

LRC

Legal Resources Centre

ADMISSION TO SCHOOLS: A GUIDE FOR PARENTS AND LEARNERS IN SOUTH AFRICA



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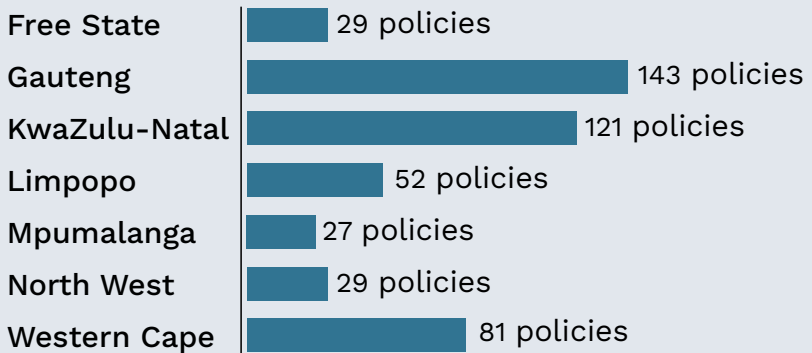
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Overview

Between 21 May 2021 and 12 April 2022, the Legal Resources Centre analysed a randomised selection of school admission policies which were obtained from the following provincial departments of education:



The laws

There are many laws which are important to the school admission process as they set out the rights of parents and learners. They also regulate the behaviour of schools.

The two most important laws in the school admission process are the Constitution of the Republic of South Africa and the Schools Act 84 of 1996.

Constitution

Section 29(1) of the Constitution guarantees everyone the right to basic education.

Numerous other constitutional rights which are relevant to school admissions are:

Section 9: Rights to equality and non-discrimination

Section 10: Human dignity

Section 28[2]: The right of the child to have their "best interests [be] of paramount importance in every matter concerning [them]"

Schools Act

The Schools Act is the main legislation regulating education in South Africa. It applies to all schools in South Africa – both private and government.

Section 5 of the Schools Act sets out admission to public schools. Section 5(1) of the Schools Act states that public schools must admit learners and serve their educational requirements without unfairly discriminating in any way.

Who is a parent?

Many of the rights that are granted by the Schools Act are to the 'parents' of the learner. The Schools Act defines 'parent' as:

- a) The biological parent or legal guardian of a learner.
- b) The person legally entitled to custody of a learner.
- c) A person who is fulfilling the obligations of people referred to in (a) and (b) above.

Fee exemptions

The Schools Act states that 'no learner may be refused admission to a public school on the grounds that his or her parent is unable to pay or has not paid school fees'.

Do you have a right to apply for a fee exemption?

Yes. In terms of Section 39(2) of the Schools Act, every school that charges fees must provide an equitable procedure for parents to apply for a total, partial or conditional exemption of parents who are unable to pay school fees.

What can you do if your application for a fee exemption is rejected?

In terms of section 40 of the Schools Act, a parent may appeal to the head of department against the decision to refuse their application for exemption from paying school fees, by a governing body.

Refusal of admission

If a school refuses to admit your child, you are entitled to written reasons from the school which explain why they did not admit your child in terms of Section 5(8) of the Schools Act.

If you read through the written reasons and you are still unsatisfied, you can appeal the rejection to the MEC of Education in your province.

Documents required for admission

South African learners

The admission policies of many schools ask for birth certificates, IDs and other documents in the application process.

But due to the high court's decision in *Centre for Child Law v Minister of Basic Education*, a public school cannot refuse to admit a child due to lack of documentation.

Non-South African learners

The admission policies of many schools ask for refugee permits, asylum seeker permits, study permits and other documents in the application process.

But due to the high court's decision in *Centre for Child Law v Minister of Basic Education*, no public school can refuse to admit a child due to lack of documentation.

Lastly, asylum seeker permits and refugee status permits allow their holder to reside, work and study in South Africa.

What can you do if your child is being denied access to a school because of documents?

Contact lawyers (like the Legal Resources Centre) for advice and assistance.

Feeder zones

Some schools have feeder zones policies which only allow learners to attend the school if they live close to, or their parents work close to the school.

What can you do if your child is being denied access to a school because you live and/or work outside its feeder zone?

Contact lawyers (like the Legal Resources Centre) for advice and assistance.

Tests and interviews

Section 5(2) of the Schools Act prohibits tests from being conducted prior to admission to schools.

During the application process, a school might ask for the child and their parents to attend an interview before accepting or rejecting your application. If you are invited to an interview, you should attend. But if the questions in the interview include asking about the learner's previous academic performance, sporting ability, or other talents/abilities, then the interview will become a test.

What can you do if your child was tested prior to admission?

If your child is tested as part of a school's admission process, you can contact the head of department of your school district. You can also contact lawyers (like the Legal Resources Centre) for advice and assistance.

Administration/registration fees

The Schools Act does not allow a school to charge the following fees during the application process:

- Registration fee
- Deposit
- Re-admission fee
- Pre-admission fee
- Testing fees
- Any other fee

If you have been asked to pay one of these fees, you should refuse to do so and report the school to the provincial Department of Education.

Discrimination

Gender

Some schools are single sex i.e. 'boys-only' or 'girls-only'. From looking at a school's policies alone, it is difficult to tell whether they admit transgender learners into the school based on their gender identity or sex assigned at birth.

What can you do if your child is refused entry into a single-sex school which aligns with their gender identity on the basis that they are transgender?

The school's conduct will violate Section 9 of the Constitution which prohibits unfair discrimination on the ground of gender. If you do find yourself in this position, contact lawyers (like the Legal Resources Centre) for advice and assistance.

Language

Some schools give admission preference to learners whose mother tongue is either English or Afrikaans.

What can you do if your child is refused entry into a school because of their mother tongue?

The school's conduct would be a violation of Section 9 of the Constitution which prohibits unfair discrimination on the ground of language. If you do find yourself in this position, contact lawyers (like the Legal Resources Centre) for advice and assistance.

Nationality

Some schools discriminate against learners on the basis of their nationality in their admission policies. Such policies include requiring non-national learners to pay higher school fees than South African learners and giving preference to applications from South African learners above non-national learners.

What can you do if your child being discriminated against due to their nationality?

The school's conduct would be a violation of Section 9 of the Constitution which prohibits unfair discrimination on the ground of nationality. If you do find yourself in this position, contact lawyers (like the Legal Resources Centre) for advice and assistance.

Repeating grades

Many policies had clauses relating to repeating grades. Typically, policies stated that learners cannot repeat a grade more than once. This rule needs to be considered in light of the age norm for each grade, which a learner cannot exceed by two years.

In terms of the Admission Policy for Ordinary Public Schools, admitted learners who are above the age norm for a grade must, as far as possible, be placed in a fast-track facility, or with their peers, unless it is not in the educational interests of the child to do so. In cases where a learner is more than three years above the norm age of the grade, the Head of Department must determine whether the learner will be admitted to that grade.

What can you do if your child is refused entry into a school because of their mother tongue?

The school's conduct would be a violation of Section 9 of the Constitution which prohibits unfair discrimination on the ground of language. If you do find yourself in this position, contact lawyers (like the Legal Resources Centre) for advice and assistance.

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