



basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

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**TO: HEADS OF PROVINCIAL EDUCATION DEPARTMENTS
HEADS OF PROVINCIAL GOVERNANCE SECTIONS
DISTRICT DIRECTORS
SCHOOL GOVERNING BODIES
SCHOOL PRINCIPALS
ALL SOUTH AFRICAN SCHOOLS
GOVERNING BODY ASSOCIATIONS**

CIRCULAR No. 1 of 2019

ADMISSION OF LEARNERS TO PUBLIC SCHOOLS

1. INTRODUCTION

- 1.1 While the South African Schools Act, 1996 (Act No. 84 of 1996)(SASA), Immigration Act, 2002 (Act No. 13 of 2002), Refugees Act, 1998 (Act No. 130 of 1998) and Admission Policy for Ordinary Public Schools published under Notice No. 2432 of 1998 in Government Gazette 19377 on 19 October 1998 set out the requirements for admission of learners, schools often find themselves facing a dilemma when a child who does not have the relevant documentation required for admission (eg a birth certificate, immunization card, court placement order, study visa, permanent residence permit, asylum seeker's visa, refugees visa, passport or identity document), applies for admission to a public school.
- 1.2 While the Constitution of the Republic of South Africa, 1996 (the 'Constitution') guarantees everyone the right to basic education¹ and obliges the State to respect,

¹ Section 29(1) (a) of the Constitution.

protect, promote and fulfil the rights in the Bill of rights², regards must be given to the domestic laws that govern this environment.

- 1.3 Currently paragraph 15 of the Admission Policy for ordinary public schools empowers the school to admit conditionally a learner who is unable to submit a birth certificate until the birth certificate is obtained from the nearest offices of the Department of Home Affairs. The parent must ensure that the admission of the learner is finalized within three months.
- 1.4 In realization of its constitutional obligation and in pursuit of provision of access to basic education, the Department of Basic Education (DBE) has designed an interim measure to deal with problems encountered by schools when dealing with admission of learners with no documentation irrespective of their citizenship status.
- 1.5 The purpose of this circular is to provide schools and school-related structures with guidance as to how to deal with the above mentioned problems in the meantime until the finalisation of revised Admission Policy.

2. ADMISSION OF UNDOCUMENTED LEARNERS TO ALL PUBLIC SCHOOLS

- 2.1 Please be advised that **ALL PUBLIC SCHOOLS** in the **REPUBLIC OF SOUTH AFRICA** should use the below mentioned criteria when dealing with admissions for undocumented learners, until the Revised Admission Policy has been finalised. This circular serves as a uniform guideline to accommodate the admission of undocumented learners in public schools.
- 2.2 NB. While the current Admission Policy require a learner without the birth certificate to be conditionally admitted for three (03) months pending attainment of birth certificate, the Admission Policy should be applied flexibly and not in a rigid manner. This is in line with *MEC For Education In Gauteng Province and Others v Governing Body of Rivonia Primary School and Others, 2013(6) SA 582 (CC)* known as *Rivonia Primary* case, whereby the Constitutional Court stated that:

² Section 7(2) of the Constitution.

'[54] A policy serves as a guide to decision making and cannot bind the decision maker inflexibly.' It then went on to find that:

'[56] The general position is that admission policies must be applied in a flexible manner.'

- 2.3 In the case of foreign learners a copy of birth certificate from their country of origin or hand-written confirmation of birth (form DHA-19) issued by the Department of Home Affairs must be submitted. Foreign Learners who have been issued with a hand-written confirmation of birth must apply for a birth certificate through their embassy to their country of origin.
- 2.4 In accordance with the principle established in the latter judgment, the following are recommended in the admission of undocumented learners (both South Africans and foreigners):
 - 2.4.1 When a parent or guardian applies for admission of an undocumented learner to an ordinary public school, the parent must make a written affirmation or sworn written statement (in the form of an affidavit) about the age of a learner, to the Principal of the school pending the application of the birth certificate or receipt of the relevant documents required for admission.
 - 2.4.2 A principal of the school must inform the parent or guardian of a learner to make an application for a birth certificate to the nearest Office of the Department of Home Affairs and the learner **must** be admitted conditionally until a copy of the birth certificate is obtained.
 - 2.4.3 The **Principal** must inform the parent that section 31 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) makes it an offence to make a false statement or cause a false statement to be made about the age of a child.
 - 2.4.4 The parent or a guardian must ensure that the admission of the learner is finalised timeously preferably within four months of conditional admission, or any reasonable period thereafter but not exceeding six months from the date of conditional admission.

- 2.4.5 If the parent or a guardian fails to submit the birth certificate of a learner within four (04) months or any reasonable period thereafter but not exceeding six (06) months from the date of conditional admission, the principal must refer the matter to the Head of Department concerned. The Head of Department must co-ordinate with the nearest office of the Department of Home Affairs for assistance relating to the matter and, as soon as possible, advise the principal on the action to be taken.
- 2.4.6 If a learner is unable to obtain a copy of the birth certificate or any other relevant documentation required for admission and has furnished the principal with proof of application for a birth certificate or any other relevant documentation required for admission from the Department of Home Affairs and after the intervention of the Head of Department or six months has passed since the application for such certificate or any other relevant documentation required for admission, the Head of the Department must consider the reasons for the delay in obtaining the birth certificate or any other relevant documentation required for admission with a view to finalising the admission of the learner to a public school.
- 2.4.7 The Head of the Department when considering the reasons for the delay in obtaining the required documentation for admission of a learner, may extend the period within which a parent or a guardian of a learner must obtain documentation up to a period of not more than twelve (12) months from the date on which the undocumented learner was conditionally admitted at school. However the Head of the Department must continue liaising with the nearest office of Department of Home Affairs or the Foreign Embassy of the country of origin of a learner, as the case may be, to ensure that the required documentation are obtained before the end of the year in which the learner was admitted conditionally.
- 2.4.8 When considering the reasons for the delay in obtaining the required documentation, the Head of the Department must treat each case on its own merits, taking into account the impact his or her decision may have on the best interests of the learner.

2.4.9 In the case of orphaned, separated and unaccompanied children, who are in Child and Youth Care Centres, a court placement order would be required and or a sworn written statement in the form of an affidavit about the estimate age of the learner.

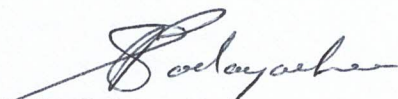
- (a) The care giver or social worker concerned for the separated or orphaned or unaccompanied learner must endeavour to obtain the birth certificate or any other relevant documentation required for admission above preferably within four months of conditional admission, or any reasonable period thereafter but not exceeding six months from the date of conditional admission.
- (b) If the care giver or social worker concerned fails to submit the birth certificate or any other relevant documentation required for admission within four (04) months of conditional admission or any reasonable period thereafter but not exceeding six (06) months from the date of conditional admission, the Principal must refer the matter to the Head of the Department concerned. The Head of Department must co-ordinate with the nearest office of the Department of Home Affairs for assistance relating to the matter and, as soon as possible, advise the principal on the action to be taken.
- (c) The Head of the Department when considering the reasons for the delay in obtaining the birth certificate or any other relevant documentation required for admission must treat each case on its own merits and may extend the period within which to obtain the required documentation up to a period of not more than twelve (12) months from the date on which the undocumented learner was conditionally admitted at school. However the Head of the Department must continue liaising with the nearest office of Department of Home Affairs or the Foreign Embassy of the country of origin of a learner, as the case may be, to ensure that the required documentation are obtained before the end the year in which the learner was admitted conditionally.

2.4.10 In the case of foreign undocumented learners in possession of a hand written confirmation of birth, they should be referred to Embassies of their countries of origin, with a view to assist them to obtain birth certificates from their countries of origin and those who are illegally in Republic of South Africa to regularise their stay

in the country through Department of Home Affairs. The Head of Department must liaise with both the Department of Home Affairs and the Embassy of the foreign learner to try and finalise the attainment of the required documentation within twelve (12) months from the date on which the learner was conditionally admitted at school.

You are kindly requested to note this circular and to distribute it to all schools.

Yours sincerely


MR SG PADAYACHEE
ACTING DIRECTOR-GENERAL
DATE: 2019/07/08