set by the Department of Basic Education called 'Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners. When developing a Code of Conduct, an SGB must consider the religious, cultural and racial diversity of the school population they serve and develop rules that are inclusive and reflect this diversity. The Code of Conduct must state what conduct is allowed and/or not allowed, and it must say what the disciplinary procedure is, including suspensions, expulsions, and the appeals procedure. The SGB can suspend a learner, but it can only recommend the expulsion of a learner to the HOD who is the only person who can decide to expel a learner. The learner has a right to appeal the decision to expel them by appealing to the MEC of the provincial DBE.

### **LANGUAGE POLICY**

SGBs can decide on a school's language policy in terms of section 6 of the Schools Act, but they must follow the Constitution. The Courts have held that the HOD can intervene in the language policy of a school on reasonable grounds to uphold a learner's right to education. Section 29 of the Constitution provides that everyone has the right to receive education in the language of their choice where it is reasonably practical, taking into account the need to deal with historical discrimination. The language policy must also take into account the broader needs of the community where the school is based.

### **PREGNANCY POLICY**

SGBs can make a pregnancy policy, but this must not go against the Constitution. The policy must uphold the learners' right to education and make sure there is no unfair discrimination against a learner based on their pregnancy. The policy should aim to protect pregnant learners from being stigmatised and bullied and provide counselling and sex education. It should also help learners with their pregnancy needs, in other words, so they can return to school after they give birth and are helped with their health and maternal needs.

In the DBE Policy of 2021 on the Prevention and Management of Learner Pregnancy in Schools, the policy provides for sexual and reproductive health services – which



include access to information on contraception to help learners make informed choices, avoid unintended pregnancies, and ensure safe abortions. The policy also ensures that learners can return to school after childbirth, facilitates access for pregnant learners to antenatal care, and ensures that schools provide a stigma-free, nondiscriminatory and non-judgemental environment for pregnant learners.

## RELIGIOUS POLICY

SGBs can make rules about religious practices, but these rules must comply with the Constitution, which protects everyone's right to freedom of religion and opinion. The rules must also comply with Section 8 of the School Act and with the DBE's National Policy on Religion in Education. It must promote understanding and respect for different religious beliefs. Learners should be free to join or not join a school's religious practices.

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## The Basic Education Laws Amendment Act (BELA) - Impact on SGBs

The DBE introduced the *Basic Education Laws Amendment Act (BELA)*, which includes many amendments for SGBs.

BELA aims to improve the efficient functioning and administration of SGBs by providing for greater measures of accountability of SGBs.

- Clause 14 of BELA amends section 18A of the Schools Act, which prevents members of SGBs or their families from benefiting financially from their relationship with the school.
- Clause 23 of BELA amends section 27(2) of the Schools Act to prevent SGB members from receiving any form of remuneration from the school and section 29, which will ensure that only a parent who is not an employee at a school may serve as the chairperson of the financial committee.
- Clause 28 of BELA amends section 36 of the Schools Act to introduce measures requiring the approval of the Member of the Executive Council where schools enter into loan or lease agreements.
- Clause 30 of BELA amends section 38 of the Schools Act to introduce new oversight measures when a budget is adapted during a financial year or when a quorum cannot be reached for an annual general meeting.
- Clause 31 of BELA amends section 38A of the Schools Act, which provides for processes in paying state employees. The section aims to provide greater financial oversight over a school's financial affairs. These clauses impact governance at a local level to prevent corruption.

- Clause 4 of BELA amends Section 5 of the Schools Act by providing that admission policies must be sent to the HOD for approval.
  - Clause 5 of BELA amends Section 6 of the Schools Act by providing that the HOD, when approving a school's language policy, must consider the best interests of the learner and the number of learners who speak the language, the best use of resources, and the language needs of the broader community. It allows the HOD to adopt more than one teaching language.
  - Clause 7 of BELA amends Section 8 of the Schools Act to allow learners to be exempt from certain rules of the school if they impact the learners' religious and cultural beliefs.
  - BELA proposes changing the criteria for getting a fee exemption.
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### **Building capacity for SGB members**

The provincial Head of Department must set up a programme to provide training for newly elected governing bodies to help them perform their functions.

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### **Additional powers that can be given to SGBs**

The provincial education department can decide to give additional management functions to school governing bodies that function well and have proved themselves capable of improving their schools.

The *South African Schools Act* identifies two kinds of schools: Section 20 and Section 21 schools. Section 21 schools have greater powers and responsibilities than Section 20 schools, especially for financial management and purchasing. Section 20 schools receive allocations of textbooks and stationery from government. They also have their lights and water accounts paid directly by government. When something is broken at the school, the Provincial Education Department must send someone from Public Works to do the repairs.

Section 21 allows a school to apply in writing to the Head of Department for additional powers. This gives more independence and responsibility to the SGB, but SGBs are encouraged to make applications only if they have the capacity required to manage these additional functions and increased responsibility.

Section 21 schools are allocated finances by the department for additional functions which include:

- Maintaining and improving the school's property, buildings and grounds

- Deciding on the extra-mural curriculum of the school as well as the choice of subject options
  - Purchasing textbooks, educational materials or equipment for the school;
  - Paying for services to the school
  - Section 21 school SGBs may also raise money to employ additional staff or educators – these are often called SGB posts.
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## **Disclosures of members of SGBs**

The *Basic Education Laws Amendment Bill* (BELA) (which is still being debated by Parliament) requires members of school governing bodies, like other public officials, to annually report their financial interests and the financial interests of their spouse, partner, and immediate family members.

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## **Prefects and Representative Councils of Learners (RCLS)**

To promote responsibility and involvement amongst learners in schools, all high schools must hold elections for RCLs. RCLs offer a useful opportunity for young people to learn about leadership and to understand the relationship between responsibility and authority. RCLs are made up of one elected representative per class. The RCL must elect two members to represent learners on the SGB.

# Admission of learners to schools

## **Government policy on admissions**

Government policy on school admissions and school fees is guided by three basic principles:

- **Equity:** to make sure that government gives the same basic resources to all government schools
- **Redress:** to give more government resources to learners in historically disadvantaged communities so that they have more money for textbooks and stationery, and to build schools – especially no-fee schools – in areas where none exist, and to upgrade existing schools

- **Access:** to make sure no one is excluded from attending school on the basis of race or religion or because they cannot afford the cost of school fees.

In terms of Section 3(1) of the Schools Act, all learners between the ages of 7 and 15, or Grade 9, whichever comes first, must attend school. This section is often interpreted and implemented by provincial education departments (PEDs) to exclude learners who are 16 years and older (referred to as 'over-aged' learners). However, it is the MEC's duty to ensure that there are enough school places for all learners in their province and not just learners who are of compulsory school-going age. Parents or caregivers must ensure that they apply to schools so that these learners can be enrolled in a school and in a grade that is appropriate for their age. While the provincial HOD has a responsibility to place a learner in a grade that is appropriate for their age, this is not necessarily in a school of the parent's choice.

If a learner has to repeat a year, the government admissions policy states that they can do this for one year per school phase if necessary. However, repeating a grade many times is not allowed.

The government's admission policy says that HODs must provide a clear process of registration for admission to public schools and must be responsible for the administration.

#### **ADMISSION OF LEARNERS WITH SPECIAL EDUCATION NEEDS**

Provincial MECs have a duty to provide enough schools for all learners in the province, including learners with special education needs, such as learners with disabilities. Section 4 of the Schools Act says the MEC must, where reasonably practical, provide education for learners with special needs and provide relevant educational support services to these learners. When a learner is registered at a public school and they have a physical disability, the school has a legal duty to admit the learner, assess their support needs, and take relevant steps to support the learner.

No learner registering at a state school can be charged a registration fee or asked to pay fees in advance. No learner can be refused entry to a state school because their parents have not paid outstanding school fees.

The provincial department of education makes regulations guiding admissions. Here are some practical steps that can be taken if a school tells a learner that it is full:

- Ask the principal if the school has been officially declared full by the Education Department. Ask to see the letter which says the school is full. If there is no letter, then the school must accept the learner. If the school refuses permission, then contact the district office

- If the school does have a letter, then the department must find a place for the learner in the nearest school to where they live.
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## **Documents that learners should produce to be admitted to a public school**

The Admission Policy for Ordinary Schools says that the only documents parents need to show the school when they apply for a learner to be admitted are:

- Completed admissions application form.
  - The learner's birth certificate (if the parent is unable to produce a birth certificate, the school must accept the learner on condition that the parent gets a copy of the birth certificate from the Department of Home Affairs).
  - If the learner is transferring from another school, they must produce a transfer card, a report card or any document from the previous school with an affidavit stating why the learner does not have a transfer card.
  - Proof that the learner has been immunised against polio, measles, TB, diphtheria, tetanus and hepatitis B (usually, the learner's clinic card will give proof of this). If the learner hasn't been immunised, the principal must advise the parent to have the learner immunised as part of the free public primary healthcare programme.
  - In terms of a person with no documents, the school can still accept the learner, but the documents must be brought within a reasonable time.
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## **Process for admission to a public school**

The head of education in each province will determine how the admissions application process will work for their province and they are responsible for the administration of admissions of learners. The process may be different in each province. For example, some provinces like Gauteng, Western Cape and Northern Cape only make use of an online application process, while KwaZulu-Natal schools only accept hard-copy application forms. Other provinces make use of both systems.

The parents or caregivers of a learner must complete and submit a school application form. If there is an online application process, the parent or caregiver must register on the provincial education department website to complete an online application form. If the school requires a hard copy application form then this usually has to be submitted to the school in person. School Principals are required to help parents with completing their admission application forms.

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## **Refusing to admit a learner to a school**

If a learner's application to a school for admission is unsuccessful, the school must inform parents and learners of their right to appeal against the decision of the school. Also, the school must provide full and proper reasons for the refusal of admission to parents and learners.

### **WHAT HAPPENS IF A CHILD IS REFUSED ACCESS TO A SCHOOL ON GROUNDS OF LANGUAGE?**

Language cannot be used as a reason to refuse admission to learners. The language policy of the school must reflect that language or languages spoken by the learners and the school must show how it is promoting multilingualism. Government policy is clear on allowing all learners access to state schools. It also supports mother tongue instruction where this is possible. Some communities have successfully solved this matter by entering into negotiations with the school governing body.

When faced with a problem where a number of learners cannot access a school because of its language policy, paralegals or community workers can begin by finding out how many learners are without a school to attend in the community. They can then request a meeting with the Principal and the school governing body. The local Education District Office can also be approached to assist.

### **CAN A LEARNER BE REFUSED ADMISSION FOR FAILING TO PAY SCHOOL FEES?**

The law says that no child can be refused admission to a school because their parents cannot afford to pay school fees. It is also illegal for the following to take place in relation to fees:

- To charge registration fees or other advance payments from parents when admitting a learner to a school
- To send a learner home from school because of unpaid school fees
- To refuse to give the results of tests or exams if fees have not been paid.

The law says that the paying of fees is a matter between the SGB and the parent of the learner and not a matter between a learner, educators and/or principals.

### **CAN A LEARNER BE REFUSED ADMISSION FOR BEING UNABLE TO AFFORD A UNIFORM, SCHOOL BOOKS OR A REGISTRATION FEE?**

The ability to pay for school uniforms and books is not a condition for admission to a school. Schools are also not allowed to refuse to register learners who cannot pay a registration fee. (*See pg 913: No-fee and Fee-charging schools*)

## **CAN A LEARNER BE DISCIPLINED FOR CULTURAL PRACTICES THAT ARE 'AGAINST SCHOOL RULES'?**

In the case of *MEC for Education (KZN) v Navaneethum Pillay*, the Constitutional Court found that the refusal by a school to allow one of its pupils to wear a small gold nose stud (which she argued was part of her cultural heritage and identity) constituted unfair discrimination against the pupil on both a cultural and religious basis, and the school was ordered to let the pupil wear the nose stud.

## **CAN A DISABLED LEARNER BE REFUSED ADMISSION?**

The law says that 'learners with special education needs' must, in most cases, have the chance to attend ordinary public schools. The school has to follow a process where the Head of Department (HOD) first consults parents and other educators to see if the learner can be admitted. This might include adapting some of the school's facilities. If the school feels that they do not have the capacity to admit the learner then the law says the HOD must have the learner admitted at another suitable school in the province. Learners with special needs cannot simply be refused admission. These learners are governed by Sections 22–25 of the Admissions Policy for Ordinary Public Schools.

## **CAN A LEARNER BE REFUSED ADMISSION BECAUSE THEY ARE HIV POSITIVE?**

Every learner has a right to be treated:

- In the same way as other learners
- With human dignity

Therefore, no learner may be discriminated against on the grounds of their HIV status.

There is a National Policy on HIV/AIDS for Learners and Educators which aims to respond to the wide variety of circumstances involving HIV/AIDS in schools and to acknowledge the importance of SGBs, councils and parents in responding to this. Governing bodies are expected to implement the National Policy by developing and adopting an HIV/AIDS Implementation Plan. The National Policy deals with the following:

- Non-discrimination and equality with regard to learners and/or educators with HIV/AIDS
- HIV/AIDS testing and admission to schools and appointments of educators
- Attendance at schools by learners with HIV/AIDS
- Disclosure of information and confidentiality
- Creating a safe school environment to prevent the risk of transmission of HIV/AIDS, particularly during play and sport

- Education on HIV/AIDS
- Duties and responsibilities of all learners, educators and parents
- Consequences of refusing to study with or teach a learner with HIV/AIDS or to work with or be taught by an educator with HIV/AIDS
- School Implementation Plans
- Health advisory Committees

#### **CAN A LEARNER BE REFUSED ADMISSION OR EXPELLED BECAUSE SHE IS PREGNANT?**

A learner may not be refused admission to a school or expelled from a school because she is pregnant. The school principal and the school community should look at ways to support learners who are pregnant. The school is required to provide pregnant learners with health information.

The Constitutional Court ruled in 2013 that expelling a pregnant learner is against the law and undermines the right to education.

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#### **Appeal against a refusal to admit a learner to a school**

If a learner's admission has been refused, they can appeal against this decision to the provincial MEC. Parents should make their appeal as soon as possible after they have been notified that the school has refused the learner's admission. Also, check provincial appeal timelines.

In the appeal, you must address the following:

- The current admission application to the school(s), when the application was made and whether or not the application was made in time
- The outcome of the application and the engagement the parent or caregiver has had with the principal
- Any steps taken by the parent or caregiver (especially whether or not the parent has approached other schools and if these schools' admission application dates have lapsed).
- Grounds for the appeal (reasons why the school's decision is unreasonable and without basis)
- Request that the MEC overturn the decision of the principal or the SGB, or alternatively that the MEC find alternative placement for the learner at the nearest school possible. The PED has a duty to place the learner in a suitable school, not necessarily in a school of the parent's choice.
- Include all relevant documentation. Include reference to the school's admission policy and whether the parent feels the school has not followed its own policy or acted unfairly towards the learner.



It is better for the learner's case if the parent has applied to a number of schools, as learners are not guaranteed a place in a specific school.

## School fees

Public schools are funded by the government and through school fees and/or school fundraising. Laws and regulations governing school fees are as follows:

- The *South African Schools Act* (Act 84 of 1996) as amended by the *Education Laws Amendment Act*, 2005 (SASA)
- The *Regulations Relating to the Exemption of Parents from the Payment of School Fees*, 2006
- The *Amended National Norms and Standards for School Funding*, 2006
- The *Admission Policy for Ordinary Public Schools*, 1998

The government pays most of the teachers' salaries and bigger building costs and makes some contribution per learner to pay for the equipment and running costs. Over and above the government's contribution, parents of learners pay school fees that contribute to financing some schools' operating expenses.

According to the *South African Schools Act* (SASA), the SGB of a school must take all reasonable measures within its means to supplement the resources that are supplied by the government in order to improve the quality of education that is provided to all the learners at the school.

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### No-fee and fee-charging schools

Schools are divided up into 5 categories or quintiles, with the poorest schools being in quintile 1, and the least poor being in quintile 5.

The amount contributed by the state in a quintile 1 school (the poorest school according to the quintile status) will be higher than the amount contributed in a quintile 4 or a quintile 5 school (least poor). In other words, all these schools receive subsidies, but the amount varies depending on which quintile the school is determined to be. The amount that the state contributes per learner decreases as you move up the quintiles.

Theoretically, schools falling into quintiles 1 and 2 ought to be no-fee schools, and some schools falling into quintile 3 may be no-fee schools, too, although this is voluntary in each

province. Parents sending their children to these schools should not have to pay any fees, including registration or activity fees.

In some instances, the MEC for Education may stipulate that a school will be a no-fee school for learners in Grades R to Grade 9 but will charge fees after this.

### **EXEMPTIONS FROM SCHOOL FEES**

At each school, the School Governing Body decides what the fees will be. The majority of parents of children at the school must approve the fees at a general meeting of the parent body. Once the fees are agreed, all parents are legally required to pay them. If a parent can't afford the fees or cannot pay the full amount, they can apply at the school for an exemption. Public schools are not allowed to refuse admission, suspend pupils from classes, deny them access to sporting or social activities, or refuse to issue school reports if parents are unable to or fail to pay school fees. However, the school is allowed to request that parents come to school and collect the reports in person.

Government regulations specify the formula that must be used to calculate whether parents or caregivers qualify for a full or partial exemption. The formula takes into account the number of school-going children supported by a parent or caregiver and provides specific guidelines for calculating the amount of partial exemptions.

In terms of these regulations, certain categories of children are automatically exempt from paying fees. These include Child Support Grant beneficiaries and children in foster care. In order to work out whether parents or caregivers qualify for a full or partial exemption, they will need the following information:

- What are the annual school fees for the school
- What the parent or caregiver's annual income (or earnings) is OR, if it is a two-parent household, what the combined gross income is of both parents/caregivers
- How many learners from the same family attend 'fee-charging' schools

### **CALCULATING EXEMPTIONS FROM SCHOOL FEES**

When applying for an exemption from school fees, the SGB will apply a certain formula. The formula is used to work out what proportion (or percentage) of the family income would be spent on school fees. If the school fees are 10% of the parent/caregiver's total income, they will be entitled to a full exemption and will not have to pay school fees.

The formula for working out exemptions is as follows:

$$E \text{ (Exemption)} = 100 \left[ \frac{F \text{ (Annual fees)} + A \text{ (Additional contributions demanded by the school)}}{C \text{ (Combined gross income of both parents)}} \right]$$

$$[ C \text{ (Combined gross income of both parents) } ]$$

Do this calculation as follows:

1. Calculate the amount in the brackets on the top line. This gives the amount in fees that the parent has to pay the school.
2. Calculate the amount in the brackets on the bottom line. This gives the income of the parents.
3. Divide the top line by the bottom line
4. Multiply the figure reached in (3) by 100 (to get a percentage)
5. E will now equal a certain percentage

If E = 10% (or more than 10%), then the parent qualifies for a full exemption because this means school fees are 10% of their income.

## EXAMPLES

### FULL EXEMPTION FROM SCHOOL FEES

1. Nelisiwe is a domestic worker earning R1 500 per month. Her gross income for the year is, therefore, R18 000. She is a single parent with one child. The annual school fees for her child's school are R2 000 per year. Additional school expenses amount to R100 for the year. Would she qualify for a full exemption in school fees?

$$E \text{ (Exemption)} = 100 \left[ \frac{F \text{ (Annual fees)} + A \text{ (Additional contributions demanded by the school)}}{C \text{ (Combined gross income of both parents)}} \right]$$

$$[ C \text{ (Combined gross income of both parents) } ]$$

$$E = 100 \left[ \frac{R2\,000 + R100}{[ 18\,000 ]} \right]$$

$$[ 18\,000 ]$$

$$E = 100 \left[ \frac{R2\,100}{[ 18\,000 ]} \right]$$

$$[ 18\ 000 ]$$

$$E = 100 \times 0.12$$

$$E = 12\%$$

**Nelisiwe would qualify for a full exemption because the school fees amount to more than 10% of her income.**

2. Thabo and Maria earn a total income of R2 500 per month. This means their gross annual income is R30 000. They have a single child who attends a school where the annual school fees are R4 000 with additional costs of R500. Would they qualify for a full exemption in fees?

$$E (\text{Exemption}) = 100 [ F (\text{Annual fees}) + A (\text{Additional contributions demanded by the school}) ]$$

$$[ C (\text{Combined gross income of both parents}) ]$$

$$E = 100 [ R4\ 000 + R500 ]$$

$$[ 30\ 000 ]$$

$$E = 100 [ R4\ 500 ]$$

$$[ 30\ 000 ]$$

$$E = 100 \times 0.15$$

$$E = 15\%$$

**E, in this case, is greater than 10%, which means Thabo and Maria would qualify for a full exemption.**

## **AUTOMATIC EXEMPTION**

The following learners may not be charged any school fees:

- An orphan in an orphanage
- A child in foster care
- A child who has been placed in the care of a family member ('kinship caregiver')

- A child who heads a household or is part of a child-headed household
- A child whose parents receive a social grant on behalf of the same learner, for example, a Child Support Grant

### **NO EXEMPTION**

If the school fees are 2% of a parent's total income, the parent does not qualify for any exemption unless they have five or more children at a 'fee-charging' school. If the school fees are less than 2%, a parent does not qualify for any exemption.

However, if the financial position of a parent changes, for example, if a parent is retrenched and they are unable to continue paying the compulsory school fees, then the parent must apply to the SGB to ask for the school fees to be waived until they are employed again. It will be up to the SGB to decide whether or not to give the parent an exemption and if so, what the exemption should be.

If the parent has made an application and they are found to be not eligible for exemption and are in arrears with their school fees, then the SGB may decide to take legal action against the defaulting parents. It would be important to help the parent consider whether they should move their child to a no-fee school to avoid incurring further debt if they are experiencing financial difficulty. In addition they could be advised with regard to settling their outstanding debt.

### **PARTIAL EXEMPTION**

According to the exemption formula, if the school fees are between 3.5% and 10% of the total income, a parent will qualify for a partial exemption (see example below). The school cannot ask the parents to sign an Acknowledgement of Debt in lieu of the possibility of defaulting on payment at a future date.

## EXAMPLE

### PARTIAL EXEMPTION FROM SCHOOL FEES

Suraj has one child in a school. The annual school fees are R3 000 with additional costs of R150 for the year. Together, Suraj and his wife earn an annual gross income of R35 000. Will they qualify for a partial exemption from school fees?

$$E (\text{Exemption}) = 100 \left[ \frac{F (\text{Annual fees}) + A (\text{Additional contributions demanded by the school})}{[ C (\text{Combined gross income of both parents}) ]} \right]$$

$$E = 100 \left[ \frac{R3\,000 + R150}{[ 35\,000 ]} \right]$$

$$E = 100 \left[ \frac{R3\,150}{[ 35\,000 ]} \right]$$

$$E = 100 \times 0.09$$

$$E = 9\%$$

Suraj and his wife would qualify for a partial exemption because the fees are between 3.5% and 10% of their combined income. In other words, Suraj will have to pay a portion of the fees. To find out how much he will have to pay, **See: Table for calculating exemptions from school fees.** According to this Table, which is included in the regulations, parents with one child at a school who spend 9% of their joint income on school fees, qualify for a 94% fee exemption.

$$94\% \text{ of the joint income of R3\,000} = R2\,820$$

$$R3\,000 - R2\,820 = R180$$

**Suraj will, therefore, have to pay R180 in school fees for their child for the year.**

### PARENTS WITH MORE THAN ONE CHILD AT SCHOOL

According to the exemption formula, if the school fees are 2.5% of a parent's total annual income, the parent does not qualify for any exemption unless

they have three or more children at the same school or at another public fee-charging school.

If the school fees are 3% of a parent's total income, the parent does not qualify for any exemption unless they have two or more children at the same public school or at another 'fee-charging' school. While this sounds very complicated, it is easy to work out by using the *Table for calculating exemptions from school fees*. Also see **Example below - Exemption from fees: More than one child at school**

## EXAMPLES

### EXEMPTION FROM FEES: MORE THAN ONE CHILD AT SCHOOL

1. Thabiso has 4 children registered in the same school. The joint annual income of Thabiso and her husband is R25 000. The annual school fee for one learner is R1 500, and the additional costs at the school amount to R50 per learner. What exemption in school fees will Thabiso qualify for?

$$E (\text{Exemption}) = 100 \left[ \frac{F (\text{Annual fees}) + A (\text{Additional contributions demanded by the school})}{C (\text{Combined gross income of both parents})} \right]$$

$$[ C (\text{Combined gross income of both parents}) ]$$

$$E = 100 \left[ \frac{R1\,500 + R50}{25\,000} \right]$$

$$[ 25\,000 ]$$

$$E = 100 \left[ \frac{R1\,550}{25\,000} \right]$$

$$[ 25\,000 ]$$

$$E = 100 \times 0.06$$

$$E = 6\%$$

The school fees are between 3.5% and 10% of the parents' total income. The parents will, therefore, qualify for a partial exemption. What will this exemption be worth to Thabiso? To find this out, see: **Table for calculating exemptions from school fees**. According to the Table, a parent with 4 children attending 'fee-charging' schools, who spends at least 6% of the joint family income on school

fees, qualifies for an 81% fee exemption.

81% of the school fees of R1 550 = R1 255.50

$R1\ 550 - R1\ 255.50 = R294.50$

**Thabiso will, therefore, have to pay R294.50 in school fees for each of her children.**

2. According to the **exemption formula**, Mary qualifies for a 7% exemption from school fees for each of her two children who attend 'fee-charging' schools. The fees are R500 per year per child. How much of these fees will Mary be exempt from paying for each child?

In the **Table for calculating exemptions from school fees**, look along the top horizontal line until you get to '2' learners. Next, look down the vertical line of the table and find '7%'. Move your finger along the 7% line until it meets the '2' learners column. This will tell you that Mary qualifies for an exemption of 83% of the school fees for each child.

To calculate how much this is worth to her:

83% of R500 (the cost of school fees per child per year) = R415 per child.

$R500 - R415 = R85$ .

**Mary will have to pay R85 school fees per year per child.**

## APPLYING FOR AN EXEMPTION IN SCHOOL FEES

It is the duty of the school to inform parents about exemptions. In the case of *Two Mothers v Hunt Road Secondary School*, the Court held that the school had acted unlawfully in attempting to sue the mothers in question for unpaid school fees when the mothers qualified for an exemption from fees in terms of their incomes but were never advised by the school of their rights to apply for such exemptions.

To apply for an exemption in fees, the parent must do the following:

- Ask the school for an application form
- Complete the application form. If there is no application form, write a letter to the Chairperson of the SGB requesting to be exempted in part or totally from fees.
- If the parent needs help in completing the application form or writing the letter, the principal of the school must help them.



- Provide a pay slip or letter from the employer explaining how much the parent earns.
- If the parent is unemployed or self-employed, they should make an affidavit saying what they earn or how they support the child, for example, on a pension or a child care grant.

Parents/caregivers who qualify for fee exemptions should apply to the SGB every year.

The SGB has 30 days (one month) to consider and decide on an application. The decision must follow what the law says in the Regulations. In considering an application for exemption, the SGB must take into account:

- The financial position of the applicant, including:
  - The total gross annual income of the parents
  - The total of their necessary annual expenses
  - A statement of their assets and liabilities.
  - The number of dependants of the applicant
  - The applicant's standard of living
  - Any other relevant information the applicant supplies.

The SGB then has 7 days (one week) to tell the parent/caregiver what it has decide.

See the Table on the next page for calculating exemptions from school fees.

**TABLE FOR CALCULATING EXEMPTIONS FROM SCHOOL FEES**

PERCENTAGE OF INCOME SPENT ON SCHOOL FEES (DIVIDE ANNUAL FEES BY TOTAL PARENTAL INCOME)	EXEMPTION PER NUMBER OF LEARNERS AT SCHOOL IN SAME FAMILY			
	1 LEARNER	2 LEARNERS	3 LEARNERS	4 LEARNERS
2%	0%	0%	0%	0%
2.5%	0%	0%	0%	14%
3%	0%	7%	22%	33%
3.5%	7%	26%	50%	47%
4%	25%	40%	40%	57%
4.5%	39%	51%	59%	65%
5%	50%	60%	67%	71%
5.5%	59%	67%	73%	77%
6%	67%	73%	78%	81%
6.5%	73%	83%	82%	85%
7%	79%	87%	86%	88%
7.5%	83%	90%	89%	90%
8%	88%	88%	92%	93%
8.5%	91%	93%	94%	95%
9%	94%	96%	96%	97%
9.5%	97%	98%	98%	98%
10%	100%	100%	100%	100%

### HOW TO USE THE TABLE

Look along the top horizontal line and find the number of children or learners. Next, look down the vertical line and find the percentage that has been worked out according to the exemption formula. Move your finger along the percentage line until it meets the horizontal column coming down from the number of learners. The figure in the square is how much the exemption will be worth to the parents for each child.

### APPEALING AGAINST A DECISION

If the parent/caregiver is unhappy with the decision, they have 30 days to appeal against the decision in writing to the head of the Department of Basic Education in the province. A parent should be informed of the decision of the Head of Department within 7 weeks from the date the appeal was first made.

*(See Pg 1086: Resources for contact details of the provincial basic education departments)*

*[Acknowledgements to the Education Law Project (ELP), Centre for Applied Legal Studies (CALS) at [www.law.wits.ac.za/cals](http://www.law.wits.ac.za/cals) for the information contained in this section.]*

## Educators and doing business with the state

The Basic Education Laws Amendment Act (BELA) prohibits educators from doing business with the state or being a director of a public or private company that does business with the state. It creates an offence if an educator is found to contravene this requirement.

## Discipline in schools

According to the SA Schools Act, a governing body of a public school must draft and adopt a Code of Conduct for the learners. This needs to follow a consultative process with learners, parents and educators of the school.

This Code of Conduct must include the types of behaviours that will be punished, the types of punishments that will be given for different forms of misbehaviour, policies on making the school a safe place against bullying and drugs, as well as grievance procedures for learners and parents if they want to take up a matter against another learner or the school, and disciplinary procedures that the school will follow if it plans to discipline a learner.

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### Kinds of punishment

#### CORPORAL PUNISHMENT

Section 10 of the SA Schools Act bans corporal punishment such as canings or hidings because Section 12 of the Constitution says no one should be punished or treated in a cruel or degrading way. A person who is found guilty of using corporal punishment can be charged with assault. The kinds of punishments that schools can use include a demerit system, detention, picking up rubbish on the playing field and so on. Degrading punishments like cleaning toilets are not allowed.

In 2017, the DBE published the 'Protocol to Deal with Incidences of Corporal Punishment in Schools', which sets out how corporal punishment should be reported. Incidents of corporal punishment should not be dealt with informally by the school.

**LEARNERS** should report corporal punishment as follows:

**Step 1:**

- Report the incident of corporal punishment to the school principal. If the principal is involved in the incident, then report the case to the circuit manager in the district or to the deputy director of the provincial department of education. The principal (or whoever the case has been reported to) must gather information and record this in a written statement.
- The principal must send the statement and any other relevant documents to the Directorate: Dispute Management at the head office of the provincial Department of Education (PED), marking the file as 'urgent'.
- The principal must inform the SGB of the incident.
- The principal must inform the circuit manager in the school's education district about the alleged instance of corporal punishment and confirm with them that the matter has been referred to the district director of the department of education.
- The principal must also inform the parents of the victim of the alleged corporal punishment, informing them that the matter has been referred to the head office of the PED and that they will be contacted by an official from the PED.

The district office of the education district the school is located in will then investigate the matter and compile a report. This report will be forwarded, along with recommendations, to the head of the PED for approval. Where an educator has been found guilty of corporal punishment, disciplinary action will be taken by the PED, and the matter will be simultaneously referred to the South African Council for Educators (SACE). A Form 22 should also be completed and sent to the head of the Department of Social Development, the district manager of the PED, the national Department of Basic Education, and a social worker. You can ask an adult at your school for these details. Once Form 22 has been filled out, it triggers a child protection investigation by a designated social worker.

**Step 2: SAPS**

All incidents of corporal punishment must be reported to the South African Police Service (SAPS) so that a case of assault can be opened against the educator.

- You can report an incident of corporal punishment at your local police station.
- If you are under 18 years of age, a parent, social worker or educator should accompany you to the police station and report with you.
- If you are over 18, you have a choice whether or not to lay a charge yourself. If you do not wish to or are under 18, a charge must be laid by the person accompanying you.

### **Step 3: Lodge a complaint with SACE**

- This can be done by calling the hotline, faxing, emailing or posting your complaint.
- You need to give as many facts, dates and details as possible.
- If you are helping a classmate or reporting an incident on their behalf, their name must be included in the complaint.
- If you do not feel comfortable lodging a complaint you can do it anonymously, and it will be accepted. If you choose to do it this way, SACE will need the following in order to do a proper investigation:
  - Name of the person who allegedly abused the learner
  - Name of the school involved
  - Name and grade of learner involved
  - Specifics of the incident, including the date.

**EDUCATORS** are legally required to report incidents of corporal punishment by following the same steps as learners.

**PARENTS, THIRD PARTIES AND COMMUNITY MEMBERS** can also report corporal punishment by following the same steps as for learners. They can report an incident on behalf of a learner or assist a learner in reporting the incident.

**HOTLINES AND NGOS** - Cases involving violence/harassment by educators can also be reported via various hotline options:

- SACE Tel: 012 663 9517
- DEPARTMENT OF BASIC EDUCATION: Helpline: 0800 202 933
- WESTERN CAPE DEPARTMENT OF EDUCATION – SAFE SCHOOLS CALL CENTRE Toll-free number: 0800 45 46 47
- POLICE CHILD PROTECTION UNITS Tel: 10111 [childprotect@saps.org.za](mailto:childprotect@saps.org.za)
- CHILDLINE SOUTH AFRICA 08000 55 555
- CHILD WELFARE SOUTH AFRICA 0861 4 CHILD (24453) 011 452 4110
- Organisations such as the Centre for Child Law, Legal Resources Centre, SECTION27, and Equal Education can also be contacted to assist with such matters and to provide learners and families with legal advice.

## **SUSPENDING A LEARNER FROM SCHOOL**

For serious offences, the school may suspend a learner for up to one week from school. This can only happen once there has been a fair hearing where the learner has had a chance to put their side of the story.

## **EXPELLING A LEARNER FROM SCHOOL**

If a school feels that the offence which the learner has committed is so serious that they should be expelled from the school, the learner can be suspended from the school while the provincial Head of Department decides whether or not to expel the learner. Only the provincial Head of Department can expel a learner from a school. The principal cannot make that decision. If a learner is expelled they can appeal against the Head of Department's decision to the provincial MEC of education. The Head of Department has to make arrangements to place an expelled learner in another public school.

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### **Taking disciplinary action against a learner**

Where a learner has been told to appear in a disciplinary hearing for any misconduct identified in the Code of Conduct, they must be accompanied by a parent or person designated by the parent at the disciplinary proceedings unless the SGB can give good reasons for continuing without the parent.

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### **Taking disciplinary action against an educator for misusing disciplinary measures**

Where there has been a complaint of misuse of disciplinary measures against an educator at a school, the district office for that school will conduct preliminary investigations of the allegations. Depending on the outcome of the investigation, the district official will refer the case to the Labour Relations Directorate for further investigation and disciplinary hearings.

The *Employment of Educators Act of 1998 (EEA)* governs the procedure for disciplinary hearings against educators. It has different sanctions for misconduct and serious misconduct. The EEA states that if the misconduct is also a criminal offence, then separate and different proceedings will occur. It does not make provision for legal representation in disciplinary hearings, but it allows for the presiding officer to appoint an intermediary if the learner is under 18 and will suffer 'undue stress' during the disciplinary procedure. The

EEA says that educators can also be dismissed if they contravene Section 10 of the Schools Act.

### **SOUTH AFRICAN COUNCIL OF EDUCATORS (SACE)**

All educators are required to register with the South African Council of Educators (SACE), and to comply with its Code of Professional Ethics. SACE is a statutory body that was established to develop and maintain ethical and professional standards for educators. Corporal punishment or assault is the most common form of educator misconduct reported to SACE.

If a learner wants to make a complaint to SACE, they can follow its disciplinary procedure. After a complaint has been made, there is an initial investigation of the complaint. The matter may then be referred for a disciplinary hearing. If an educator is found guilty of misconduct, SACE has the following possible sanctions:

- A caution or reprimand
- A fine of not more than one month's salary, or
- Removing the educator's name from the register for a specific period or indefinitely.

## **Sexual harassment and abuse in schools**

The *Protocol for the Management and Reporting of Sexual Abuse and Harassment in Schools* in 2019 (referred to as the *Sexual Abuse and Harassment Protocol*) has been developed to provide the Department of Basic Education (DBE) at all levels, especially the School Management Teams (SMTs) District Directors and Provincial Managers, with guidelines to manage and report all incidents of sexual abuse and harassment as required by the *Sexual Offences and Related Matters Amendment (SORMAA) Act* (No. 32 Of 2007). The Protocol also provides a guide to the management and reporting of sexual abuse and harassment to encourage a consistent and appropriate response to cases of sexual abuse and harassment perpetrated against learners. It provides for a standard response to allegations by learners of sexual abuse and harassment, whether they are perpetrated by fellow learners, educators or by other people.

Gender discrimination, sexual harassment and violence are against the law, which means the school management is obliged to follow prescribed legal procedures when dealing with these kinds of grievances.

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## **Reporting sexual harassment if a victim is a learner**

1. A learner who is a victim of sexual harassment can report an offence to:
  - An educator, the Principal or Grade Head, OR
  - Another learner or person they feel comfortable with who must then report it to an educator, the Principal or Grade Head, OR
  - A parent or community member who can report the complaint to any of the following people: Principal, Grade Head, a member of the School Management Team (SMT), an Educator, Circuit Manager, Department of Social Development (DSD), South African Council for Educators (SACE), Department of Health (DOH) or SAPS.
2. If another learner is the alleged perpetrator, then a disciplinary hearing must be held by the Principal or Grade Head for that learner.
3. In all cases, the Principal is responsible for the following actions:
  - Report the incident to the Circuit Manager
  - Inform the parents of the learner victim and learner perpetrator
  - Inform the School-based Support Team (SBST)
  - Inform the School Governing Body chairperson
  - Report the incident to the Department of Social Development (DSD)
4. The Circuit Manager should take the following actions:
  - Report the incident to the Provincial Department of Employment and Labour.
  - If the alleged perpetrator is a staff member, hold an Education Labour Relations Council (ELRC) arbitration and report the incident to the South African Council of Educators (SACE), which will hold its own parallel investigation.
5. If the incident is a level 4 offence (which includes sexual assault and rape), then the case should be reported to the police and the nearest Thuthuzela Care Centre.

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## **Reporting sexual harassment if a victim is a staff member**

1. A staff member who is a victim of sexual harassment should report an offence to the Principal, who should take the following actions:
  - Report the incident to the Circuit Manager
  - Report the incident to the Department of Social Development
  - Inform the School Governing Body chairperson



2. If the alleged perpetrator is a learner, the Principal must report the incident to the Grade Head, and a disciplinary hearing should be held. The incident should also be reported to the School-based Support Team (SBST).
  3. The Circuit Manager should take the following actions:
    - Report the incident to the Provincial Department of Employment and Labour
    - If the alleged perpetrator is a staff member, hold an Education Labour Relations Council (ELRC) arbitration and report the incident to SACE, which will hold its own parallel investigation
  4. If the incident is a level 4 offence (which includes sexual assault and rape), then the case should be reported to the police and the nearest Thuthuzela Care Centre.
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## **Child protection register and sexual offenders register**

The *Children's Act* establishes the National Child Protection Register. This is separate from the Sex Offenders Register.

The *Child Protection Register* contains two lists:

1. **Part A:** Includes details of children who have been abused and/or neglected, to assist with giving those children special protection and preventing their further abuse and neglect.
2. **Part B:** Includes the details of adults who have been found to be unsuitable to work with children or to have access to them. A finding that a person is unsuitable to work with children can be made by a court or other forum, including, for example, disciplinary action brought against a teacher or disciplinary action taken by the South African Council for Educators (SACE). Any person who has been convicted of murder or rape of a child, assault with the intent to do serious harm to a child, keeping child pornography, or of human trafficking is automatically seen to be unsuitable to work with children, and their name should be entered into Part B of the Child Protection Register.

A court can also order that a person must be listed on Part B of the Child Protection Register. The Child Protection Register is private but allows people in child protection organisations, as well as members of the police who work on child protection, to access the register. All institutions working with children should check this list before employing anyone. This information can be obtained by writing to the Director General of the Department of Social Development (DSD) on a confidential basis. The Director General must respond in writing within 21 working days to say whether the person's name appears on Part B of the Child Protection Register. Alternatively, the employer can complete Form 29 from the DSD and send it back to them with the request to complete the details.

Any person convicted of sexual offences against a child or a person who is mentally disabled will have their name recorded in the Sex Offenders Register. The Sex Offenders Register has only recently become operational and is different to the Child Protection Register. Usually, an employer would have to get a certificate from the Department of Justice and Constitutional Development to confirm that a potential employee's name does not appear on the Sexual Offenders Register. If an employer cannot get these details from the department, they should try and get a police clearance certificate from the potential employee and ask them to provide an affidavit confirming that they have never been convicted of a sexual offence against a child.

## Language in schools

Section 6 of the Schools Act deals with language policy in public schools at two levels: provincial and individual school level. At provincial level, the MEC responsible for education in each province must decide on the norms and standards for language in the province, and at school level, SGBs must develop a language policy for their school that specifically promotes the best interests of the community where the school is located.

Section 3(3) of the Schools Act requires the MEC to ensure that there are enough places in schools so that every child who has to go to school (children between the ages of seven and 15 years) can attend school. This means that the MEC must make sure, within reason, that every learner has a place in a school that offers their preferred language of instruction. The school governing body's power to develop a language policy is therefore limited by the following:

- The language policy must be consistent with the norms and standards made by the MEC
- The language policy cannot discriminate against learners on the grounds of their race, culture, ethnic or social origin (or any other grounds)
- The language policy must facilitate access to school for learners in the community and must take into account what the community's needs are regarding teaching language for children at the school
- The language policy must promote the best interests of the broader community.

What this means in practice is that while the SGB makes the language policy of the school, the MEC may intervene if the language policy is discriminatory, if it unfairly restricts access to the school, or if it is unreasonable in any other way.

If no school in the school district offers a learner's preferred teaching language, the learner can ask the provincial education department to make provision for that learner:

- If there are at least 40 learners in the same grade (in grades 1 to 6) or at least 35 learners in the same grade (in grades 7 to 12) wanting a particular language of instruction, the norms and standards provide that it will be reasonably practical to provide education in that language and the provincial education department must facilitate this.
- If a smaller group of learners wants a particular teaching language, it may not be reasonable to provide this. However, the head of the provincial education department must still consider how to assist the learners and must consult the SGBs and the principals of the schools concerned to make a decision.

Even if the school cannot offer education in a particular language, and the learner must learn in a language that is different to their home language, the head of the provincial education department must still consider how it can provide additional support to that learner.

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## **Draft policy on the introduction of African languages in schools**

In 2013, the Department of Basic Education introduced a draft policy on the incremental introduction of African Languages in schools.

The purpose of this draft policy is to give protection to African languages, for learners who speak an African language at home and for learners who do not. The draft policy provides that learners in all grades should learn one language at the home language level and two on the first additional language level. This would need additional teaching time every week for learners in all grades. It would also require that the necessary learning materials are available in all of the African languages and that teachers who are qualified to teach in these languages are available to teach. This policy still needs to be finalised.

## **Transport in schools**

In October 2015, the national Department of Transport (DoT) published a National Learner Transport Policy with the Department of Basic Education and other stakeholders. The National Policy introduced the following:

- Both the DoT and the DBE are jointly responsible for providing learner transport.

- The criteria to be used to determine which learners should benefit from government-subsidised learner transport, including:
  - Beneficiaries must be needy learners from Grades R to 12
  - Learner transport will be subsidised to the nearest appropriate school only and not to a school chosen by the parents
  - Priority must be given to learners with disabilities, taking into account the nature of the disability
  - Priority must be given to primary school learners who walk long distances to schools
  - Existing learner transport services must be taken into account when identifying beneficiaries, as no learner transport services will be provided in areas where public transport is available in order to avoid duplication of services and resources
  - That selection criteria must not discriminate on the basis of gender or race and must not deny access to learners from disadvantaged communities.

Every province has a duty to develop a provincial learner transport plan that is consistent with the National Policy. Provinces use different departments to do this. For example, in Gauteng, the DBE manages the learner transport policy, while in Mpumalanga, it is the Department of Public Works, Roads and Transport. The learner transport policies are also not all the same. Some provincial policies, such as in Mpumalanga and the Western Cape state that a minimum of ten learners are required before scholar transport will be provided for a particular route. Other provinces use the distance that learners have to walk to school as the measure; so, for example, in most provinces, learners who walk five kilometres or more per trip to school would qualify for learner transport. In KZN, the measure is 3 kilometers one way to school to qualify for learner transport. While each province must develop its own policy, the National Policy is clear that priority must be given to learners with disabilities, taking into account the type of disability, and that priority must be given to primary school learners who walk long distances.

*Acknowledgements to Section 27: Basic Education Rights Handbook 2022 for information provided for the above section.*

# Universities and TVET colleges

## Applying to go to a University or TVET college

Anyone wanting to apply to go to a University or TVET college can apply to register online. This has made the application process more accessible to applicants who can use the online application forms provided on the university or TVET college websites. There is no centralised online system for making multiple applications to different institutions, so separate applications must be made for every university or TVET college.

Some universities and colleges have an application fee. Check the relevant website for each university or college to see what the cost is.

Students who cannot make the online application should check the website of the relevant university or TVET college to see how to make the application in person.

Follow these steps to make an online application to a university or TVET college:

### 1. Research University and TVET college options

Before making an application, research courses and identify the university or TVET college that provides the programme aligned with the course to be taken. Take into account factors such as location, campus facilities, and student support provided by each university or TVET college.

### 2. Check application deadlines and apply before the closing date

Application deadlines aren't the same for all universities or TVET colleges. Common deadlines are the end of June/July or the end of September, but some course applications close even earlier or later. It is important to check this before starting the application process.

### 3. Gather necessary documents and information

Documents should be in PDF format and might include:

- Copy of passport or personal ID
- Passport-size photos
- Academic records - usually the highest education qualification (such as a high school certificate - Grade 11 and Grade 12)
- Proof of any relevant work experience or certificates
- Contact details
- CV and motivation letter (if applicable)
- Letter of reference or recommendation

- Proof of payment of application fee (if applicable) - this could be either a credit card or proof of bank deposit into the institution's bank account
- Own email and postal address

Check the specific requirements for the university or TVET college that has been chosen.

#### **4. Complete and submit the online application form**

Each university or TVET college will have its own online application portal where applications can be submitted. Follow the instructions carefully when completing the application form. Attach all the documents that the application requires before submitting the application. Make sure the correct button is clicked to submit the application.

## **NSFAS Bursary**

The National Student Financial Aid Scheme (NSFAS) is a government entity that was established under the Department of Higher Education and Training in terms of the *National Student Financial Aid Scheme (Act 56 of 1999)*. NSFAS provides financial aid to disadvantaged students who qualify to study at TVET colleges and public universities.

### **WHO QUALIFIES FOR A NSFAS BURSARY?**

- All South African citizens
- All SASSA grant recipients
- Applicants whose combined household income is not more than R350 000 per annum
- A person with a disability where the combined household income must not be more than R600 000 per annum
- Students who started studying before 2018 and whose household income is not more than R122 000 per annum.

Students who do not qualify for an NSFAS bursary include those who:

- Have completed a previous qualification
- Have a combined household income of more than R350 000 per year
- Have already received funding for their studies

### **WHAT DOES THE NSFAS BURSARY COVER?**

Costs for accommodation, living allowance and learning materials must be checked with the latest Department of Higher Education guidelines. These are the current figures for 2023.

## **UNIVERSITY**

- Accommodation - Actual costs charged by the university (costs for private accommodation must not be more than costs for university residence)
- Transport (up to 40 km from the institution) R7 500 per annum
- Living allowance R15 000 per annum
- Book allowances R5 200 per annum
- Incidental/personal care allowance of R2 900 per annum for students in catered residences

## **TVET**

- Accommodation in an urban area R24 000 per annum
- Accommodation in a peri-urban area R18 900 per annum
- Accommodation in a rural area R15 750 per annum
- Transport (up to 40 km from the institution) R7 350 per annum
- Transport R7 000 per annum
- Incidental/personal care allowance R2 900 per annum

## **APPLYING FOR A NSFAS BURSARY**

Before applying, check on the NSFAS website for the opening and closing dates for applications for an NSFAS bursary for Universities and TVET Colleges:  
<https://www.nsfas.org.za/content/how-to-apply.html>

What documents are required to apply for an NSFAS bursary?

- Copy of student ID / Birth certificate
- Copy of parent/s or guardian/ spouse ID
- Smart card: both sides of the card required
- Proof of income (where applicable)
- Persons living with disability (Disability Annexure A form)
- An applicant who is recognised as a vulnerable child by the Department of Social Development must provide a Vulnerable Child Declaration form completed by a social worker
- An applicant who has indicated that they have no family member details and or abridged birth certificate must complete the Declaration: Non-SASSA

How to apply for an NSFAS bursary:

1. Go to [www.nsfas.org.za](http://www.nsfas.org.za) and click on the 'myNSFAS' tab.
2. Create a 'myNSFAS' account.
3. Click on the 'Apply' tab and complete the sections on the screen.
4. Upload supporting documents where this is requested.
5. Click on submit.

## **DISABILITY SUPPORT FROM NSFAS**

The NSFAS Disability Bursary Programme provides financial support to students with disabilities who need financial support and have the ability to pass their academic subjects. It is intended to provide support for students to manage learning barriers resulting from disabilities.

If a person has qualified for financial aid from NSFAS and has received final approval from NSFAS, they can apply for an assistive device. They can do this through the student disability unit at their university or TVET college.

For more information, go to the NSFAS website:

<https://www.nsfas.org.za/content/disability-support.html>

## **APPEALS TO REVIEW A DECISION FOR A NSFAS BURSARY**

An appeal is a request to review a decision not to fund a student who applied for NSFAS funding. Any student whose application for financial aid is rejected or the financial aid for a continuing student, if withdrawn, can lodge an appeal with NSFAS.

They must submit their appeal within 30 days of receiving their application results. They must do this by logging in to their myNSFAS profile and providing the necessary information.

## **STUDENT SUPPORT FROM NSFAS**

Students who receive an NSFAS bursary will get their cash funds in their NSFAS Wallet. This allows them to withdraw cash or spend it at a merchant registered by NSFAS.

### **LAPTOP**

A student who qualifies for an NSFAS bursary and is registered at a university or TVET college can apply for a laptop. To do this, follow these steps:

- Complete and submit a DLD (Digital Learning Device) form to the Financial Aid Office on campus. The form is available from this office. Order the laptop on the DLD online order portal via the NSFAS website: [www.nsfas.org.za](http://www.nsfas.org.za).
- Collect the laptop after the verification process is complete, and you have been informed that your laptop is ready for collection. The student who applied must provide an ID and sign for the laptop in person.



## Problems

### 1. Parents cannot afford to pay school fees

David and Naledi have two children at school. David was retrenched and now does casual work at a supermarket where he earns R1 600 per month (R19 200 per year). Naledi cannot find a job. They cannot afford to pay the required school fees for their children. The school has sent David and Naledi a number of reminders about the payment of school fees. The school now sends them threatening letters saying that their children will not be allowed to write the final exams unless the fees are paid. The fees for each child are R1 500 per year.

#### WHAT DOES THE LAW SAY?

The Schools Act says no child can be refused admission to a public school because their parents cannot afford to pay school fees. The right to a basic education is also entrenched in the Constitution.

Parents can apply for a full or partial exemption.

#### WHAT CAN YOU DO?

Work out whether the parents qualify for full or partial exemption using the required formula.

$$E (\text{Exemption}) = 100 \left[ \frac{F (\text{Annual fees}) + A (\text{Additional contributions demanded by the school})}{C (\text{Combined gross income of both parents})} \right]$$

$$E = 100 \left[ \frac{R1\,500}{19\,200} \right]$$

$$[ 0.08 ]$$

$$E = 100 \times 0.08$$

$$E = 8\%$$

The school fees are between 3.5% and 10% of the parent's total income. David and Naledi will, therefore, qualify for a partial exemption. What will this exemption be worth to them? Check the **Table for calculating exemptions from school fees on pg 922** to work out what the value of this exemption is. According to the Table, a parent with two children attending 'fee-charging' schools, who spends at least 8% of the joint family income on school fees, qualifies for a 90% fee exemption.

*90% of the school fees of R1 500 = R1 350*

*R1 500 – R1 350 = R150*

David and Naledi will have to pay R150 towards the school fees of each of their children.

You can help the parents apply in writing to the school governing body for an exemption from paying school fees. Ask the school for a formal exemption application form. If this is not available, then write a letter.

In the application, use the formula to show why they qualify for a partial exemption and what this exemption is worth to them.

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## **2. Learners are refused admission to a school because of unpaid school fees**

A number of learners have been refused admission to a school because they are told they have not paid their outstanding fees. The parents are unable to afford the outstanding fees and want to take action against the school to force them to take their children.

### **WHAT DOES THE LAW SAY?**

The law states that a school cannot refuse to re-admit a learner to school on the grounds that they have outstanding school fees.

### **WHAT CAN THEY DO?**

- The learner's parents should write a letter to the school principal pointing out which part of the law they are breaking and formally appeal to the SGB against the decision. Send a copy of this letter to the Head of the Department in the province and /or the Provincial MEC (Member of the Executive Council) for Education.
- If the school still refuses to admit the learner, or if they don't reply to the letter, the learner should write to the HOD in the province and/or MEC for Education and advise them that the school continues to refuse to admit the learner.

- If the HOD or MEC does not respond, contact a public interest law organisation or a lawyer for support.

## Checklist

### REGULATIONS FOR THE EXEMPTION OF PARENTS FROM PAYMENT OF SCHOOL FEES

#### MARK WITH A CROSS IN APPLICABLE BOX

Has the principal informed you about the amount of the annual school fees to be paid?	•
Has the principal informed you that you are liable to pay part of school fees unless you are totally exempted from paying school fees?	•
Has the principal informed you about your right to apply for an exemption from paying school fees or part of school fees?	•
Do you wish to apply for such an exemption?	•
Do you wish to be assisted in such an application?	•
Has the principal provided you with the relevant form for application for exemption?	•
Has the principal signed this form?	•
Have you signed this form?	•
Has the principal handed over the signed copy of this form to you?	•