



**NEDLAC REPORT
ON THE ADMISSION POLICY FOR ORDINARY PUBLIC SCHOOLS
25 AUGUST 2023**

1. BACKGROUND

- 1.1. On 10 February 2021, the Department of Basic Education (DBE), acting under section 3(4)(i) of the National Education Policy Act, 1996 (Act No. 27 of 1996), published the draft Admission Policy for Ordinary Public Schools required by the South African Schools Act, 1996 (Act No. 84 of 1996) for public comment.
- 1.2. The DBE last published the Admission Policy for Ordinary Public Schools on 19 October 1998. There was however, a need to review the provisions of the Policy as there was new legislation put in place that impacted the Policy, which was also silent on the newly developed legislation such as the Refugees Act, 1998 (Act No. 130 of 1998). The Policy was referring to Acts which had been repealed.
- 1.3. In April 2021, the DBE made a presentation to the Development Chamber on the Admission Policy that had been published for comment. However, as the process of incorporating the public comments received had not been completed, the DBE was requested to come back to Nedlac once this process was concluded.
- 1.4. Government received over five thousand (5 000) comments on the draft Admission Policy. To ensure that all comments were incorporated a team consisting of all relevant departments referred to in the Admissions Policy, including the relevant provincial officials, was established to analyse the comments received. This process took the Government over a year to complete.
- 1.5. On 14 March 2023, Government indicated its readiness to table the draft Admissions Policy for Public Ordinary Schools at Nedlac for engagement and provided Nedlac with the draft Policy which incorporated the public comments. Secretariat convened a three-a-side task team meeting under the Development Chamber to engage on the Policy.
- 1.6. On 28 March 2023, Government (DBE) tabled the Admissions Policy for Public Ordinary Schools and the Nedlac process of engagement on the Policy commenced.
- 1.7. This Nedlac Report provides a summary of the process at Nedlac and outlines the areas of agreement with inputs from social partners regarding the Admission Policy for Ordinary Public Schools.

2. PURPOSE OF ADMISSIONS POLICY FOR ORDINARY PUBLIC SCHOOLS

2.1 The Policy seeks to:

- 2.1. provide for a framework for developing admission policies for all provincial and district schools to Provincial Departments, District level, and School Governing Bodies (SGB); and
- 2.2. review the provisions of the Admission Policy for Public Ordinary Policy to cater for the Refugees Act, 1998 (Act No. 130 of 1998) and other new legislation that would have an impact on the Admissions Policy.

3. PROCESS AT NEDLAC

3.1. The task team convened four (4) meetings on the following dates:

- 3.1.1. 28 March 2023;
- 3.1.2. 06 June 2023;
- 3.1.3. 26 June 2023; and
- 3.1.4. 14 July 2023.

3.2. Please find attached:

- 3.2.1. **Annexure A** consists of the list of task team members that considered the Policy.
- 3.2.2. **Annexure B**, which is the revised Admission Policy for Ordinary Public Schools that incorporates the public input, as tabled by Government.

3.3. At the end of the process, there were no areas of disagreement recorded. The Nedlac social partners proposed several amendments to the Admission Policy for Public Ordinary Schools, which were accepted by Government. The following section sets out the list of the proposals made and agreed to by all the social partners.

4. AREAS OF AGREEMENT

4.1. The below section outlines areas of agreement reached, as a result of the Nedlac process of engagement.

Insertion = _____ [] = deletion

| No. | <u>Contents as per the Policy</u> | <u>Problem statement and Constituencies' views on what should be changed</u> | <u>Amendments agreed to by all Constituencies</u> |
|-----|-----------------------------------|---|--|
| 1) | Paragraph 2: The scope | Certain provinces have promulgated their Admission Policies in terms of Sec 2(2) of the South African Schools Act (SASA). It also provides for provinces to comply with national policy. This, therefore, translates that provinces have the responsibility of overseeing the operation of the schools in district areas. | It was agreed that the operation of the district schools is governed and overseen by the Provincial Department of Education. It was also agreed to define the term "Provincial Department of Education" with reference to the definition of that term in the Employment of Educators Act, 1998 (Act No.76 of 1998). |

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| 2) | Paragraph 3: The scope | The admissions of learners in schools must cater for learners with physical disabilities in public ordinary schools. The intention was to cater for learners with a physical disability in full-service public schools. | It was agreed that the Policy must provide for reasonable accommodation for learners with physical disabilities. It was further agreed, that Government will ensure that facilities will be adjusted to be accessible to learners who are using crutches or wheelchairs, etc. However, learners with mental disabilities confirmed by psychologists must be admitted to schools that cater for children with such special needs. |
| 3) | Para 6: Administration of Admission | The final say to administer the admission of learners remains the responsibility of the Head of Department (HOD). However, he or she may delegate this function to an official to undertake this task. | It was agreed that the insertion will be made as follows: "The Head of Department (HOD) is responsible for the administration of the admission of learners to an ordinary public school. The HOD may delegate in <u>writing</u> the responsibility for the admission of learners to an official of the provincial education department". |
| 4) | Paragraph 7: Administration of Admission | In addressing the problem of learners relocating to other provinces for various reasons: <ul style="list-style-type: none"> • The Head of Department (HOD) may delegate other responsibilities to the district directors to be addressed as the HOD may not be available to address all issues for example, dealing with parent complaints, etc. • The concern was that the default approvals as proposed by Government in paragraph 7, may create gaps where policies would be discovered after the 60 days period that are not consistent with the Constitution of the Republic. | It was agreed that the paragraph will be amended to cater for the following: "The HOD may delegate administrative functions e.g. parent complaints etc. to the district director and be resolved at that level." The HOD will still address issues of non-compliance contained in the school policy beyond the 60 days timeframe. The allocated timeframe of 60 days should not be the final date to address issues of non-compliance. |

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| 5) | Paragraph 8: Administration of admissions | The HOD will have the final say and will be responsible to authorise the admission of learners to ordinary public schools, in coordination with school governing bodies. | It was agreed that the paragraph will be amended as follows: "The HOD will have the final say to authorise the admission of learners to ordinary public schools working together with school governing bodies." |
| 6) | Paragraph 9: Administration of Admission | All learners should not be discriminated against unfairly or be denied admission to a public ordinary school on the basis of socio-economic status, sex, religion, etc. | A consensus was reached and the paragraph will be revised to read as follows: "The admission policy of an ordinary public school and the administration of admissions by a provincial education department must not unfairly discriminate in any way against an applicant for admission including but not limited to race, gender, sex, marital status, ethnicity or social origin, color, sexual orientation, age, disability, HIV status, religion, conscience, belief, culture, language, birth, <u>socio-economic status</u> , immigration status or nationality or any other discriminatory ground. <u>The admission policies of single-sex public schools may limit admissions to learners of only that sex.</u> " In terms of the single-sex schools, that discrimination is accepted in terms of the Constitution. Business proposed that a policy to provide that public schools on private land affiliated with religious institutions may give preference to learners belonging to such religion. This was not supported by government. |
| 7) | Paragraph 9b: Administration of Admission | To ensure that the policy was more inclusive and referred correctly to all applicable legislation that has an impact on the Policy. | The following amendments were agreed upon: "The power to determine the language policy of the school must be exercised with due regard to the |

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| | | Section 6 “provides for all the official languages in the Republic and, 29(2) states Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account— (a) equity; (b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices” | values enshrined in sections 6 and 29(2) of the Constitution of the Republic of South Africa, 1996, <u>and other relevant pieces of legislation</u> taking into consideration what is fair, reasonably practicable, equitable and the need to redress the results of the past discriminatory laws and practices”. |
| 8) | Paragraph 15: Documents required for admission of a learner | Allocation of the timeframes for a parent to submit proof of a learner's identity may fall outside the control of the parent to adhere to the set allocated time frames. In relation to providing proof a learner's age can be in any form of identity e.g. birth certificate etc | In the Phakamisa Judgement case no: 2840/2017, a ruling was made that it was unconstitutional for a parent to be allocated timeframes to submit proof of learners who are of school-going age, as this was outside the control of a parent. |
| 9) | Paragraph 16: Documents required for admission of a learner | The exemption should only be granted on the basis of medical conditions, observations of the learner. The exemption will only be granted by the HOD. In order to protect the health of the other learners from a life-threatening disease, for example, a learner cannot be admitted to the school without being immunised. | The following amendments were agreed to: “On application for admission, a parent must show proof that the learner has been immunised against the following communicable diseases: polio, measles, tuberculosis, diphtheria, tetanus, and hepatitis B. A parent of a <i>learner</i> may apply to the Head of <i>Department</i> for exemption of that <i>learner</i> from being immunised due to: (i) <u>the medical circumstances of the learner, which application must be supported by a motivation from a health care practitioner registered with the Health Professions Council of South Africa and suitably qualified to determine that the learner should be exempted, or</u> |

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| | | | (ii) [cultural beliefs, religious observances or medical circumstances of the learner.] If a parent is unable to show proof of immunisation and where an exemption has not been granted the principal must immediately advise the parent in writing to have the learner immunised as part of the free primary health care programme. If the parent refuses or fails, within thirty days from the date of the written communication referred to above, to submit proof of immunisation or exemption from immunisation, the principal must not admit the learner to the school. It is in the best interest of other learners that a learner without proof of immunisation or exemption from immunisation must not be allowed on the school premises during the thirty days referred to above." |
| 10) | Paragraph 17: Documents required for admission of a learner | The transfer of a learner from one school to another must be a voluntary act or it should be a request from the parent. This cannot be enforced by the principal of the school. | It was agreed that this paragraph will be amended as follows: "The transfer must be voluntary at the request of a parent and it should not be forced by the school. The principal will assist the learner to ensure that the process is well-organised." |
| 11) | Paragraph 19: Documents required for admission of a learner | Section 1(l) of the Basic Education Laws Amendment Bill (BELA) defines "Parent" as "the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education [at school];"; | It was agreed that the Admission Policy for Public Ordinary Schools will use the word "parent" to ensure consistency with the BELA Bill and the SASA. |
| 12) | Paragraph 19(a) Documents required for admission of a learner | Government to ensure linking provision of para 15 and 19(a) of the Policy. This is in line with the Phakamisa Judgement case no: 2840/2017: | It was agreed that all learners who are of school-going age must be admitted to school using any form of confirmation of identity e.g. birth certificate etc. or any alternative proof of identity. |

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| | | <p>"The first to third respondents are directed to admit all children not in possession of an official birth certificate into public schools in the Eastern Cape Province (the schools), and where a learner cannot provide a birth certificate, the Principal of the relevant school is directed to accept alternative proof of identity, such as an affidavit or sworn statement deposed to by the parent, caregiver or guardian of the learner wherein the learner is fully identified."</p> | |
| 13) | <p>Para 19 (e) Documents required for admission of a learner</p> | <p>It seemed as if all learners are required to provide the listed required documents in Para 19 of the Policy.</p> <p>Government must link the terminology used in the Immigration Act 13 of 2002 and the Refugees Act 130 of 1998. In terms of foreign nationals learners would be required to provide certified documents. Government will ensure alignment with policies of the Department of Home Affairs</p> | <p>In the case of foreign nationals, the following amendments were agreed to:</p> <p>(i) passports; and (ii) (aa) residence permits, residence visas, or asylum visas; and (bb) work and study visas</p> |
| 14) | <p>Para 19 (h) Documents required for admission of a learner</p> | <p>In order to protect the interest of the learner to receive education at home as provided for in section 51(2) of SASA, which provides for a parent to apply to the HOD for the learner to receive education at home.</p> | <p>The following amendments were agreed to: "[the learner must be educated at home must be produced by the parent; and], A motivational letter to support why <u>education of the learner at home is in the interests of the learner must be provided by the parent; and"</u></p> |
| 15) | <p>Paragraph 20</p> | <p>Constituencies' views were that the paragraph was open-ended and there was a need to allocate timeframes for the school to provide reasons for refusing admission of the learner.</p> | <p>It was agreed that paragraph 20 will be amended to read as follows:</p> <p>"If an application for admission of a learner is refused, the school must inform the learner and parent in writing <u>within 7 days</u> of such refusal, the reason therefor and the right to lodge an appeal."</p> |

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| 16) | Paragraph 21(c)(iv) | Constituencies' views were that not all counties were using identity documents. The provision may pose challenges for learners who do not have the identity documents in their individual countries. | The following amendments were agreed to: "a copy of his or her identity document from his or her country of origin <u>if applicable</u> if he or she is 16 years and above or a valid passport". |
| 17) | Paragraph 24: Admission of learners who are not South African citizens | The South African Constitution of 1996 extends the right to education to everyone within the boundaries of South Africa. It was important to comply with the provision of the Constitution. | The following amendments were agreed to: "The right to education <u>extends to everyone within the boundaries of South Africa, regardless of their nationality and immigration status. Learners without valid documentation are therefore equally entitled to admission as documented learners, and their parents are required to provide any documentation available to them for the purposes of school admission, as contemplated in paragraphs 15 to 19 of this policy, within the timeframes provided in those paragraphs.</u> " |
| 18) | Paragraph 26: Learners with special education needs | The section was not consistent with section 12(4) of SASA, which provides that "The Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners. | The following amendments were agreed to: " <u>Public ordinary schools must admit learners with special physical education needs, where this is reasonably practicable. Schools are obliged to make the necessary arrangements, as far as practically possible, to make their facilities accessible to such learners.</u> " |
| 19) | Paragraph 29: Admission of undocumented learners | The placement of a learner with special education needs cannot be the sole responsibility of the individual school. This must be a responsibility of the Provincial Departments and must be delegated to the local district director's office to be addressed. | The following amendments were agreed to: "Assessment and consultation relating to a change of placement must be carried out by a team based at the <u>[school] provincial education department</u> in consultation with parents, educators and the District Official. The Head of the Department of the |

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| | | | province concerned must approve the placement” |
| 20) | Paragraph 30: Age requirements for the admission of a learner to an ordinary public school | There must be a distinction made between the compulsory school-going age and the admission age as these are related but have different functions. | Section 30(i) was agreed to be amended as follows: “ <u>Grade R is five turning 6 by 30 June in the year of admission, and Grade 1 is six turning 7 by June in the year of admission</u> ” |
| 21) | Paragraph 31: Age requirements for the admission of a learner to an ordinary public school | The fast-tracking system or mechanisms to assist the learner who is already in the schooling system must be clearly outlined, and the mechanism referred to was non-existent in public schools. | It was agreed that Government will develop Regulations to ensure that detailed mechanisms and procedures are put in place for fast-tracking of learners in public schools. These will be tabled at Nedlac for engagement when developed. |
| 22) | Paragraph 36: School Zoning | In line with the provisions of SASA, the insertion of a new para 36(e) was supported by all Constituencies. | The following insertion was agreed to: “ <u>36 (e) whether the school has boarding facilities and, if so, preferences to be given to learners for placement in boarding facilities</u> ” |
| 23) | Paragraph 45(b)(iii) | Parents have an obligation to adhere to the school’s code of conduct except where there are exceptions granted. No other unlisted exceptions will apply. | The following amendments were agreed to: “with the understanding that exceptions apply to issues relating to <u>cultural/ religious and medical circumstances as per court judgments.</u> ” |

5. CONCLUSION

- 5.1. This Report, therefore, concludes considerations at Nedlac on Admission Policy for Ordinary Public Schools. It will be submitted to the relevant Ministers and Portfolio Committee in terms of Section 8 of the Nedlac Act. No 35 of 1994.

ANNEXURE 1

| Business | Labour | Community | Government |
|---------------------|---------------------|------------------|-------------------|
| Andile Kuzwayo | Matthew Parks | Lawrence Bale | Shalili Misser |
| Kate Paterson | Piet Delport | Conti Matlakala | Noluvuyo Gela |
| Daniel Pretorius | Ingrid Leukers | Mokgadi Rakabe | Sello Ntema |
| Mustak Ally | Godfrey Selematsela | Palesa Lebenya | James Ndlebe |
| Tsakane Muavha | Gregory Masondo | Mokovhe Masutha | Ramasedi Mafoko |
| Sanelisiwe Jantjies | Faseega Solomon | | Ronald Sithole |
| | Hema Harriam | | Khomotso Tefu |
| | Chris Klopper | | Thakgedi Nkosana |
| | Jeff Malekane | | |
| | Khusta Mafunda | | |
| | Sipho Ndhlovu | | |
| | Riefda Ajam | | |
| | Mamaile Manthata | | |
| | Boitumelo Molete | | |