

*Every child is a National Asset*

# BASIC EDUCATION LAWS AMENDMENT ACT

## No 32, 2024



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# **BASIC EDUCATION LAWS AMENDMENT ACT**

## **PRESENTATION FROM DBE**



# SA AS A GLOBAL PLAYER

South Africa is a signatory to global treaties that promote Economic, Cultural and Social Right of people.

As a member of the UN and Common Wealth that push for the right of the child, South Africa is obliged to meet certain standards to make education compulsory and free.

The African Charter for the Rights and welfare of the child declared in 1986 also drives the country to develop laws that put the child first, leave no child behind as it makes education compulsory.

The BELA is the country's response to these treaties and the Sustainable Development Goals of the UN of 2015

At its core, the Bill reflects South Africa's aspiration for a more inclusive, equitable and efficient basic education system.

It addresses key challenges that have, for years, hindered the progress of our education ecosystem.

# ADVANCEMENT OF SOCIAL JUSTICE

Access

Inclusivity

Equity

Efficiency

Redress

Quality



# PURPOSE OF THE BELA BILL

The BELA Bill seeks to amend certain sections of the South African Schools Act of 1996 to respond to administrative challenges facing our schools and to continue with the transformation agenda of our education system.

It is not a whole-sale bill that covers all aspects of the sector.

It focuses mainly on the administrative processes of the department and schools.

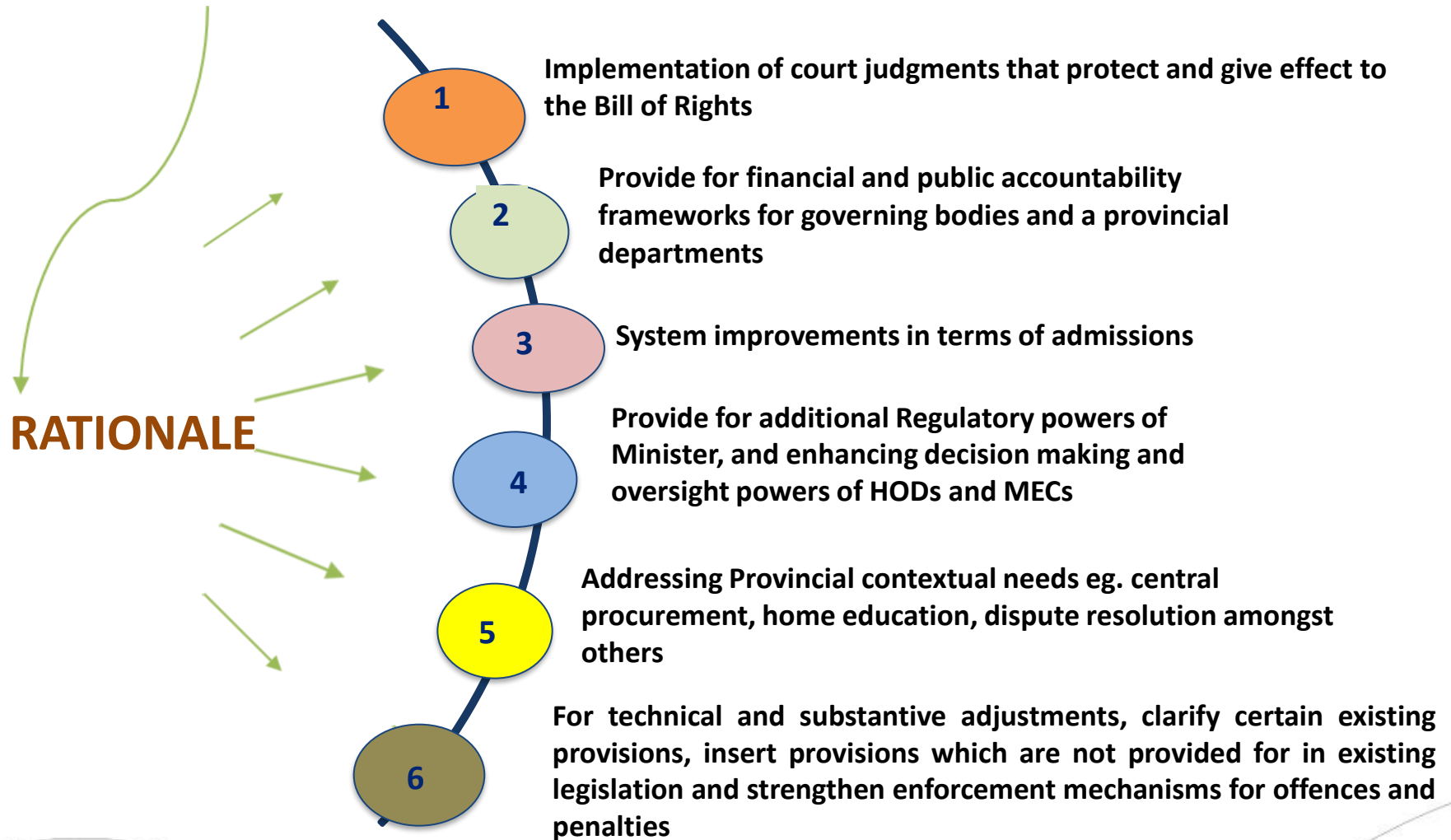
# LIMITATION

## It would therefore not include:

- Curriculum aspects, so there will be no mention of subjects, 3 stream model, online schools, assessment, Life Orientation which includes sexuality education.
- Human resources – no appointment of teachers and general workers
- Infrastructure – no sanitation, pit latrines, mobile classrooms, building of schools, water & electricity supply or such. These are covered in the Norms and Standards for School Infrastructure
- Inclusive Education and schools for Learners with Special Needs which are covered in White Paper 6

**TO CREATE CERTAINTY &  
CURE MISCHIEF IN THE  
EDUCATION LANDSCAPE**

# LEGISLATIVE REFORMS



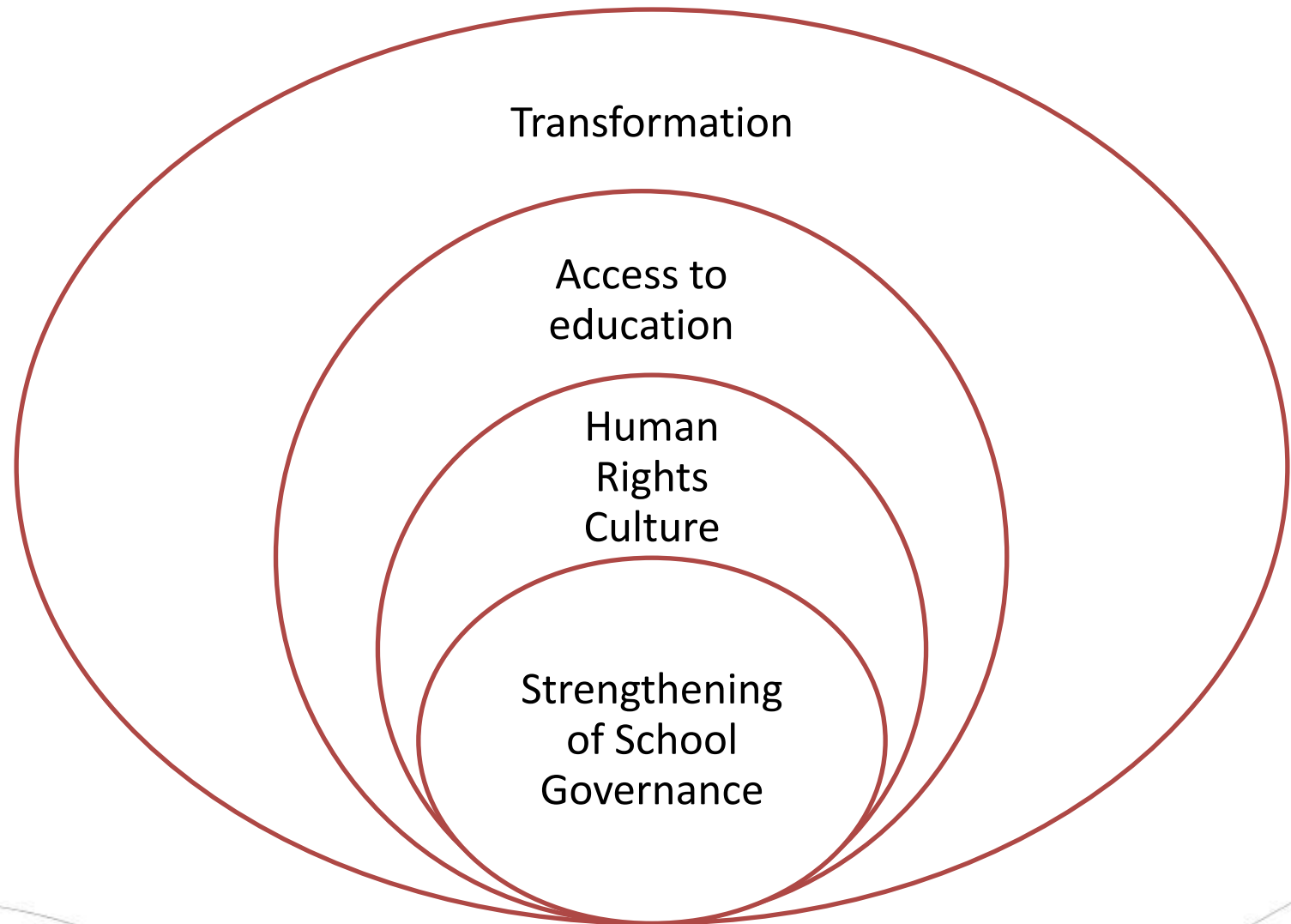


# WHAT THE BILL IS ABOUT

- It is an Act that responds to the current needs in terms of:
  - the changing demographics of our communities,
  - findings by the courts and
  - our own observations as we monitor schools.
- The Act amends clauses ranging from the introduction of Grade R to learner attendance, Code of Conduct for learners, Home Schooling, rationalisation of schools, abolishment of corporal punishment and initiations, language policy, admission policy, criminalisation of disruptions of school.



# BROAD AREAS COVERED BY THE ACT



# CHALLENGES TO TRANSFORMATION

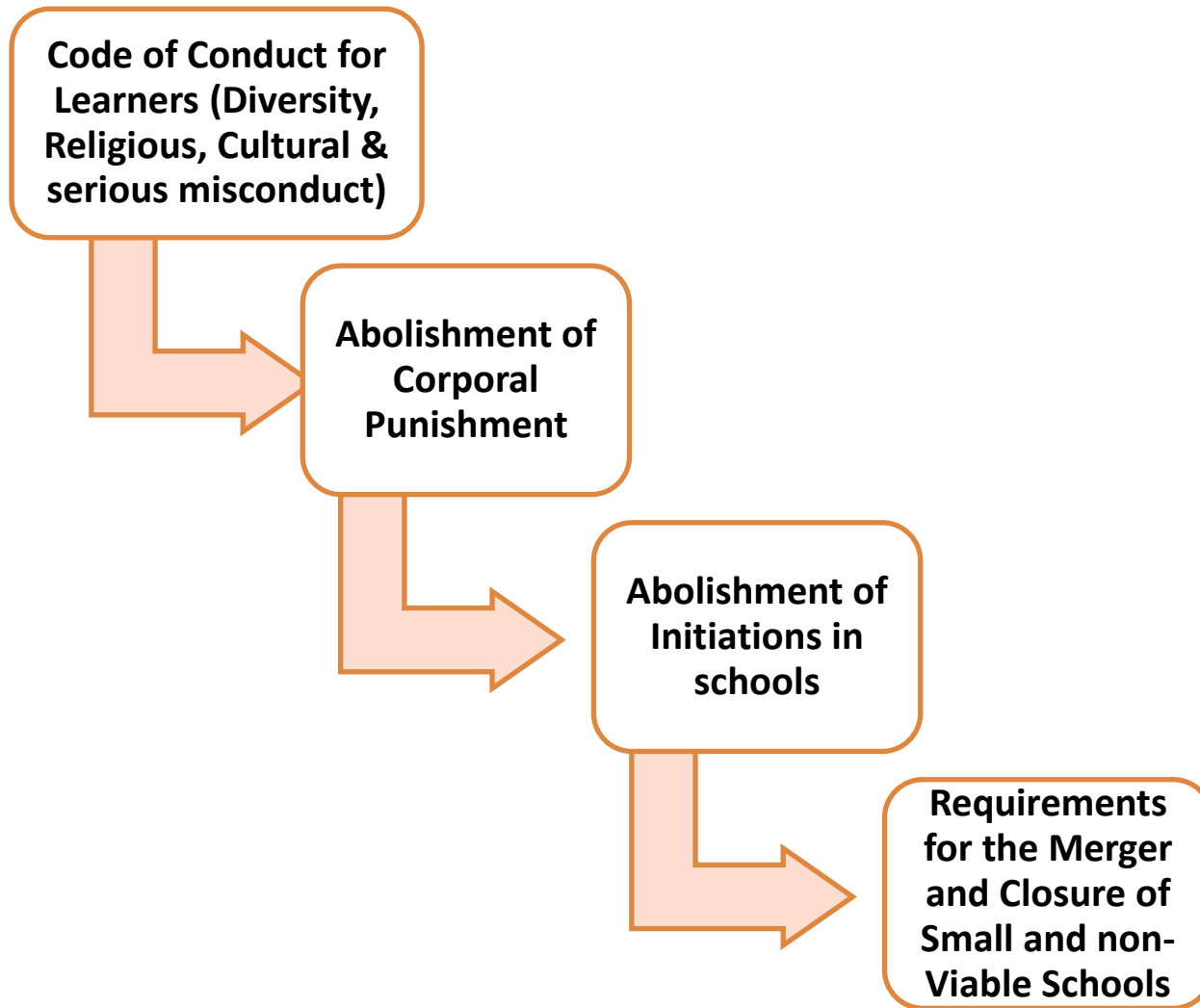
- Impairment to access to education
- Lack of integration
- Religious and cultural intolerance
- Lack of Human Right Culture
- Ineffective SGBs



# ACCESS TO EDUCATION

- Grade R as a compulsory grade
- Admissions and language policy to address discrimination on the basis of race, ethnicity, language, ability to pay fees, scholastic and sporting abilities
- Management of school attendance to reduce learner drop-out
- Disruptions of schools
- Penalties to parents
- Regulation on learner pregnancy
- Home education (Registration, Curriculum & Assessment)

# HUMAN RIGHTS CULTURE



# STRENGTHENING OF SGBS

Removal of  
ineffective  
SGB  
members.....

Declaration  
of interest -  
Recusal  
requirement

Taking  
away of  
SGB powers

Introducing  
uniform SGB  
election  
process

Tightening  
financial  
accountability  
(Financial records,  
Reporting and  
budgeting  
processes)

Incorporating new  
schools into SGBs  
(Membership of  
schools of  
specialisation,  
special schools)

Co-option of  
members



# CLAUSE 1: DEFINITIONS

## BASIC EDUCATION

includes *grade R* to grade 12, as evidenced in the National Curriculum Statement;

## ***BENEFIT IN KIND***

means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is not a monetary benefit, including, but not limited to—

- a) exclusive private usage or ownership of a vehicle;
- b) free accommodation;
- c) free phone, including a cell phone;
- d) free holiday;
- e) groceries to the benefit of the employee;
- f) garden services;

# CLAUSE 1: DEFINITIONS

## **COMPETENT ASSESSOR**

means an *educator* registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), a recognised professional in the field of education, or a person or body registered with the South African Qualifications Authority as defined in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008)

## **CORPORAL PUNISHMENT**

means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to—

- a) hitting, smacking, slapping, pinching or scratching with the hand or any object;
- b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; forcing children to stay in uncomfortable positions, forced ingestion, washing children's mouths out with soap, denying meals, heat and shelter, forcing a child to do exercises which are not in accordance with the curriculum applicable to the *learner* or denying or restricting a child's use of the toilet; and
- c) any acts which seek to belittle, humiliate, threaten, induce fear or ridicule the dignity and person of a learner





# DEFINITIONS

## CRIMINAL PROCEDURE ACT

means the Criminal Procedure Act, 1977 (Act No. 51 of 1977)

## DRUG

means any intoxicating or stupefying substance that has a psychological or physiological effect

## GRADE R

means the Reception grade

## HOME EDUCATION

means a purposeful programme of education for a *learner*, alternative to *school* attendance, which

is provided under the direction of the *learner's* parent, primarily in the environment of the *learner's* home;

may include tutorial or other educational support, if necessary, secured by the *parent* on specific areas of the curriculum followed by the *learner*; and

meets the requirements for *home education* contemplated in section 51 of this Act

# 1. COMPULSORY ATTENDANCE

- Subject to *this Act* and any applicable provincial law, every *parent* must cause every *learner* for whom he or she is responsible to attend *school* starting from *grade R* on the first *school* day of the year in which such *learner* reaches the age of six years and not leaving *school* until the last *school* day of the year in which such *learner* reaches the age of 15 years or will complete grade nine, whichever occurs first.”
- any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding [~~six~~] 12 months, or to both
- Any person who, unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a *school*, or hinders or obstructs any *school* in the performance of the *school's* official educational activities, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.



# MONITORING SCHOOL ATTENDANCE

1. The *educator, principal* and *governing body* are responsible for promoting and monitoring the attendance of *learners* at *school*
2. The *governing body* must ensure that the code of conduct for *learners* contains rules dealing with punctuality and regular *school* attendance.
3. If a *learner* is absent for three consecutive *school* days without valid reason, the class teacher concerned must report the absence to *the principal*.
4. The *principal* must, within 24 hours after being informed of the absence, investigate the matter by making a reasonable effort to contact the *parent* of the *learner* by whatever means are suitable for the circumstances of the *school* and the family concerned and report the matter to the *governing body* of the *school* for further intervention.



# LEARNER ADMISSIONS

- Any *learner* whose *parent* or guardian has not provided any *required documents*, whether of the *learner* or such adult person acting <sup>45</sup> on behalf of the *learner*, during the application for admission, shall nonetheless be allowed to attend *school*.
  - The admission age of a *learner* to a *public school* to *grade R* is age four turning five by 30 June in the year of admission: Provided that, if a *school* has limited capacity for admission in *grade R*, preference must be given to *learners* who are subject to compulsory attendance.
- Subject to *this Act* and any applicable provincial law, the admission policy of a *public school* is determined by the *governing body* of such *school* in line with the *Constitution* and relevant legislation
- the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity;
  - whether there are other *schools* in the community that are accessible to *learners*;
  - the available resources of the *school* and the efficient and effective use of state resources; and
  - the space available at the *school* for *learners*; and
  - the *Head of Department*, after consultation with the *governing body* of the *school*, has the final authority, subject to subsection (9), to admit a *learner* to a *public school*; and
  - the *governing body* must review the admission policy determined in terms of this section every three years or whenever the factors referred to in paragraph (a) have changed when circumstances so require, or at the request of the *Head of Department*.”;

# LANGUAGE POLICY

The *governing body* of a *public school* may, \_determine the language policy of the *school* subject to the *Constitution*,

- a)the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity;
- b)section 6(2) of the *Constitution*; section 29(2) of the *Constitution*;
- c)the changing number of *learners* who speak the language of learning and teaching at the *public school*;
- d)the need for effective use of classroom
- e)space and resources of the *public school*; and
- f)the enrolment trends of the *public school*.

The *Head of Department* may, where it is practicable to do so and subject to subsection (5), direct a *public school* to adopt more than one language of instruction.

- the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity;
- the changing number of *learners* who speak the language of learning and teaching at the *public school*;
- the need for effective use of classroom space and resources of the *public school*; and
- the language needs, in general, of the broader community in the *education district* in which the *public school* is situated.

# CODE OF CONDUCT

- Subject to the Constitution, this Act and any applicable provincial law, a *governing body* of a *public school* must adopt a code of conduct for the *learners* after consultation with the *learners, parents and educators* of the *school*
- A code of conduct must be aimed at establishing a disciplined and purposeful *school* environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school.
- Nothing contained in *this Act* exempts a *learner* from the obligation to comply with the code of conduct of the *school* attended by such *learner*.
- the code of conduct must contain an exemption provision in terms of which a *learner*, or the *parent* of a *learner*, may apply to the *governing body* for exemption
- The disciplinary proceedings referred to in this subsection must be age-appropriate, must be conducted in the best interests of the *learner* must adhere to the principles of natural justice, fairness and reasonableness prescribed by the *Constitution.*



# DANGEROUS OBJECTS, DRUGS AND ALCOHOL

seeks to amend section 8A with regards to random search and seizure and drug testing at schools. The clause also makes it clear that a school has the right to search an individual learner and not only a group of learners and consequential amendments in this regard are proposed to the section. This clause seeks to extend the provisions of section 8A of the SASA regarding the possession of liquor by a learner and to make consequential amendments to the section in this regard and in regard to the new definition of “drug”.

The *principal* or his or her delegate may at random administer a urine or other non-invasive test to any learner or group of learners that 10 is on fair and reasonable grounds suspected of using liquor or [illegal] drugs, after taking into account all relevant factors



# SUSPENSION & MISCONDUCT

Where a *learner* is accused of committing the following acts of serious misconduct—

- murder and attempted murder;
- culpable homicide;
- any sexual offence including rape;
- robbery;
- theft;
- assault with intent to do 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 drugs; or
- the conveyance or supply of dependence-producing drugs at *school* and to *learners*, which occurs on a *school* premises or at a *school activity*, and the *learner* has been formally charged by the South African Police Service, the *governing body* must suspend such *learner* immediately without granting the *learner* an opportunity to make representations in relation to the accusation of such serious misconduct.”



# ABOLISHMENT OF INITIATION

A person may not conduct or participate in any initiation practices against  
40 a *learner* at a *school*, during a *school activity*, or in a hostel  
accommodating *learners* of a *school*.”.



# SCHOOLS OF SPECIALISATION

It provides that the SGB of a public school may apply to the MEC to be designated as a public school with a specialised focus on talent. The HOD may also identify a public school to be so designated and may make a recommendation to the MEC in this regard.



# MERGER AND CLOSURE OF SCHOOLS



# CENTRAL PROCUREMENT

The *Head of Department* may, in consultation with the *governing body*, centrally procure identified learning and teaching support material for *public schools* on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards: Provided that the *governing body*—

- may, procure identified learning and teaching support material from a supplier where such procurement will be more cost effective than the central procurement of such material by the *Head of Department*; and
- must provide the *Head of Department* with documentary proof that the procurement of the identified learning and teaching support material from the supplier referred to will be more cost effective than the central procurement thereof by the *Head of Department*.”.



# WITHDRAWAL OF FUNCTIONS OF SGBS

The *Head of Department* may, on reasonable grounds, withdraw one or more functions of a governing body.

The *Head of Department* may, on reasonable grounds, dissolve 10 a governing body that has ceased to perform its functions in terms of *this Act* or any provincial law.

A governing body may co-opt a member or members of the community, or persons from outside the community, with the relevant expertise, to assist it in discharging its functions.”.

The **Minister** must, by notice in the *Gazette*, determine the number of members in each category) and the manner of election or appointment of such members at every *public school* for learners with special education needs

# RECUSAL OF SGB MEMBERS

- Before a *governing body* discusses, or decides on, the recruitment or employment of staff, or the procurement of goods and services for a *public school*, a member must declare to the *governing body* any direct or indirect personal and financial interest that the member or any of his or her family members or close friends or business partners has
- A *governing body* member must recuse himself or herself and withdraw from a meeting of the *governing body* for the duration of the discussion and decision-making on an issue in which the member has a personal or financial interest as contemplated in subsection





# 20.REMUNERATION OF SGB MEMBERS

No member of a *governing body* may be remunerated in any way for the performance of his or her duties or for the attendance of meetings and school activities.”.



# 22. CHAIRPERSON OF FINANCE COMMITTEE

- a) Only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the *governing body*.
- b) Where reasonably practicable, only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the finance committee of that *public school*.



# 23. STATUS OF LEARNERS IN THE SGB

- (1) A member of a *governing body* who is a **[minor]** learner may not contract on behalf of a *public school*.
- (2) A member of a *governing body* who is a **[minor]** learner may not vote on resolutions of a *governing body* which impose liabilities on third parties or on the *school*.
- (3) A member of a *governing body* who is a **[minor]** learner incurs no personal liability for any consequence of his or her membership of the *governing body* and
- (4) A member of a *governing body* who is a *learner* may not take part in meetings at which recommendations for the appointment of staff to the *school* are decided on, or form part of interview panels relating to the appointment of staff, whether *educators* or non-educators, or in any other way be involved in the appointment of staff to the school.

# LOAN AGREEMENTS

*A governing body may not, without the 5 written approval of the Head of Department, enter into any loan, lease or overdraft agreement [so as to supplement the *school* fund, without the written approval of the *Member of the Executive Council*] for any purpose.”; and*

*[lease,] burden, convert or alter immovable property of the *school* to provide for *school activities* or to supplement the *school* fund [of that *school*], or lease such property for such purpose: Provided that such approval is not required for a lease of a period not exceeding 12 months*



# 26. SCHOOL FUND

The *governing body* of a *public school* must establish a *school fund* and administer it in accordance with **[directions]** directives issued by the *Head of Department*.”.



# 27. BUDGET MEETING

- (a) the budget, together with a document explaining the budget, must be made available to the *parents* by means of the existing communication channels of the *school*; and
- (b) the *parents* must be informed that the document and the budget will be available for inspection at the *school* at least 14 days prior to the meeting.”; and
- (c) If a *governing body* finds it necessary to—
  - (a) deviate from the initial budget that has been approved as contemplated and the deviation will be 10 per cent or more of the initial budget; or
  - (b) reallocate funds for use for a purpose different to that which was approved by the *parents* as contemplated the *governing body* must present such deviation or reallocation to a general meeting of *parents* convened specifically for that purpose, on at least 14 days’ notice, for consideration and approval by a majority of *parents* present and voting.

A quorum of 10 per cent of *parents* is required for the general meetings of *parents*

# 26. REMUNERATION

Section 38A of the South African Schools Act, 1996, is hereby amended—

(2) A governing body may apply to the employer for approval to pay a state employee any **[payment contemplated in subsection (1)]** remuneration, or to give to a state employee any *other financial benefit, or benefit in kind*.

Such application must be lodged in writing in the office of the employer and must state—

- (a) full details of the nature and extent of the **[payment]** remuneration, other financial benefit, or benefit in kind;
- (b) the reasons for the remuneration, other financial benefit, or benefit in kind;
- (c) if practicable, the monetary value of the remuneration, *other financial benefit, or benefit in kind*;
- (d) the process that will be followed and the resources that will be used to compensate or remunerate the state employee; and
- (e) the extent of compliance with section 20(5) to (9).

The **[payment]** remuneration, other financial benefit, or benefit in kind (1) must be reflected in the school's budget, as presented to the general meeting of parents and in such reflection in the budget, any remuneration, other financial benefit, or benefit in kind must, if practicable, be accorded a monetary value.”.



# 27. SINGLE PARENT

Notwithstanding subsection (2), a *parent* may submit to the *governing body* an affidavit, as proof that the other *parent* of the *learner*—

- (a) is untraceable;
- (b) is unwilling to provide the first-mentioned *parent* with particulars of his or her total annual gross income;
- (c) has failed to provide the first-mentioned *parent* with particulars of his or her total annual gross income despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned *parent* that he or she do so; or
- (d) has provided the first-mentioned *parent* with incomplete or inaccurate particulars about his or her total annual gross income and has refused to rectify the deficiency or has failed to do so despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned *parent* that he or she do so.

Although the affidavit contemplated in subsection (2A) constitutes sufficient proof, a *parent* may also submit to the *governing body* a court order or any other documentary evidence that would support the proof contemplated in subsection (2A).”.



# 29. FINANCIAL RECORDS

The *governing body* of a *public school* must—

- (a) keep records of all investments, donations and funds received and spent by the *public school* and of its assets, liabilities and financial transactions;
- (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements reflecting all the investments, donations and funds received and spent by the *public school* in accordance with the guidelines determined by the *Member of the Executive Council*;
- (c) present the financial records and statements to a general meeting of *parents*; and
- (d) inform the *parents* that the financial records and statements will be available for inspection at the *school* at least 14 days prior to the meeting referred to in paragraph (c).”.



# 30. INVESTIGATION

4. If the [***Member of the Executive Council***] *Head of Department* deems it necessary, on just cause shown, he or she may—

(a) authorise suitably qualified officers to conduct an investigation into the financial affairs of a *public school* and, where necessary, after consultation 30 with the *governing body*, access documents relevant for the purposes of the investigation;

(b) request the Auditor-General to undertake an audit of the records and financial statements of a *public school*; or

(c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a *public school*.

(5) A *governing body* must submit to the *Head of Department*

(a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the *Head of Department*; and

(b) within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.”.

# 32. INDEPENDENT SCHOOLS

The *Member of the Executive Council* may, out of funds appropriated by the *provincial legislature* for that purpose, grant a subsidy to an *independent school*, subject to conditions determined by the *Member of the Executive Council*.”; and

An *independent school* must submit to the *Head of Department*—

- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure relating to the subsidy in accordance with directives issued by the *Head of Department*; and
- (b) within six months after the end of each financial year, a copy of the audited or examined annual financial statements relating to the subsidy



# 35. FALSIFYING OF INFORMATION

If, when applying for admission to a *public school* or for exemption from the payment of *school fees*, the *parent* of a *learner*, or any other person—

- (a) submits or provides information which he or she knows to be false or misleading;
- (b) submits a document which he or she knows to be forged; or
- (c) submits a document and claims that it is a true copy of the original when in fact it is not a true copy, such person is guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”.

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# REGULATIONS TO SUPPORT THE ACT

Amendment to section 61 of the SASA to empower the Minister to promulgate Regulations on the:

- management of *learner* pregnancy;
- prohibition of the payment of unauthorised remuneration or the giving of *other financial benefits*, or *benefits in kind* to certain employees;
- minimum norms and standards for provincial educator development institutes and district educator development centres;
- organisation, roles and responsibilities of *education districts*;
- national education information system; and
- Home Education
- determination of school capacity
- admission of *learners* to *public schools*
- learner discipline
- alternatives to corporal punishment

# 19. BUSINESS WITH THE STATE

(1) An educator may not—

- (a) conduct business with the State; or
- (b) be a director of a public or private company conducting business with the State.





# TECHNICAL AMENDMENTS

**Clause 41 and 42** amends section 1 and 5 of the EEA. The object is to effect technical amendments to the EEA in order to align the basic education legislation with current developments. To also delete all obsolete provisions and definitions such as further education and training institution and adult basic education centre which are currently under the domain of the Department of Higher Education, Science and Innovation.



## TECHNICAL AMENDMENTS

- **Clause 43** seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility that an appointment to a promotional post can be made on probation
- **Clause 44, 45 and 46** also seeks to effect technical amendments to sections 8, 9 and 11 of the EEA to bring it inline with current developments in the sector.
- **Clause 47** amends section 17 of the EEA by inserting a phrase that expands the list of acts of serious misconduct.
- **Clause 48** seeks to effect technical amendments to section 18 of the EEA.

# Background and rationale for Section 4

- The origin of section 4 can be found in the court case of **MEC Education Gauteng and Others v Governing Body of Rivonia Primary School and Others**.
- This case dealt with the admission of a learner to grade 1 at the Rivonia Primary School(the school).
- The parents of the learner, who lived in the feeder zone of the school, applied for admission of their child to the school.
- The school indicated that it was full as the capacity has been reached as provided for in its admission policy.
- The policy provides that the school can only admit 120 grade 1 learners. The learner was placed on a waiting list.

# Background and rationale for Section 4

- The ten-day statistics of the school, however indicated that the school admitted 124 learners.
- Based on this statistics the HOD decided to admit the learner. The principal refused to admit the learner.
- The HOD then withdrew the power of the governing body to admit the learner and instructed the principal to admit the learner.
- The decision of the HOD to override the admission policy of the school, was challenged in court.
- The High court ruled that the power to decide the maximum capacity of a school resides with the Department and that the HOD had the power to intervene to ensure that the learner is placed in a school.

# Background and rationale for Section 4

- The school took the decision on appeal to the SCA who ruled that the instruction to admit the learner contrary to the admission policy is unlawful.
- The court held that the governing body may determine the capacity of the school in its admission policy.
- The case went to the Constitutional Court who overturned the decision of the SCA.

# Background and rationale for Section 4

- The CC made the following finding:  
“...the general position is that admission policies must be applied in a flexible manner. **The capacity determination as set out in Rivonia Primary’s admission policy could not have inflexibly limited the discretion of the Gauteng HOD.** If there were good reasons to depart from the policy, it was always open to the principal or the Gauteng HOD to do so. Indeed in this case, the school itself applied the policy flexibly when it admitted four extra learners, thus exceeding the maximum capacity set in its policy. **The Supreme Court of Appeal therefore erred when it concluded that the Schools Act placed admission decisions squarely in the hands of the Rivonia Governing Body and that the Gauteng HOD could not override the admission policy.”**

# Background and rationale for Section 4

- ...leaving schools to determine their admission policy, including the power to determine their capacity, and subject only to appeals in individual cases, one unwittingly creates space privileged schools can use and manipulate that power to fortify rather than dismantle existing inequalities
- the question that arises is what would happen if a large number of schools grouped together decided to alter their admissions policies to reduce the number of learners they would accommodate...the MEC would be powerless to intervene to ensure that there are enough school places for every child who lives in his or her province to attend school as required by the Act”.



# Background and rationale for Section 5

- The origin of section 5 can be found in the court case of **Head of Education Department Mpumalanga v Hoerskool Ermelo**.
- This case dealt with access to education of learners that wanted to be taught in English in the town of Ermelo
- The schools that offered English as LOLT were all full and the only way the learners could be accommodated was to enroll them at the Hoerskool Ermelo
- The school refused to enroll the learners on the basis that it was an Afrikaans school and cannot accommodate learners who wanted to be taught in English
- The HOD then in terms of section 22 of the SASA withdrew the function of the school to determine its language policy and appointed in terms of section 25 of SASA a committee to perform the function. The committee then determined that English be a second LOLT at the school.

# Background and rationale for Section 5

- This decision was challenged in court on the grounds that it was unprocedural. The high court dismissed the court application and held in favour of the HOD.
- The School appealed to the SCA who held in its favour on the basis that the HOD acted unprocedural and cannot unitize section 22 to withdraw the function of the school to determine a language policy. The SCA held that section 22 can only be used to withdraw an allocated section 21 function.
- The Constitutional court overturned this and ruled that all functions of a governing body can be withdrawn in terms of section 22 including the function to determine the language policy of a school.

# Background and rationale for Section 5

- The CC did not just look at procedural aspects, but also at the broader issue of language in schools. DCJ Moseneke gave the following guidance:

**“A school cannot be seen as a static and insular entity. Good leaders recognise that institutions must adapt and develop. Their fiduciary duty, then, is to the institution as a dynamic part of an evolving society. The governing body of a public school must in addition 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 broader community in which the school is located and in the light of the values of our Constitution.**

# Background and rationale for Section 5

- What is more, the governing body's extensive powers and duties **do not mean that the HoD is precluded from intervening, on reasonable grounds, to ensure that the admission or language policy of a school pays adequate heed to section 29(2) of the Constitution.** The requirements of the Constitution remain peremptory. In this regard, the state must consider all reasonable alternatives and must take into account **what is fair, practicable and what ameliorates historical racial injustice."**

## Which sections are on hold and what are they dealing with

- Section 4 provides for the following:
  - that a governing body, when determining an admission policy, must take into account the needs of the broader community of the education district in which the school is located;
  - Factors such as the best interest of the child, availability of other schools in the community and the available resources of the school and efficient and effective use of state resources.
  - Review of the admission policy every three years or if circumstances so require or at the request of the HOD
  - HOD after consulting with a SGB has final authority to admit a learner
  - Required documents that must be submitted on admission

## Which sections are on hold and what are they dealing with

- Section 5 provides for the following:
  - that a governing body, when determining an language policy, must take into account the needs of the broader community of the education district in which the school is located;
  - Factors such as the best interest of the child with emphasis on equality as provided for in section 9 of the Constitution as well as the provisions of sections 6(2) and 29(2) of the Constitution; Changing number of learners who speak the LOLT; enrollment trends of the public school; effective use of classroom space and resources;
  - Review of the admission policy every three years or if circumstances so require or at the request of the HOD

## Which sections are on hold and what are they dealing with

- the HOD may, where it is practicable to do so and subject to subsection (5) direct a public school to adopt more than one language of instruction.
- The HOD when deciding whether it is practicable must take into account the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity; the changing number of *learners* who speak the language of learning and teaching at the *public school*; the need for effective use of classroom space and resources of the *public school*; and the language needs, in general, of the broader community in the *education district* in which the *public school* is situated.



## Which sections are on hold and what are they dealing with

- The HOD must follow certain procedural safe guards such as:
- *a)* in writing, inform the *school* and the *governing body* of his or her intention to act as contemplated in subsection (7) and his or her reasons therefor;
- *(b)* notified the *parents* associated with the *school*, and the community in which the *school* is situated, of his or her intention so to act and the reasons therefor—
- (i) by means of a notice in at least one newspaper circulating in the area where the *school* is situated, if any newspapers circulate in that area;
- (ii) by causing the *principal* of the *school* to hand to every *learner* a notice containing the relevant information and instruct the *learners* to hand the notice to their *parents*; and iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible

## Which sections are on hold and what are they dealing with

- (c) granted the *school*, the *governing body*, the *parents* associated with the *school*, and the community in which the *school* is situated, a reasonable opportunity to make representations to him or her in relation to such action;
- (d) conducted a public hearing, on reasonable notice, to enable the community to make representations to him or her in relation to such action; and given due consideration to any such representations received.
- The *Head of Department* must—
  - (a) inform the *school* and the *governing body* of his or her decision contemplated in subsection (7) and his or her reasons therefor; and
  - (b) by means of the methods listed in subsection (9)(b), notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the decision.

# Which sections are on hold and what are they dealing with

- If the *Head of Department* acts in terms of subsection (7), he or she must, before his or her directive is implemented, take all necessary steps to ensure that:
- the *public school* concerned receives the necessary resources, including, but not limited to— (a) *educators*; and (b) learning and teaching support material, to enable that *public school* to provide adequate tuition in the additional language or languages of instruction
- If the *governing body* is not satisfied with the directive of the *Head of Department* as contemplated in subsection (7), the *governing body* may appeal against the directive to the *Member of the Executive Council* within 14 days after receiving the directive.



NDZA KHENSA  
INKOMU SWINENE!!!



# THANK YOU

Working together to make “EFFECTIVE DISTRICTS – for BETTER QUALITY schools”  
COMMITTED TO IMPROVING LEARNER PERFORMANCE BECAUSE:  
“EVERY CHILD MATTERS”