



MINISTRY OF
BASIC EDUCATION
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR PURPOSES OF IMPLEMENTING CERTAIN OF THE 2024 AMENDMENTS TO THE SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO. 84 OF 1996)

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GUIDELINES FOR PURPOSES OF IMPLEMENTING CERTAIN OF THE 2024 AMENDMENTS TO THE SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO. 84 OF 1996)

1. Purpose, scope and application of these Guidelines

- (1) The South African Schools Act, 1996 (Act No. 84 of 1996) (**SA Schools Act**) and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (**Employment of Educators Act**) were amended in certain respects in terms of the Basic Education Laws Amendment Act, 2024 (Act No. 32 of 2024) (**BELA Act**). These amendments introduced into the SA Schools Act and the Employment of Educators Act came into force and effect on 24 December 2024.
- (2) The Minister of Basic Education is, pursuant to section 85(2) of the Constitution of the Republic of South Africa, 1996 (the **Constitution**), the executive authority responsible for the implementation of basic education legislation and the coordination of functions between state departments and administrations within the basic education sector.
- (3) The Minister of Basic Education has confirmed that implementation of certain of the 2024 amendments to the SA Schools Act should be appropriately supported by national policy, national norms and standards and national regulations developed in line with the SA Schools Act, as amended. The Department of Basic Education has commenced work on the development of these instruments and intends to start publishing them for public comment by the end of June 2025.
- (4) The development and introduction of the required national regulations, norms and standards and policy does not in any way delay implementation of the 2024 amendments to the South African Schools Act and the Employment of Educators Act (which amendments came into force and effect on 24 December 2024).
- (5) In line with legal advice received from the Office of the Chief State Law Advisor, the Minister of Basic Education is empowered, within the general scope of her executive authority, to introduce practical, rational and non-binding measures (such as guidelines) that simplify the language of legislation to facilitate understanding and implementation.
- (6) The main purpose of these Guidelines is therefore to support the basic education sector to implement the 2024 amendments to the SA Schools Act consistently and in a manner that aligns with the objectives and requirements of the Constitution, the SA Schools Act and the Employment of Educators Act, as well as applicable administrative justice law (including the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (**PAJA**)) and applicable case law, pending the development and introduction of the required national regulations, norms and standards and policy.

- (7) The need for urgent but interim guidance on how to give effect to certain of the 2024 amendments to the SA Schools Act pending the development and introduction of national regulations, norms and standards and policy has been expressed by various stakeholders in several different ways, including via correspondence, in the media, at statutory meetings, through parliamentary engagements and as part of public dialogues and campaigns.
- (8) The urgency for these Guidelines arises from the fact that the 2024 amendments to the SA Schools Act commenced and must therefore be implemented with full and immediate effect from 24 December 2024. It must be appreciated that requiring the immediate implementation of new but wide-reaching amendments to our basic education legislation days before and during the start of a new school year requires all key stakeholders in the basic education sector to have clarity on what is expected of them to give practical and meaningful effect to that legislation.
- (9) Given the urgency for these Guidelines, key stakeholders in the basic education sector were provided with a short period to consider and make inputs on a draft version of these Guidelines. The draft version of these Guidelines has since been updated to address concerns raised by these stakeholders. Should any stakeholder in the basic education sector have further inputs on these Guidelines, they may direct these to the Ministry of Basic Education so that these inputs may be considered in any further iterations of these Guidelines that may be required.
- (10) These Guidelines are intended only to offer non-binding guidance on the implementation of certain of the 2024 amendments to the SA Schools Act that is consistent with the Constitution, applicable basic education legislation (including the SA Schools Act and the Employment of Educators Act), applicable administrative justice law (including the PAJA) and applicable case law.
- (11) Any functionary that exercises their powers and discharges their functions in terms of the SA Schools Act and the Employment of Educators Act in a manner that does not align with a proper interpretation of these Acts, read with applicable administrative justice laws and applicable case law, runs the risk of having their decision-making legally challenged. These Guidelines therefore serve as a tool to assist functionaries to mitigate this risk in a coordinated manner.
- (12) Functionaries remain responsible for exercising their respective powers and discharging their respective functions in accordance with applicable law, including the legislation and case law referred to above, whether they apply these Guidelines or not.
- (13) These Guidelines are not intended to introduce any legal obligations, functions or rights on any functionary nor are they intended to interfere with, circumvent or otherwise affect the scope of powers and functions conferred by law on the relevant functionaries.
- (14) These Guidelines are relevant to the Department of Basic Education, the Member of the Executive Council responsible for education in each province (each a **MEC for Education**), Provincial Education Departments, public schools (represented through their School Governing Bodies), the staff of public schools, parents and learners and are intended to provide guidance on the following –

- (a) the implementation of section 1 of the SA Schools Act relating to amended and new definitions;
 - (b) the implementation of section 3 of the SA Schools Act relating to compulsory school attendance in Grade R;
 - (c) the implementation of section 3 of the SA Schools Act relating to compulsory school attendance;
 - (d) the implementation of section 4A of the SA Schools Act relating to monitoring of learner attendance;
 - (e) the implementation of section 5 of the SA Schools Act relating to admissions of learners to public schools;
 - (f) the implementation of section 6 of the SA Schools Act relating to the languages of instruction to be offered at public schools;
 - (g) the implementation of section 8 of the SA Schools Act relating to the code of conduct for learners;
 - (h) the implementation of section 8A of the SA Schools Act relating to random search and seizure and drug testing;
 - (i) the implementation of section 9 of the SA Schools Act relating to the suspension by a School Governing Body of a learner accused of serious misconduct;
 - (j) the implementation of section 21 of the SA Schools Act relating to the centralised procurement of learning and teaching support materials;
 - (k) the implementation of section 22 of the SA Schools Act relating to the withdrawal of one or more functions of a School Governing Body;
 - (l) the implementation of section 24 of the SA Schools Act relating to the membership of a School Governing Body of a public school for learners with special education needs;
 - (m) the implementation of section 25 of the SA Schools Act relating to the dissolution of a School Governing Body;
 - (n) the implementation of section 51 of the SA Schools Act relating to home education registration; and
 - (o) the implementation of section 61 of the SA Schools Act relating to regulations.
- (15) The Minister of Basic Education may review and amend these Guidelines from time to time.
- (16) These Guidelines remain relevant until withdrawn by the Minister after consultation with the Council of Education Ministers.
- (17) Unless otherwise indicated, all references to the SA Schools Act and the Employment of Educators Act in these Guidelines are references to them as amended by the BELA Act.

2. The implementation of section 1 of the SA Schools Act relating to amended and new definitions

Section 1 of the SA Schools Act has been amended to include updates to a few existing definitions in basic education legislation and to introduce new definitions required by the inclusion of new or amended provisions. These amended and new definitions are applicable with effect from 24 December 2024. Where necessary, amendments will be made to existing guidelines, policies and regulations to align with these amended and new definitions.

3. The implementation of section 3 of the SA Schools Act relating to compulsory school attendance in Grade R

- (1) Grade R is a compulsory reception grade for all children that are subject to compulsory school attendance. A child is subject to compulsory school attendance (i.e. of compulsory school-going age) from Grade R on the first school day of the year in which such learner reaches the age of 6 (six) years until the last school day of the year in which such learner reaches the age of 15 (fifteen) years or will complete Grade 9, whichever occurs first.
- (2) Admission to Grade R is for children who are at least four (4) years old turning five (5) by 30 June of the admission year. It is recommended that (a) public schools give preference to children who are the age of admission before admitting underaged children in Grade R; and (b) the admission policies of public schools must adhere to the applicable age of admission whilst giving appropriate admission preference to learners of compulsory school-going age.
- (3) Any parent whose child is of compulsory school-going age and has not been placed at a school, registered for home education or otherwise exempted from compulsory school attendance is strongly encouraged to bring this matter to the attention of the nearest office of the relevant Provincial Education Department. In such instances, the relevant Provincial Education Department can support the parent(s) concerned to ensure the child can access education as soon as possible.
- (4) It is recommended that all ECD centres offering Grade R register as independent schools in terms of section 46 of the SA Schools Act, read with any applicable provincial law, as section 3(1) of the SA Schools Act requires compulsory attendance in Grade R at a school (being a public or independent school). The requirement to register as an independent school already exists for ECD centres seeking to access state funding for their Grade R classes. Provincial Education Departments are encouraged to take all reasonable steps to ensure that applications for the registration of such centres as independent schools are processed as efficiently as possible.

- (5) Provincial Education Departments are developing and adopting plans that ensure that suitable infrastructure, classroom furniture, learning and teaching support materials, teaching resources and support mechanisms are in place to accommodate the demand for Grade R enrolments, as well as putting systems in place to monitor and support independent ECD centres that offer Grade R to ensure that the applicable curriculum is implemented accordingly.
- (6) Grade R Teachers/Practitioners will be formally integrated into the basic education system as educators in accordance with the Employment of Educators Act. Those who possess the necessary qualifications to teach in the Foundation Phase and who are registered with the South African Council for Educators (**SACE**) will be eligible for appointment into vacant substantive posts as fully qualified educators. These appointments will be made through open advertisement, absorption or conversion, as guided by the terms set out in the Education Labour Relations Council (**ELRC**) Collective Agreement 2 of 2024.
- (7) For Grade R Teachers/Practitioners who are unqualified or underqualified, transitional measures are currently being developed in consultation with the ELRC, the Heads of Education Departments Committee (**HEDCOM**) and SACE. These measures aim to support unqualified and underqualified Grade R teachers/practitioners in upgrading their qualifications within a determined timeframe.

4. The implementation of section 3 of the SA Schools Act relating to compulsory school attendance

- (1) Before a parent may be charged with failing to ensure their child (who is of compulsory school-going age) is enrolled at and attends a school, is registered for home education or is otherwise exempted from attending a school, it is recommended that, pursuant to section 3(5) of the SA Schools Act and the principles of administrative justice, the Head of the relevant Provincial Education Department first issues a written notice to the parent that includes at least the following:
 - (a) Reasons, supported by evidence, as to why the Head of the relevant Provincial Education Department believes the parent has failed to ensure their child (who must be of compulsory school-going age) attends a school or is exempted from attending a school;
 - (b) An invitation to the parents to make representations within a reasonable period in respect of the above reasons and evidence; and
 - (c) A request to the parents to provide full details of any reasons that justify the alleged failure.

- (2) Upon receipt of the above representations and reasons from the parent concerned, it is recommended that the Head of the relevant Provincial Education Department considers all relevant facts and determines (a) whether, in fact, the parent has failed to ensure their child (who is of compulsory school-going age) is enrolled at and attends a school or is exempted from attending a school; and (b) if so, whether the parent had a just cause for this failure.
- (3) Wherever possible, and pursuant to section 3(5) of the SA Schools Act, it is recommended that the Head of the relevant Provincial Education Department ensures that appropriate remedial steps are taken to ensure that children of compulsory school-going age are enrolled at a school, registered for home education or otherwise exempted from attending a school.
- (4) Section 51(7) of the SA Schools Act provides that a learner who is registered to receive home education is exempted from compulsory school attendance.
- (5) Charging a parent for failing to ensure their child (who is of compulsory school-going age) is enrolled at and attends a school, is registered for home education or is otherwise exempted from compulsory school attendance should only be pursued where this is supported by the facts and the parent does not have a just cause for such failure.

5. The implementation of section 4A of the SA Schools Act relating to the monitoring of learner attendance

- (1) Section 4A of the SA Schools Act makes the monitoring of regular, on time learner attendance at a public school the joint responsibility of both the professional management and the governance of that school.
- (2) It is recommended that School Governing Bodies ensure that punctuality and regular school attendance are provided for in the code of conduct for learners. The existing Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for learners will be amended accordingly.
- (3) It is also recommended that School Governing Bodies adopt appropriate intervention procedures to use in cases of repeated absenteeism. These intervention procedures need to be sensitive and responsive to the broad reasons why a learner may not be able to attend school while being respectful of the privacy of learners and their families. Providing learner access to social services may be appropriate in certain circumstances.

6. The implementation of section 5 of the SA Schools Act relating to admissions of learners to public schools

- (1) The Guidelines set out below relating to the implementation of section 5 of the SA Schools Act seek to maintain a careful balance between the power conferred by law on School Governing Bodies to determine their admission policies in accordance with the law and the rights of learners (particularly learners of compulsory school-going age) to be admitted to a school without being unfairly discriminated against.
- (2) Section 5(5)(c) of the SA Schools Act requires Schools Governing Bodies of public schools to review their admission policies as and when they no longer meet the requirements set out in that section. It is therefore recommended that School Governing Bodies of public schools take proactive measures as early as possible in the 2025 school year to ensure that their admission policies comply with the requirements of section 5(5)(a) of the SA Schools Act. Subject to the provisions of the SA Schools Act, it is recommended that Provincial Education Departments monitor and support the development by School Governing Bodies of their admission policies to ensure their compliance with section 5 of the SA Schools Act.
- (3) Section 5(5) of the SA Schools Act regulates the contents of admission policies of public schools by setting out what requirements must be met by a School Governing Body when determining or reviewing its admission policy and what factors must be considered in this regard. The list of factors set out in section 5(5) of the SA Schools Act is not a closed list. However, School Governing Bodies are required, in terms of applicable administrative justice law, to ensure that they consider all factors relevant in the circumstances. The following is intended to guide a School Governing Body in ensuring that its determination or review of its admission policy is informed by and rationally connected to all factors that may be relevant in the circumstances. It is recommended that each of these relevant factors is appropriately considered and balanced with all other relevant factors while ultimately ensuring that the best interests of learners are protected and promoted.
- (4) When determining or reviewing its admission policy, it is recommended that a School Governing Body, pursuant to section 5(5) of the SA Schools Act read with applicable administrative justice law and applicable case law, ensures that such policy:
 - (a) aligns with the Constitution;
 - (b) complies with the requirements of the SA Schools Act;
 - (c) complies with any applicable provincial law;
 - (d) complies with any other relevant legislation;
 - (e) aligns with the existing Admission Policy for Ordinary Public Schools (to the extent applicable); and
 - (f) is at least informed by and rationally connected to the following factors:
 - (i) the best interests of learners, with an emphasis on ensuring the following:

- a. no learner is unfairly discriminated against by the admission policy and practices of the public school concerned (in line with section 9 of the Constitution); and
 - b. fair treatment, access, opportunity and advancement are guaranteed for all learners, while at the same time striving to identify and eliminate barriers that prevent the full participation of some groups (in line with the principles of equity required by section 5(5)(a)(i) of the SA Schools Act);
- (ii) the needs, in general, of the broader community in the education district in which the relevant public school is situated, including, without limitation, the number of learners of compulsory school-going age, and the mother tongue languages of learners, requiring admission within the education district (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);
- (iii) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, the needs, in general, of the broader community in the municipality in which the public school is situated, including, without limitation, the number of learners of compulsory school-going age, and the mother tongue languages of learners, requiring admission within the boundaries of the municipality in which the public school is situated (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);
- (iv) whether there are other schools that are accessible to and have the capacity to admit and meet the education needs of learners (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);
- (v) the available resources of the public school concerned (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) and the efficient and effective use of state resources, provided that no learner is denied admission to a public school on the basis of available resources;
- (vi) the capacity of the public school concerned to accommodate learners, including, without limitation, the classroom spaces available at the public school for learners (as determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools);
- (vii) any applicable feeder zones determined by the relevant province;

- (viii) any existing plans by the relevant MEC for Education and his or her Provincial Education Department to provide for additional places for learners at new or existing public schools in the education district in which the public school concerned is located, as required in terms of section 3(3), read with section 12, of the SA Schools Act; and
 - (ix) any other factors relevant to the admission policy of the public school concerned.
- (5) Before a Head of a Provincial Education Department exercises his or her final authority to admit a learner to a public school, he or she must, pursuant to applicable administrative justice law, notify the School Governing Body in writing of his or her intention to exercise such authority in a particular case and provide the School Governing Body with a reasonable opportunity to make representations to him or her in relation to such intention. It is recommended that such notice should at least include a motivation that reflects and is rationally connected to the relevant factors to be considered by a Head of a Provincial Education Department in this regard (as detailed below).
- (6) Section 5(5)(b) of the SA Schools Act does not specify any factors that should be considered by a Head of a Provincial Education Department when exercising his or her final authority to admit a learner in terms of section 5(5)(b) of the SA Schools Act. However, in line with applicable administrative justice laws (including PAJA), the exercise of such authority must always be rational and informed only by all relevant factors. The following factors may be considered relevant to any decision to be taken by a Head of a Provincial Education Department when exercising his or her final authority to admit a learner in terms of section 5(5)(b) of the SA Schools Act:
 - (a) the best interests of the learner concerned, including, without limitation:
 - (i) an emphasis on ensuring the following:
 - a. no learner is unfairly discriminated against by the admission policy and practices of the public school concerned (in line with section 9 of the Constitution); and
 - b. fair treatment, access, opportunity and advancement are guaranteed for all learners, while at the same time striving to identify and eliminate barriers that prevent the full participation of some groups (in line with the principles of equity required by section 5(5)(a)(i) of the SA Schools Act);
 - (ii) the language, support and other education needs of the learner concerned; and
 - (iii) whether the learner is of compulsory school-going age;
 - (b) the available resources (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) of the public school concerned and the efficient and effective use of state resources, provided that no learner is denied admission to a public school on the basis of available resources;

- (c) the available resources (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) of the relevant Provincial Education Department to support the public school concerned in accommodating the learner concerned;
- (d) the capacity of the public school concerned to accommodate the learner concerned, including, without limitation, the classroom spaces available at the public school concerned for learners (as determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools);
- (e) the admission policy of the relevant public school and whether it complies with the requirements set out in section 5(5)(a) of the SA Schools Act;
- (f) the needs, in general, of the broader community in the education district in which the relevant public school is situated, including, without limitation, the number of learners of compulsory school-going age, and the mother tongue languages of learners, requiring admission within the education district;
- (g) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, the needs, in general, of the broader community in the municipality in which the public school is situated, including, without limitation, the number of learners of compulsory school-going age, and the mother tongue languages of learners, requiring admission within the boundaries of the municipality in which the public school is situated;
- (h) any applicable feeder zones determined for the relevant province;
- (i) whether there are other schools that are accessible to and have the capacity to admit and meet the education needs of the learner concerned;
- (j) any required and/or existing plans by the relevant MEC for Education and his or her Provincial Education Department to provide for additional places for learners at new or existing public schools in the education district in which the public school concerned is located, as required in terms of section 3(3), read with section 12, of the SA Schools Act;
- (k) all relevant representations made by the School Governing Body of the public school concerned in respect of the matter; and
- (l) any other factors relevant to the admission of the relevant learner at the public school concerned.

- (7) Admission policies of public schools must, in accordance with applicable law, be applied in a flexible but rational manner. It is recommended that these policies be drafted and interpreted in a way that does not derogate from a child's right to be admitted to a school, where reasonably practicable. However, it is important that the exercise by the Head of a Provincial Education Department of his or her final authority to admit a learner to a public school is rationally linked to and responsive to all relevant considerations.
- (8) Pursuant to applicable case law, the Head of a Provincial Education Department is strongly discouraged from exercising his or her final authority to admit a learner to a public school in terms of section 5(5)(b) of the SA Schools Act where that school is objectively operating at full capacity or cannot meet the education needs of the learner concerned. Such an action may otherwise compromise the quality of education delivered by that public school and/or result in the education needs of the learner concerned not being met. Therefore, the Head of a Provincial Education Department is strongly encouraged to only exercise his or her final authority to admit a learner to a public school in terms of section 5(5)(b) of the SA Schools Act where (a) that school has demonstrated that it is unable to operate at full capacity by receiving sufficient admission applications to admit the total number of learners who can be accommodated within the school (which total number should be determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools); and (b) that school can meet the education needs of the learner concerned (including, without limitation, the language needs, special education needs and any other education needs of the learner concerned).
- (9) Pursuant to applicable law, the Head of a Provincial Education Department is strongly discouraged from exercising his or her final authority to admit a learner to a public school in terms of section 5(5)(b) of the SA Schools Act where the resources (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) available to that public school are insufficient to accommodate and meet the education needs of the learner concerned and the Provincial Education Department is unable to provide the public school with the resources required to accommodate and meet the education needs of that learner at that school.
- (10) Where the Head of a Provincial Education Department and the School Governing Body of a public school agree that there is a possibility for increasing the number of places for learners at that school, they may collaborate with each other to achieve this, provided that the Head of the relevant Provincial Education Department commits to providing additional resources (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) to the public school necessary to increase the number of places available for learners at that school once those resources are in place. In such instances, it is recommended

that the Head of the relevant Provincial Education Department and the relevant School Governing Body should ensure that (i) the financial viability of the public school is protected; (ii) an acceptable quality of education will be delivered at that school; and (iii) the public school will be able to meet the education needs of all learners admitted to the school (including the language needs, special education needs and any other education needs of those learners); once the number of places available to learners at that school is increased. Collaborations of this nature should be explored where all schools in a particular vicinity are operating at full capacity (where capacity is determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools).

- (11) The final authority of the Head of a Provincial Education Department to admit a learner to a public school does not in any way exempt the relevant MEC for Education from discharging his or her obligations to ensure that there are enough school places so that every child who lives in his or her province can attend school in terms of section 3(3), read with section 12, of the SA Schools Act.
- (12) When the Head of a Provincial Education Department exercises his or her final authority to admit a learner to a public school in terms of section 5(5)(b) of the SA Schools Act, it is recommended pursuant to applicable administrative justice law that he or she immediately notifies, in writing, the School Governing Body of that public school of his or her decision in this regard and the reasons for such decision. It is recommended that these reasons are clear and at least reference and be rationally connected to the factors relied on by the Head of the Provincial Education Department in making that decision.
- (13) When a public school decides to decline admission to a learner in terms of its admission policy, it is recommended that, upon written request by the parents of that learner, the public school should immediately provide, in writing, reasons for such decision. It is recommended that these reasons are clear and at least reference and be rationally connected to the factors relied on by the public school in making that decision.
- (14) Where the admission policy of a public school does not, in the reasonable view of the Head of the relevant Provincial Education Department, comply with the requirements set out in section 5(5)(a) of the SA Schools Act, the Head of the relevant Provincial Education Department is strongly encouraged to immediately request the School Governing Body of that public school to review its admission policy in line with the requirements of section 5(5)(c) of the SA Schools Act.

- (15) It is recommended that any request by a Head of a Provincial Education Department to a School Governing Body to review its admission policy in terms of section 5(5)(c) of the SA Schools Act should be made in writing and contain sufficient information regarding the non-compliance of that admission policy with the requirements set out in section 5(5)(a) of the SA Schools Act so as to enable the School Governing Body to understand how best to review of its admission policy. Pursuant to applicable administrative justice laws, there must be a rational connection between such a request by a Head of a Provincial Education Department and the areas within the public school's admission policy that require review.
- (16) It is strongly recommended that any review of an admission policy requested by the Head of a Provincial Education Department in terms of section 5(5)(c) of the SA Schools Act is undertaken by the relevant School Governing Body timeously and within a reasonable period (preferably not exceeding 90 (ninety) days) from the date on which the written request from the Head of the relevant Provincial Education Department is received by that School Governing Body.
- (17) The final authority of the Head of a Provincial Education Department to admit a learner to a public school is subject to an appeal submitted by that learner or parent of that learner that is submitted to the relevant MEC for Education in terms of section 5(9) of the SA Schools Act.
- (18) It is recommended that any appeal made to the relevant MEC for Education pursuant to section 5(9) or 5(11) of the SA Schools Act should at least detail any relevant provisions in the public school's admission policy that are the subject of the appeal (if applicable).
- (19) Where a MEC for Education receives an appeal pursuant to section 5(9) or 5(11) of the SA Schools Act, it is recommended that the MEC for Education ensures that such appeal is decided timeously (i.e. within 14 (fourteen) calendar days after receiving the appeal) and takes into account all relevant factors that should have been taken into account by the relevant School Governing Body or the Head of the relevant Provincial Education Department (as the case may be), including, without limitation, the admission policy of the public school concerned and those factors detailed above in these Guidelines. In accordance with applicable administrative justice laws (including PAJA), there must be a rational connection between the MEC for Education's decision and the relevant factors to be considered by him or her.
- (20) Where no specific provision in the public school's admission policy is the subject of an appeal to the MEC for Education pursuant to section 5(9) or 5(11) of the SA Schools Act, that admission policy shall not in any way be suspended pending the finalisation of the appeal process, and any further process that may follow. As indicated in section 5(13) of the SA Schools Act, the admission policy of a public school remains valid pending finalisation of the appeal process.
- (21) Where the MEC for Education receives both an appeal lodged by a learner or parent in terms of section 5(9) of the SA Schools Act and an appeal lodged by the School Governing Body in terms of section 5(11) of the SA Schools Act arising from the same or a related admission decision, the appeals must be managed in a coordinated and procedurally fair manner.

- (22) All MECs for Education, Heads of Provincial Education Departments and School Governing Bodies are strongly encouraged, when giving effect to section 5 of the SA Schools Act, to always engage with each other in good faith, act in the best interests of all affected learners and take all reasonable steps available to avoid litigation in relation to school admissions.
- (23) All MECs for Education, officials of Provincial Education Departments (including the Heads of Provincial Education Departments) and School Governing Bodies must ensure that they do not contravene section 3(7) of the SA Schools Act when discharging their functions and exercising their functions pursuant to section 5 of the SA Schools Act by unlawfully and intentionally interrupting, disturbing or hindering any official educational activity of a public school or unlawfully and intentionally hindering or obstructing any public school in the performance of that school's official educational activities.
- (24) In the event that any official of a Provincial Education Department (other than the Head of that Provincial Education Department) acts in contravention of section 5 of the SA Schools Act, read with applicable provisions of the PAJA, any person may report such contravention to the Head of the relevant Provincial Education Department for investigation and appropriate action (including, where applicable, disciplinary action). If the Head of a Provincial Education Department acts in contravention of section 5 of the SA Schools Act, read with applicable provisions of the PAJA, any person may report such contravention to the relevant MEC for Education for investigation and appropriate action.

7. The implementation of section 6 of the SA Schools Act relating to the languages of instruction to be offered at public schools

- (1) The Guidelines set out below relating to the implementation of section 6 of the SA Schools Act seek to maintain a careful balance between (a) the power conferred by law on School Governing Bodies to determine their language policies in accordance with the law; (b) the rights of learners to receive education in their mother tongue language, where this is reasonably practicable, taking into account equity, practicability and the need to redress the results of past racially discriminatory laws and practices (as set out in section 29(2) of the Constitution); and (c) the need for the State, together with public schools, to take practical and positive measures to elevate the status and advance the use of indigenous languages of our people (as set out in section 6(2) of the Constitution).
- (2) Section 6(6) of the SA Schools Act requires Schools Governing Bodies of public schools to review their language policies as and when they no longer meet the requirements set out in that section. School Governing Bodies of public schools are strongly encouraged to take proactive measures as early as possible in the 2025 school year to ensure that their language policies comply with the requirements of section 6(5) of the SA Schools Act.

- (3) Sections 6(2) and 6(5) of the SA Schools Act regulate the contents of language policies of public schools by setting out what requirements must be met by a School Governing Body when determining or reviewing its language policy and what factors must be considered in this regard. The list of factors set out in section 6(5) of the SA Schools Act is not a closed list. However, School Governing Bodies are required, in terms of applicable administrative justice law, to ensure that they consider all factors relevant in the circumstances. The following is intended to guide a School Governing Body in ensuring that its determination or review of its language policy is informed by and rationally connected to all factors that may be relevant in the circumstances. It is recommended that each of these relevant factors is appropriately considered and balanced with all other relevant factors while ultimately ensuring that the best interests of learners are protected and promoted.
- (4) When determining or reviewing its language policy, it is recommended that a School Governing Body, pursuant to sections 6(2) and 6(5) of the SA Schools Act read with applicable administrative justice law and applicable case law, ensures that such policy:
- (a) aligns with the Constitution;
 - (b) complies with the requirements of the SA Schools Act;
 - (c) complies with any applicable provincial law;
 - (d) complies with any applicable norms and standards for language policy in public schools determined in accordance with section 6(1) of the SA Schools Act; and
 - (e) is at least informed by and rationally connected to the following factors:
 - (i) the best interests of learners, with an emphasis on ensuring the following:
 - a. no learner is unfairly discriminated against by the language policy and practices of the public school concerned (in line with section 9 of the Constitution); and
 - b. fair treatment, access, opportunity and advancement are guaranteed for all learners, while at the same time striving to identify and eliminate barriers that prevent the full participation of some groups (in line with the principles of equity required by section 6(5)(a) of the SA Schools Act);
 - (ii) the need for the State, together with public schools, to take practical and positive measures to elevate the status and advance the use of indigenous languages of our people (as set out in section 6(2) of the Constitution);
 - (iii) the need to give effect to the right of learners to receive education in their mother tongue language, where this is reasonably practicable, taking into account equity, practicability and the need to redress the results of past racially discriminatory laws and practices (as set out in section 29(2) of the Constitution);
 - (iv) the language needs, in general, of the broader community in the education district in which the relevant public school is situated (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);

- (v) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, the language needs, in general, of the broader community in the municipality in which the public school is situated (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);
- (vi) the changing number of learners who speak the language of learning and teaching at the public school concerned;
- (vii) the need for effective use of classroom space and resources of the public school;
- (viii) the enrolment trends of the public school concerned, including, without limitation, whether and to what extent the public school concerned is operating at full capacity (where capacity is determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools);
- (ix) whether there are other schools that can meet the language needs, in general, of the broader community in the education district in which the relevant public school is situated (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);
- (x) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, whether there are other schools that are able to meet the language needs, in general, of the broader community in the municipality in which the public school concerned is situated (as informed by relevant information sourced by the public school concerned, including, without limitation, information available from the relevant education district office);
- (xi) the available resources (including, without limitation, educators, classroom furniture, learning and teaching support materials and infrastructure) of the public school concerned to meet the language needs, in general, of the broader community in the education district in which the relevant public school is situated;
- (xii) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, the available resources (including, without limitation, educators, classroom furniture, learning and teaching support materials and infrastructure) of the public school concerned to meet the language needs, in general, of the broader community in the municipality in which the public school concerned is situated; and

- (xiii) any other factors relevant to the language policy of the public school concerned.
- (5) Before a Head of a Provincial Education Department directs or otherwise instructs a public school to adopt more than one language of instruction, he or she must ensure compliance with the public participation requirements set out in section 6(9) of the SA Schools Act, read with applicable administrative justice law (including PAJA). These requirements include (a) a notice and comment procedure to enable the public school concerned, its School Governing Body, all parents associated with that school and the community in which the school is located to make informed representations in respect of the proposed decision of the Head of the relevant Provincial Education Department; and (b) a compulsory public hearing on reasonable notice to enable the community in which the school is located to make informed representations in respect of the proposed decision of the Head of the relevant Provincial Education Department.
 - (6) Before a Head of a Provincial Education Department directs or otherwise instructs a public school to adopt more than one language of instruction, he or she must notify, in writing and in the manner set out in section 6(9) of the SA Schools Act read with applicable administrative justice law (including PAJA), the principal and the School Governing Body of that public school, as well as the parents associated with that public school and the community in which that public school is situated, of his or her intention to issue such a directive or instruction and provide such principal, School Governing Body, parents and community with a clear motivation for the intended directive or instruction. In line with applicable administrative justice law (including PAJA), it is recommended that this motivation should reflect and be rationally connected to the factors to be considered by a Head of a Provincial Education Department in this regard (as detailed below). The principal and the School Governing Body of the public school concerned, as well as the parents associated with that public school and the community in which that public school is situated, must all be provided with a reasonable opportunity to make representations to the Head of the relevant Provincial Education Department (which opportunity should preferably be at least 30 (thirty) calendar days pursuant to applicable administrative justice law).
 - (7) Section 6(8) of the SA Schools Act sets out what factors must be considered by the Head of a Provincial Education Department when he or she determines whether it is practicable to direct or otherwise instruct a public school to adopt more than one language of instruction in terms of section 6(7) of the SA Schools Act. The list of factors set out in section 6(8) of the SA Schools Act is not a closed list. However, the Head of a Provincial Education Department is required, in terms of applicable administrative justice law, to ensure that he or she considers all factors relevant in the circumstances. The following is intended to guide a Head of a Provincial Education Department in ensuring that his or her decision in terms of section 6(7) of the SA Schools Act is informed by and rationally connected to all factors that may be relevant in the circumstances. It is recommended that each of these relevant factors is appropriately considered and balanced with all other relevant factors while ultimately ensuring that the best interests of learners are protected and promoted.

- (8) Given the wording of section 6(8) of the SA Schools Act, it is recommended that the following factors be considered relevant to any decision to be taken by a Head of a Provincial Education Department to direct or otherwise instruct a public school to adopt more than one language of instruction in terms of section 6(7) of the SA Schools Act:
- (a) the best interests of learners, with an emphasis on ensuring the following:
 - (i) no learner is unfairly discriminated against by the language policy and practices of the public school concerned (in line with section 9 of the Constitution); and
 - (ii) fair treatment, access, opportunity and advancement are guaranteed for all learners, while at the same time striving to identify and eliminate barriers that prevent the full participation of some groups (in line with the principles of equity required by section 5(8)(a) of the SA Schools Act);
 - (b) the need for the State, together with public schools, to take practical and positive measures to elevate the status and advance the use of indigenous languages of our people (as set out in section 6(2) of the Constitution);
 - (c) the need to give effect to the right of learners to receive education in their mother tongue, where this is reasonably practicable, taking into account equity, practicability and the need to redress the results of past racially discriminatory laws and practices (as set out in section 29(2) of the Constitution);
 - (d) the language policy of the relevant public school and whether it complies with the requirements set out in section 6(5) of the SA Schools Act;
 - (e) the language needs, in general, of the broader community in the education district in which the relevant public school is situated;
 - (f) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, the language needs, in general, of the broader community in the municipality in which the public school is situated;
 - (g) the changing number of learners who speak the language of learning and teaching at the public school concerned;
 - (h) the need for effective use of classroom space and resources of the public school;
 - (i) the enrolment trends of the public school concerned, including, without limitation, whether and to what extent the public school concerned is operating at full capacity (where capacity is determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools);

- (j) whether there are other schools that can meet the language needs, in general, of the broader community in the education district in which the relevant public school is situated;
 - (k) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, whether there are other schools that can meet the language needs, in general, of the broader community in the municipality in which the public school concerned is situated;
 - (l) the available resources (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) of the public school concerned to meet the language needs, in general, of the broader community in the education district in which the relevant public school is situated;
 - (m) where the education district in which the relevant public school is situated is geographically larger than the municipality in which the relevant public school is situated, the available resources (including, without limitation, educators, classroom furniture, learning and teaching support materials and infrastructure) of the public school concerned to meet the language needs, in general, of the broader community in the municipality in which the public school concerned is situated;
 - (n) whether and to what extent the relevant Provincial Education Department can provide the public school concerned with the resources necessary to enable that public school to provide adequate tuition in the additional language or languages of instruction (including, but not limited to, educators, classroom furniture, learning and teaching support materials and infrastructure) before the proposed directive or instruction is issued to that public school; and
 - (o) all relevant representations made by the principal and School Governing Body of the public school concerned, as well as the parents associated with that public school and the broader community in which that public school is situated, in respect of the matter; and
 - (p) any other factors relevant to the proposed directive or instruction.
- (9) Language policies of public schools must, in accordance with applicable law, be applied in a flexible but rational manner. It is recommended that these policies be drafted and interpreted in a way that does not derogate from a child's right to receive instruction in his or her mother tongue, where reasonably practicable. However, it is important that the decision of a Head of a Provincial Education Department to direct or otherwise instruct a public school to adopt more than one language of instruction is rationally linked and responsive to all relevant considerations.
- (10) It must also be noted that a public school must recognise that it is entrusted with a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time but also in the interests of the communities in which the public school is located and in the light of the values of the Constitution.

- (11) The Head of a Provincial Education Department is strongly discouraged from directing or otherwise instructing a public school to adopt more than one language of instruction in terms of section 6(7) of the SA Schools Act where that school is objectively operating at full capacity (as contemplated in applicable case law) or where the Provincial Education Department is unable to provide the public school concerned with the resources necessary to enable that public school to provide adequate tuition in the additional language or languages of instruction (including, but not limited to, educators, learning and teaching support materials and infrastructure) before the proposed directive or instruction is issued to that public school (as required in terms of section 6(11) of the SA Schools Act). Such an action may otherwise compromise the quality of education delivered by that public school. Therefore, the Head of a Provincial Education Department is strongly encouraged to only direct or otherwise instruct a public school to adopt more than one language of instruction in terms of section 6(7) of the SA Schools Act where (a) that school has demonstrated that it is unable to operate at full capacity by receiving sufficient admission applications to admit the total number of learners who can be accommodated within the school (which total number should be determined in accordance with section 58C(6) of the SA Schools Act, read with the court order made by the High Court of South Africa, Gauteng Division, Pretoria in *SAOU v Minister of Basic Education and Others* on 10 October 2023, pending the introduction of regulations on the minimum norms and standards for determining the capacity of ordinary public schools); and (b) the Provincial Education Department is able to provide the public school concerned with the resources necessary to enable that public school to provide adequate tuition in the additional language or languages of instruction (including, but not limited to, educators, learning and teaching support materials and infrastructure) before the proposed directive or instruction is issued to that public school, as required in terms of section 6(11) of the SA Schools Act.
- (12) The power of the Head of a Provincial Education Department to direct a public school to adopt more than one language of instruction does not in any way exempt the relevant MEC for Education from discharging his or her obligation to ensure that there are enough school places so that every child who lives in his or her province can attend school in terms of section 3(3), read with section 12, of the SA Schools Act.
- (13) When the Head of a Provincial Education Department directs or otherwise instructs a public school to adopt an additional language of instruction in terms of section 6(7) of the SA Schools Act, he or she must, in accordance with the processes and requirements set out in section 6(9) of the SA Schools Act, notify, in writing, the principal and School Governing Body of that public school, as well as the parents associated with that public school and the community in which that public school is situated, of his or her decision in this regard and the reasons for such decision. In line with applicable administrative justice law (including PAJA), it is recommended that these reasons be clear and at least reference and be rationally connected to the factors relied on by the Head of the Provincial Education Department in making that decision.

- (14) Where the language policy of a public school does not, in the reasonable view of the Head of the relevant Provincial Education Department, comply with the requirements set out in section 6(5) of the SA Schools Act, the Head of the relevant Provincial Education Department is strongly encouraged to first request the School Governing Body of that public school to urgently review its language policy in line with the requirements of section 6(5) of the SA Schools Act before directing or otherwise instructing that public school to adopt more than one language of instruction in a manner that departs from or otherwise overrides the language policy of that public school.
- (15) It is recommended that any request by a Head of a Provincial Education Department to a School Governing Body to review its language policy in terms of section 6(6) of the SA Schools Act should be made in writing and contain sufficient information regarding the non-compliance of that language policy with the requirements set out in section 6(5) of the SA Schools Act so as to enable the School Governing Body to understand how best to review its language policy. In line with applicable administrative justice law, it is recommended that there is a rational connection between such a request by a Head of a Provincial Education Department and the areas within the public school's language policy that require review.
- (16) It is strongly recommended that any review of a language policy requested by the Head of a Provincial Education Department in terms of section 6(6) of the SA Schools Act should be undertaken by the relevant School Governing Body timeously and within a reasonable period (preferably not exceeding 90 (ninety) calendar days) from the date on which the written request from the Head of the relevant Provincial Education Department is received by that School Governing Body.
- (17) Where a MEC for Education receives an appeal pursuant to section 6(12) of the SA Schools Act, it is recommended that the MEC for Education ensures that, in terms of section 6(13) of the SA Schools Act, such appeal is decided timeously (i.e. within 14 (fourteen) calendar days of receiving the appeal) after taking into account all relevant factors that should have been taken into account by the relevant Head of the relevant Provincial Education Department, including, without limitation, the language policy of the public school concerned and those factors detailed above in these Guidelines. In accordance with applicable administrative justice laws (including PAJA), it is recommended that there is a rational between the MEC for Education's decision and the relevant factors to be considered by him or her.
- (18) Where no specific provision in the public school's language policy is the subject of an appeal to the MEC for Education pursuant to section 6(12) of the SA Schools Act, that language policy shall not in any way be suspended pending the finalisation of the appeal process, and any further process that may follow. As indicated in section 6(14) of the SA Schools Act, the language policy of a public school remains valid pending finalisation of the appeal process.

- (19) All MECs for Education, Heads of Provincial Education Departments and School Governing Bodies are strongly encouraged, when giving effect to section 6 of the SA Schools Act, to always engage with each other in good faith, act in the best interests of all affected learners and take all reasonable steps available to avoid litigation in relation to the language policies of public schools.
- (20) All MECs for Education, officials of Provincial Education Departments (including the Heads of Provincial Education Departments) and School Governing Bodies must ensure that they do not contravene section 3(7) of the SA Schools Act when discharging their functions and exercising their functions pursuant to section 6 of the SA Schools Act by unlawfully and intentionally interrupting, disturbing or hindering any official educational activity of a public school or unlawfully and intentionally hindering or obstructing any public school in the performance of that school's official educational activities.
- (21) In the event that any official of a Provincial Education Department (other than the Head of that Provincial Education Department) acts in contravention of section 6 of the SA Schools Act, read with applicable provisions of the PAJA, any person may report such contravention to the Head of the relevant Provincial Education Department for investigation and appropriate action (including, where applicable, disciplinary action). If the Head of a Provincial Education Department acts in contravention of section 6 of the SA Schools Act, read with applicable provisions of the PAJA, any person may report such contravention to the relevant MEC for Education for investigation and appropriate action.

8. The implementation of section 8 of the SA Schools Act relating to the code of conduct for learners

- (1) In terms of section 8 of the SA Schools Act, the code of conduct for learners adopted by a School Governing Body is strengthened by making it subject to the Constitution and the SA Schools Act in addition to any applicable provincial law and by requiring that it must consider the cultural diversity, religious observances and medical circumstances of learners.
- (2) The code of conduct for learners must be adopted after consultation with the learners, parents and educators of the public school concerned. This requires the development of the code of conduct for learners to be informed by consultations with the learners, parents and educators of the public school concerned.
- (3) The code of conduct for learners must provide for a learner to apply to the School Governing Body for exemption from specific provisions based on cultural considerations, religious observances and medical circumstances. The process of application to the School Governing Body, its response and an appeal to the Head of the relevant Provincial Education Department is spelt out in section 8 of the SA Schools Act, including the timeframe and provision of written reasons in the case of a refusal.

- (4) Disciplinary proceedings conducted in terms of the code of conduct for learners must be age appropriate and in line with applicable constitutional principles.
- (5) The existing Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners will be amended accordingly.

9. The implementation of section 8A of the SA School Act relating to random search and seizure and drug testing

- (1) For the purposes of section 8A of the SA Schools Act, liquor is added to the list of substances and items which may not be brought onto school premises or be in the possession of any person on such premises or at any school activity without the authorisation of the school principal for legitimate educational purposes. In addition, a broader definition of “drug” is introduced.
- (2) Aspects of search and seizure processes, including drug testing, are clarified in section 8A of the SA Schools Act.
- (3) The existing Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners will be amended accordingly.

10. The implementation of section 9 of the SA Schools Act relating to the suspension by a School Governing Body of a learner accused of serious misconduct

- (1) Suspicion of committing serious misconduct is no longer sufficient to suspend a learner. The learner must be accused and only in relation to the listed forms of serious misconduct. This presumes that an investigation has already taken place. In addition, before suspension, the learner must be given a reasonable opportunity to make representations in relation to the accusation.
- (2) A learner must be suspended immediately by a School Governing Body if accused of specified acts of serious misconduct on school premises or at a school activity and formally charged by the South African Police Services. No opportunity for the learner to make representations is required under these circumstances. These specified acts of serious misconduct include murder, attempted murder, culpable homicide, any sexual offence including rape, robbery, theft, assault with intent to cause grievous bodily harm, breaking or entering any premises with an intent to harm a person, any offence under any law relating to the illicit possession of any dependence-producing drug or the conveyance or supply of dependence-producing drugs at school and to learners.

- (3) A learner may be suspended by a School Governing Body as a precautionary measure if accused of specified acts of serious misconduct (excluding those set out above) where the School Governing Body has reasonable grounds for doing so and the learner has been granted a reasonable opportunity to make representations in relation to the accusation of such serious misconduct. In these cases, clear evidence that links the learner concerned to the specified acts of serious misconduct in question must, in the absence of formal charges brought by the South African Police Services or a completed investigation, exist to warrant the School Governing Body pursuing a precautionary suspension. Such evidence may include, for example, credible and authentic video or photographic evidence, corroborated by multiple witness statements.
- (4) The existing Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners will be amended accordingly.

11. The implementation of section 21 of the SA Schools Act relating to centralised procurement of learning and teaching support materials

- (1) A School Governing Body that has been allocated the function of purchasing textbooks, educational materials or equipment for the public school concerned retains the authority to procure such textbooks, educational materials or equipment independently, unless such function is withdrawn in terms of section 22 of the SA Schools Act.
- (2) A School Governing Body that has been allocated the function of purchasing textbooks, educational materials or equipment for the public school concerned in terms of section 21(1) of the SA Schools Act has the option, but is not obliged, to participate in a centralised procurement of identified learning and teaching support materials in terms of section 21(3A) of the SA Schools Act on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.
- (3) When a central procurement is undertaken in terms of section 21(3A) of the SA Schools Act, it is recommended that the Head of the relevant Provincial Education Department and the School Governing Bodies concerned must reach consensus on the terms of the central procurement to be undertaken.
- (4) When assessing the cost-effectiveness of procurements relating to identified learning and teaching support materials contemplated by section 21(3A) of the SA Schools Act, Heads of Provincial Education Departments and School Governing Bodies are strongly encouraged to ensure that the quality of the learning and teaching support materials to be procured (whether through a centralised or decentralised process) and the reliability of the suppliers concerned are acceptable before proceeding with the procurement of such materials. The greater the quality (including, for example, the longevity and relevance) of those materials from an education perspective and the greater the reliability of the suppliers concerned, the less those materials will cost in the long-term because they will be reliably provided on time with the required quality

and last longer thereby reducing the need for corrective procurements and reducing the frequency of replacements.

- (5) Where a School Governing Body has elected to participate in a centralised procurement of identified learning and teaching support materials in terms of section 21(3A) of the SA Schools Act but subsequently determines that it can procure those materials from a supplier in a more cost effective manner than that which is offered by the centralised procurement, it may opt out of that centralised procurement, provided that it can demonstrate, with reference to sufficient evidence, that the procurement from the supplier in question will be more cost effective than the centralised procurement. In determining the cost effectiveness of a procurement, it is recommended that the School Governing Body should at least consider and be informed by the price, quality and supplier reliability differentials between the centralised procurement and the procurement from the supplier in question. Quality (inclusive of longevity and relevance) and supplier reliability are relevant to the determination of cost-effectiveness in this regard for the reasons set out above.
- (6) In the event of a dispute arising between a Head of a Provincial Education Department and a School Governing Body that concerns the implementation of section 21(3A) of the SA Schools Act, the relevant procedure set out in section 59A of the SA Schools Act must be followed.

12. The implementation of section 22 of the SA Schools Act relating to the withdrawal of one or more functions of a School Governing Body

- (1) Section 22 of the SA Schools Act concerns dysfunctionality on the part of School Governing Bodies that manifests in failures to perform one or more of their function(s) whereas section 25 of the SA Schools Act concerns wholly inactive School Governing Bodies that have ceased to perform all of their functions in terms of the SA Schools Act or provincial law.
- (2) In line with section 22(1) of the SA Schools Act, any decision by a Head of a Provincial Education Department to withdraw one or more function(s) of a School Governing Body must be premised on reasonable grounds. It is recommended that this be understood to require such a decision to be:
 - (a) based on objective evidence of a failure, and a refusal or lack of capacity, on the part of that School Governing Body to perform such function(s); and
 - (b) aimed at (i) maintaining governance across such function(s) during the period within which such function(s) is/are withdrawn (**the withdrawal period**); and (ii) building the necessary capacity to ensure that the School Governing Body will be able to perform such function(s) that it previously failed to perform once the withdrawal period terminates.

- (3) It is recommended that the authority to withdraw one or more function(s) of a School Governing Body should not be used as a deadlock breaking mechanism to resolve any dispute between the Head of the relevant Provincial Education Department and that School Governing Body.
- (4) When a Head of a Provincial Education Department informs a School Governing Body in writing of his or her intention to withdraw one or more function(s) of that School Governing Body and the reasons for such intention in terms of section 22(2) or section 22(3) of the SA Schools, it is recommended that, in line with applicable administrative justice law (including PAJA), he or she should at least provide sufficient details regarding:
 - (a) any failure on the part of the School Governing Body to perform such function(s);
 - (b) any evidence that he or she has of a refusal or a lack of capacity on the part of the School Governing Body to perform such function(s);
 - (c) why he or she considers it necessary in the circumstances to withdraw such function(s); and
 - (d) the suitably qualified persons he or she intends to appoint to perform the withdrawn function(s) in question during the withdrawal period (as required in terms of section 22(5) of the SA Schools Act).
- (5) When a Head of a Provincial Education Department takes a decision to withdraw one or more function(s) of a School Governing Body and informs that School Governing Body of such decision in writing, it is recommended that he or she advise that School Governing Body of the sufficiently qualified persons appointed to perform such function(s) during the withdrawal period and provide reasons for such decision that are rationally linked to the following:
 - (a) any established failure(s) on the part of the School Governing Body to perform such function(s);
 - (b) any objective evidence of a refusal or a lack of capacity on the part of the School Governing Body to perform such function(s); and
 - (c) why it is necessary in the circumstances to withdraw such function(s).
- (6) When deciding whether persons are sufficiently qualified to perform one or more withdrawn function(s) of a School Governing Body, it is recommended that the Head of the relevant Provincial Education Department should verify and consider the relevance of such persons' qualifications, skills and work experience to the proper performance of the withdrawn function(s) in question.
- (7) Given the purpose of section 22 of the SA Schools Act, a Head of a Provincial Education Department is strongly encouraged not to withdraw a function of a School Governing Body where that School Governing Body has demonstrated that it is willing to correct and capable of correcting that failure within a reasonable time from the date on which the School Governing Body receives written notice from the Head of the relevant Provincial Education Department informing it of his or her to intention to withdraw such a function.

- (8) Where a decision by a Head of a Provincial Education Department would have the effect of withdrawing the function(s) of a School Governing Body to determine, apply and/or review its admission policy, it is strongly recommended that the Head of the relevant Provincial Education Department follows and exhausts the relevant processes in terms of section 5 of the SA Schools Act before proceeding to withdraw the said function(s) in terms of section 22 of the SA Schools Act. This is consistent with the purpose and requirements of sections 5 and 22 of the SA Schools Act.
- (9) Where a decision by a Head of a Provincial Education Department has the effect of withdrawing the function(s) of a School Governing Body to determine, apply and/or review its language policy, it is strongly recommended that the Head of the relevant Provincial Education Department follows and exhausts the relevant processes of section 6 of the SA Schools Act before proceeding to withdraw the said function(s) in terms of section 22 of the SA Schools Act. This is consistent with the purpose and requirements of sections 6 and 22 of the SA Schools Act.
- (10) In line with section 22(5) of the SA Schools Act, it is recommended that the Head of a Provincial Education Department should not withdraw one or more function(s) of a School Governing Body if he or she is unable to ensure the immediate and continued appointment of sufficiently qualified persons to perform the withdrawn function(s) for the withdrawal period.
- (11) Before the Head of a Provincial Education Department decides to extend the withdrawal period (as contemplated in section 22 of the SA Schools Act), it is recommended that, in line with applicable administrative justice law, he or she first:
 - (a) notifies the School Governing Body, in writing, of his or her intention to extend the withdrawal period and the reasons for such intention;
 - (b) grants the School Governing Body with a reasonable opportunity of not less than 10 (ten) working days to make representations to him or her relating to such intention;
 - (c) gives due consideration to any representations made by the School Governing Body; and
 - (d) notifies the School Governing Body of his or her final decision in this regard in writing.
- (12) In line with applicable administrative justice law (including PAJA), it is recommended that any decision by a Head of a Provincial Education Department to withdraw one or more function(s) of a School Governing Body or extend the withdrawal period must be rationally connected to the relevant circumstances relating to, and all representations made by, that School Governing Body.
- (13) Where a MEC for Education receives an appeal pursuant to section 22(9) of the SA Schools Act, it is recommended that the MEC for Education must ensure that such appeal is decided timeously (i.e. within 30 (thirty) calendar days after receiving the appeal) after taking into account at least all relevant factors that should have been taken into account by the relevant Head of the relevant Provincial Education Department, including, without limitation, those factors detailed above in these Guidelines. In line with applicable administrative justice law (including PAJA), it

is recommended that there is a rational connection between the MEC for Education's decision and the relevant factors to be considered by him or her.

- (14) All MECs for Education, Heads of Provincial Education Departments and School Governing Bodies are strongly encouraged, when giving effect to section 22 of the SA Schools Act, to always engage with each other in good faith, act in the best interests of all affected learners and take all reasonable steps available to avoid litigation in relation to the governance of public schools.

13. The implementation of section 24 of the SA Schools Act relating to the membership of a School Governing Body of a public school for learners with special education needs

- (1) The determination of the number of each category of members of the School Governing Body of a public school for learners with special education needs is now a function of the Minister of Basic Education as is the consideration of submissions made concerning this determination.
- (2) No determination to be made in this regard will become effective before the end of the current term of office of School Governing Bodies.
- (3) Any determination to be made in this regard will be included in the regulations relating to the elections of School Governing Bodies, which will be consulted on with all relevant stakeholders and gazetted for public comment before being finalised.

14. The implementation of section 25 of the SA Schools Act relating to the dissolution of a School Governing Body

- (1) Section 25 of the SA Schools Act concerns wholly inactive School Governing Bodies that have ceased to perform all their functions in terms of the SA Schools Act or provincial law whereas section 22 of the SA Schools Act concerns dysfunctionality on the part of School Governing Bodies that manifests in failures to perform one or more of their function(s).
- (2) In line with section 25(1) of the SA Schools Act, it is recommended that any decision by a Head of a Provincial Education Department to dissolve a School Governing Body must be premised on reasonable grounds. It is recommended that that this requires such a decision to be:
 - (a) based on objective evidence of a cessation by that School Governing Body to perform all its functions in terms of the SA Schools Act or all its functions in terms of any applicable provincial law; and
 - (b) aimed at (i) maintaining governance across such functions during the period within which the School Governing Body remains dissolved (**the dissolution period**); and (ii) ensuring that a new School Governing Body is elected in terms of the SA Schools Act within a year from the date on which the decision to dissolve the School Governing Body is taken and the

Head of the relevant Provincial Education Department has appointed suitably qualified persons to perform all functions of that School Governing Body.

- (3) It is recommended that the authority to dissolve the School Governing Body of a public school should not be used as a deadlock breaking mechanism to resolve any dispute between the Head of the relevant Provincial Education Department and that School Governing Body.
- (4) When considering whether a School Governing Body has ceased to perform all its functions in terms of the SA Schools Act or all its functions in terms of any applicable provincial law, the Head of the relevant Provincial Education Department is strongly encouraged to take meaningful steps to determine whether that School Governing Body, through its acts or omissions, has in fact stopped performing or otherwise terminated its performance of such functions.
- (5) When a Head of a Provincial Education Department informs a School Governing Body in writing of his or her intention to dissolve that School Governing Body and the reasons for such intention in terms of section 25(5) of the SA Schools Act, it is recommended that, in line with applicable administrative justice law (including PAJA), he or she should at least provide sufficient details regarding:
 - (a) the cessation by that School Governing Body to perform all its functions in terms of the SA Schools Act or all its functions in terms of any applicable provincial law;
 - (b) the reasons for such cessation;
 - (c) why he or she considers it necessary in the circumstances to dissolve the School Governing Body and ensure the election of a new School Governing Body; and
 - (d) the suitably qualified persons he or she intends to appoint to perform the functions of the School Governing Body during the dissolution period (as required in terms of section 25(2) of the SA Schools Act).
- (6) When a Head of a Provincial Education Department takes a decision to dissolve a School Governing Body and informs that School Governing Body of such decision in writing in terms of section 25(5) of the SA Schools Act, it is recommended that he or she advise that School Governing Body of the sufficiently qualified persons appointed to perform the functions of the School Governing Body during the dissolution period and provide reasons for such decision that are rationally linked to the following:
 - (a) any established cessation by that School Governing Body to perform all its functions in terms of the SA Schools Act or all its functions in terms of any applicable provincial law;
 - (b) any objective evidence of the reasons for such cessation; and
 - (c) why it is necessary in the circumstances to dissolve the School Governing Body and ensure the election of a new School Governing Body.

- (7) When deciding whether a person is sufficiently qualified to perform the functions of a School Governing Body, it is recommended that the Head of the relevant Provincial Education Department verify and consider the relevance of the person's qualifications, skills and work experience to the proper performance of the School Governing Body's functions.
- (8) Given the purpose of section 25 of the SA Schools Act, a Head of a Provincial Education Department is strongly encouraged not to dissolve a School Governing Body where that School Governing Body has demonstrated that it is willing to perform and immediately capable of performing all its functions in terms of the SA Schools Act and any applicable provincial law.
- (9) Where a decision by a Head of a Provincial Education Department is aimed only at intervening in or withdrawing the function(s) of a School Governing Body to determine, apply and/or review its admission policy, it is strongly recommended that the Head of the relevant Provincial Education Department should first follow and exhaust the relevant provisions of section 5 of the SA Schools Act and then, if required, follow and exhaust the provisions of section 22 of the SA Schools Act. Section 25 of the SA Schools Act is not applicable in these circumstances.
- (10) Where a decision by a Head of a Provincial Education Department is aimed only at intervening in or withdrawing the function(s) of a School Governing Body to determine, apply and/or review its language policy, it is strongly recommended that the Head of the relevant Provincial Education Department should first follow and exhaust the relevant provisions of section 6 of the SA Schools Act and then, if required, follow and exhaust the provisions of section 22 of the SA Schools Act. Section 25 of the SA Schools Act is not applicable in these circumstances.
- (11) In line with section 25(5) of the SA Schools Act, it is recommended that the Head of a Provincial Education Department should not dissolve a School Governing Body if he or she is unable to ensure the immediate and continued appointment of sufficiently qualified persons to perform the functions of the School Governing Body for the dissolution period.
- (12) Before the Head of a Provincial Education Department decides to extend the dissolution period (as contemplated in section 25(3) of the SA Schools Act), it is recommended that, in line with applicable administrative justice law, he or she first:
 - (a) notifies the parents associated with the relevant public school, in writing, of his or her intention to extend the dissolution period and the reasons for such intention;
 - (b) grants the parents associated with the relevant public school with a reasonable opportunity of not less than 10 (ten) working days to make representations to him or her relating to such intention;
 - (c) gives due consideration to any representations made by the parents associated with the relevant public school; and
 - (d) notifies the parents associated with the public school of his or her final decision in this regard in writing.

- (13) It is recommended that any decision by a Head of a Provincial Education Department to dissolve a School Governing Body must, in accordance with applicable administrative laws (including PAJA), be rationally connected to the relevant circumstances relating to, and all relevant representations made by, that School Governing Body.
- (14) It is recommended that any decision by a Head of a Provincial Education Department to extend the dissolution period must, in accordance with applicable administrative laws (including PAJA), be rationally connected to the relevant circumstances relating to, and all relevant representations made by the parents associated with, the public school concerned, including, without limitation, progress made in ensuring the timely election of a new School Governing Body in terms of the SA Schools Act.
- (15) Where a MEC for Education receives an appeal pursuant to section 25(7) of the SA Schools Act, it is recommended that the MEC for Education must ensure that such appeal is decided timeously (i.e. within 14 (fourteen) calendar days after receiving the appeal) after taking into account at least all relevant factors that should have been taken into account by the relevant Head of the relevant Provincial Education Department, including, without limitation and where relevant, those factors detailed above in these Guidelines. In accordance with applicable administrative laws (including PAJA), it is recommended that there is a rational connection between the MEC for Education's decision and the relevant factors to be considered by him or her.
- (16) All MECs for Education, Heads of Provincial Education Departments and School Governing Bodies are strongly encouraged, when giving effect to section 25 of the SA Schools Act, to always engage with each other in good faith, act in the best interests of all affected learners and take all reasonable steps available to avoid litigation in relation to the governance of public schools.

15. The implementation of section 51 of the SA Schools Act relating to home education

- (1) It is important that section 51 of the SA Schools Act is applied uniformly across all provinces. In this regard, the Department of Basic Education will issue an updated registration application form aligned with section 51 of the SA Schools Act. Pending the issuing of this updated registration application form, the existing registration application form may be used.
- (2) Where parents apply for home education registration due to the unavailability of school placements, it is recommended that the relevant Provincial Education Department keeps a separate register of these parents and, wherever possible, assists them to enrol their learners in schools.

- (3) When determining whether education at home, as provided for in the SA Schools Act, is in the best interests of a learner, it is strongly recommended that the Head of a Provincial Education Department should ensure that this determination is based on factual information that is relevant to the unique circumstances of the learner concerned. Such information may concern the following:
- (a) the factors listed in section 7 of the Children's Act, 2005 (Act No. 38 of 2005);
 - (b) the language needs of the learner concerned;
 - (c) what is in the learner's best interests, including, but not limited to, what the parent(s) concerned consider to be in the learner's best interests; and
 - (d) what international and national research may indicate is relevant in the unique circumstances of the learner concerned.

In line with applicable law, it is recommended that no arbitrary criteria should be relied on when determining whether education at home is in the best interests of a learner.

- (4) Where the Head of a Provincial Education Department does not have sufficient information to make a determination on whether education at home, as provided for in the SA Schools Act, is in the best interests of a learner, it is strongly recommended that the Head of the relevant Provincial Education Department first supports the parents of that learner with the application process by guiding them on what further information needs to be provided before making a determination. It is strongly recommended that applications for home education registration should not be declined on the basis that the Head of the relevant Provincial Education Department did not have sufficient information to make such a determination.
- (5) When considering an application for home education registration, it is recommended that the Head of the relevant Provincial Education Department must ensure that, wherever possible and necessary, the parents in question are supported to find the most appropriate solution for the learner concerned (as contemplated in section 51(3) of the SA Schools Act). This may include, for example, appropriately supporting the parents in question to overcome obstacles that they face in obtaining home education registration.
- (6) Where, after sourcing all relevant information required to make a determination on whether education at home is in the best interests of a learner, a Head of a Provincial Education Department determines that it is not in the best interests of a learner to be educated at home, it is recommended that, in line with applicable administrative justice law, the Head of the relevant Provincial Education Department provides, in writing, the parents of that learner with sufficient reasons with reference to available evidence to support this determination.
- (7) Section 51(2)(a)(iii) of the SA Schools Act requires learners registered for home education to follow a programme that predominantly covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister of Basic Education. It is recommended that this be understood as requiring a learner registered for home education to follow a curriculum programme that is suitable for their ability and cover a variety of skills, but

which ensures that the learner is able to cover a comparable scope of content and cover a comparable variety of skills to the relevant national curriculum. This requirement in the SA Schools Act ensures that learners registered for home education may easily transition into mainstream schooling should the need for this arise in the future while still providing the parents of these learners with the freedom to choose what curriculum programme is followed as part of home education. Learners registered for home education are therefore not required to follow the Curriculum and Assessment Policy Statement (**CAPS**) specifically.

- (8) Section 51(2)(b)(iii)(bb) of the SA Schools Act requires learners registered for home education to be assessed against a standard that is not inferior to the standard determined in the National Curriculum Statement (**NCS**). It is recommended that this be understood as requiring a learner registered for home education to be assessed against a standard that is similar to or better than, but not inferior to, the standards set out in the NCS. This requirement in the SA Schools Act ensures that learners registered for home education may easily transition into mainstream schooling should the need for this arise in the future while still providing the parents of these learners with the freedom to choose what assessment standards and methods are followed as part of home education. Learners registered for home education are therefore not required to follow the NCS specifically.
- (9) To support all Provincial Education Departments to apply section 51 of the SA Schools Act uniformly, the Department of Basic Education has confirmed the following and encourages all Provincial Education Departments to align their practices with the following accordingly:
 - (a) Provincial Education Departments may consider the curriculum and assessment options determined and published by the Department of Basic Education from time to time as acceptable options available to parents wishing to apply for home education registration. However, these options are not necessarily the only options available to parents in this regard. The Head of a Provincial Education Department may seek guidance from the Department of Basic Education in respect of curriculum and assessment options that do not feature in the curriculum and assessment options published by the Department of Basic Education;
 - (b) Section 51 of the SA Schools Act does not allow for home visits to be conducted by or at the instance of Provincial Education Departments as a standard precondition for home education registration. It is recommended that any home visit that is conducted only be undertaken with the prior written consent of the parent(s) concerned, which consent is provided voluntarily without duress. It is further recommended that no home visit should be conducted with the learner concerned present; and
 - (c) Parents are not required in terms of section 51 of the SA Schools Act to hold any specific qualifications to apply for and obtain home education registration.

- (10) Section 51(3) of the SA Schools Act permits the Head of a Provincial Education Department, on just cause shown and after notification to the parent(s) concerned, to require a delegated official to conduct a pre-registration consultation with the parents and learner to either (a) verify information supplied in their application documentation; and/or (b) provide support, where necessary, with the application process. This pre-registration consultation is not a home visit. It is recommended that a pre-registration consultation be arranged and conducted as follows:
- (a) Prior to a pre-registration consultation, it is recommended that the Head of the relevant Provincial Education Department should issue a written notice to the parent(s) concerned detailing what information supplied in the application documentation requires verification, what support is to be provided at the pre-registration consultation (if any), what information and documentation needs to be provided by the parent(s) (if any) and clear reasons as to why the pre-registration consultation is justifiable and necessary. It is recommended that the written notice to be issued by the Head of the relevant Provincial Education Department should not be generic or predetermined and should provide the parent(s) with a reasonable opportunity of not less than 5 (five) business days to respond to the contents of the written notice, including providing the information and documentation requested by the Head of the relevant Provincial Education Department (where possible);
 - (b) To the extent that there is a just cause shown for a pre-registration consultation, it is recommended that the official delegated by the Head of the relevant Provincial Education Department should host such consultation either virtually, physically at a provincial office/district office or an agreed upon venue, at a time and date to be agreed between that official and the parent(s) concerned;
 - (c) When conducting the pre-registration consultation, it is recommended that:
 - (i) the delegated official must, in accordance with section 51(3) of the SA Schools Act, ensure that the relevant information supplied in the application documentation is verified and, where applicable, provide support to the parent(s) with the application process; and
 - (ii) the delegated official must provide valid proof of authorisation to conduct the pre-registration consultation.
 - (d) It is recommended that no pre-registration consultation should be conducted with the learner concerned present.
- (11) If a parent educates a learner of compulsory school-going age at home, and that learner has, on 24 December 2024, not been registered as contemplated in section 51 of the SA Schools Act, the parent was required, on or before 23 January 2025, to apply to the Head of the relevant Provincial Education Department for the registration of the learner to receive home education. Section 51 of the SA Schools Act does not provide for an extension of this deadline.

- (12) If a parent has submitted a home education registration application prior to 24 December 2024 and has not yet received a decision from the Head of the relevant Provincial Education Department before 24 December 2024, the parent is encouraged to take immediate steps to either (a) supplement that application to ensure that it meets the requirements of section 51 of the SA Schools Act; or (b) prepare a new application in line with the requirements of section 51 of the SA Schools Act, and submit this to the Head of the relevant Provincial Education Department. This is encouraged because section 51(5) of the SA Schools Act expressly requires parents who educate their learners at home and who have not been registered as contemplated in section 51 of the SA Schools Act as of 24 December 2024 to apply for such registration. The 60-day period discussed below applies from the date on which the supplementary or new application for home education registration is made.
- (13) Given that the 2024 amendments to the SA Schools Act commenced during the 2024 festive season period, it is acknowledged that not all parents wishing to apply for home education registration in 2025 may, for good reason, have become aware of the deadline of 23 January 2025 in time to meet this deadline. These parents are encouraged to make application for home education registration as soon as possible. Section 51 of the SA Schools Act does not impose penalties on parents who failed to meet the above deadline. In such instances, the relevant Provincial Education Department is encouraged to support the parent(s) concerned to either apply for home education registration, enrolment at a school or an exemption from compulsory school attendance. As noted above, section 51(7) of the SA Schools Act provides that a learner who is registered to receive home education is exempted from compulsory school attendance.
- (14) Given the definition of “home education” in the SA Schools Act, a parent registered for home education may make use of full-time tutors or other forms of educational support (including, for example, online educational resources) on specific areas of the curriculum followed by the learner concerned, provided that (a) this is necessary for the implementation of home education for that learner; (b) this is undertaken under the direction of that parent and primarily in the environment of the learner’s home (including the private residence of the parent(s) concerned or any other suitable area provided by the parent(s) concerned over which the parent(s) concerned have control for the purposes of implementing home education for the learner); and (c) the parent remains fully responsible for the implementation of home education for the learner and accordingly exercises adequate supervision. There is no pre-approved list of educational support providers that parents must use when sourcing educational support for learners. Parents must ensure that any educational support providers they use are suitably qualified, skilled and resourced to provide the support required by the learner concerned. However, it must be noted that a parent registered for home education may not enrol their learner on a full-time basis in an online school or at a centre where children are grouped to receive tuition on a full-time basis, as this would otherwise result in the parent delegating their responsibility to fully

implement home education for the learner. Parents of learners registered for home education may use online service providers to provide educational support in specific subjects, provided that these service providers do not take on the responsibility of parents to fully implement home education for those learners.

- (15) It is recommended that applications for home education registration should not be declined based on any employment or work undertaken by the parent(s) concerned where the parent(s) can demonstrate that they are able to effectively manage and ensure the implementation of home education for the learner.
- (16) Where an application for home education registration is denied, it is recommended that the relevant Provincial Education Department should immediately provide support to the parent(s) concerned to ensure that the learner in question is placed in a suitable school as soon as possible.
- (17) More than one learner registered for home education may be educated in the same place and at the same time, provided that (a) this does not in any way undermine the quality of education received by each learner concerned; and (b) the arrangement remains compliant with a proper interpretation of the requirements of section 51 of the SA Schools Act.
- (18) Section 51 of the SA Schools Act does not require a parent registered for home education to submit quarterly learner assessments and reports to the Head of the relevant Provincial Education Department. Instead, section 51(2)(b)(iv) of the SA Schools Act requires a parent registered for home education to submit to the Head of the relevant Provincial Education Department, at the end of each of the following phases, an assessment report for the learner that has been signed by a competent assessor and that serves as evidence of the learner's educational attainment:
 - (a) Foundation Phase (Grades R to 3);
 - (b) Intermediate Phase (Grades 4 to 6); and
 - (c) Senior Phase (Grades 7 to 9).

Any additional assessments and reports (other than the mandatory phase-specific assessment report) that are requested by a Provincial Education Department may be provided on a voluntary basis. When such additional assessments and reports (including, for example, quarterly assessments and reports) are required by a Provincial Education Department, it is recommended that the relevant official(s) making such request must inform the parent(s) concerned that the provision of such additional assessments and reports is voluntary. Notwithstanding the above, regular assessments of learners registered home education within each phase are strongly encouraged.

- (19) With reference to the definition of “competent assessor” in section 1 of the SA Schools Act, any educator (as defined in the SA Schools Act) registered with SACE or accredited by the South African Qualifications Authority may qualify to serve as a competent assessor for the purposes of section 51(2)(b)(iii) of the SA Schools Act, regardless of whether they are currently employed at a school or not.
- (20) It is recommended that the Head of each Provincial Education Department should ensure that, as far as possible, all home education registration applications are considered and processed in a timeous manner, ensuring that affected parents and learners are promptly informed of the outcome of their applications. However, where an applicant for home education registration does not receive a response from the Head of the relevant Provincial Education Department within 60 (sixty) calendar days of the date on which their home education registration application was submitted, section 51(6) of the SA Schools Act provides that their application is deemed to be approved (with effect from the expiry of the 60-day period) on condition that the applicant concerned must be able, on request by the relevant Provincial Education Department, to produce proof that a home education registration application was submitted. It is recommended that the 60-day period should not be understood as being interrupted by an acknowledgement of receipt of the home education registration application by the relevant Provincial Education Department. It is also recommended that Provincial Education Departments consider, where appropriate and necessary, permitting learners to receive home education pending finalisation of the home education application processes relating to such learners so as to mitigate the impact of administrative delays associated with these processes on the learners’ right to receive a basic education. Upon expiry of the 60-day period, the relevant Head of the Provincial Education Department is strongly encouraged to issue a home education registration certificate to the parent(s) concerned.
- (21) As per section 51(14) of the SA Schools Act, if the parent of a learner is of the opinion that any decision of the Head of the relevant Provincial Education Department in relation to the home education of the learner in question is unreasonable, such parent may appeal to the relevant MEC for Education within 30 (thirty) calendar days of receiving written notice of such decision. An appeal must be considered and decided by the relevant MEC for Education, and written notice of the decision made by the MEC for Education must be sent to the parent(s) concerned, within 30 (thirty) calendar days of the MEC for Education receiving such appeal.
- (22) If the Head of a Provincial Education Department investigates a case of a learner who is not attending a school and is found to be educated at home without being registered as such in terms of section 51 of the SA Schools Act, it is recommended that the Head of the relevant Provincial Education Department should give due consideration to any concerns the parent(s) of this learner may have regarding home education registration and take reasonable steps to rectify the matter, remove any obstacles the parent(s) may have experienced regarding home education registration and/or assist the parent(s) to register the learner for home education.

16. The implementation of section 61 of the SA Schools Act relating to regulations

(1) Regulations concerning the following are added to the list of regulations that may be made by the Minister of Basic Education:

- the management of learner pregnancy
- the admission of learners to public schools
- the prohibition of the payment of unauthorised remuneration or the giving of other financial benefits or benefits in kind to certain employees
- the minimum norms and standards for provincial education development institutes and district educator development centres
- the organisation, roles and responsibilities of education districts
- a national education information system

17. Communication

These Guidelines are to be brought to the immediate attention of all MECs for Education, Heads of Provincial Education Departments, officials of Provincial Education Departments, District Directors, Circuit Managers, school principals, School Management Teams, School Governing Bodies, staff of public schools, parents and, where appropriate, learners.

18. Authorisation

These Guidelines were approved, after consultation with the Council of Education Ministers, by:



MS S GWARUBE, MP
MINISTER OF BASIC EDUCATION
DATE: 12 JUNE 2025