

Questions & Answers: SCHOOL GOVERNING BODIES, PROVINCIAL EDUCATION DEPARTMENTS AND WHY DO THEY MATTER?

In light of *MEC for Education, Gauteng and others v Rivonia Primary School and others* ("Rivonia case") which will be heard by the Constitutional Court on 9 May 2013, SECTION27 has prepared the following summary comparing the powers and functions of School Governing Bodies ("SGBs") and provincial education departments ("PEDs").

What are School Governing Bodies ("SGBs")?

SGBs are statutory bodies established in terms of section 16 of the South African Schools Act 84 of 1996 ("Schools Act"). All public schools are required to have an SGB. According to the Schools Act, the SGB must set the policies and rules that govern the school.

In terms of the Schools Act, SGBs must include the principal in his or her official capacity, and elected representatives of the parents, teachers and non-teaching staff at the school. SGBs of secondary schools also include learner representatives. Co-opted members (non-voting members with special knowledge or skills) can also be elected to the SGB.

The idea behind SGBs is to give all stakeholders a say in how a school is governed. The SGB serves not only the interests of learners and parents at the school but also the interests of the broader community.

What are the powers of an SGB?

The SGB of a school must, among other things:

- a. Decide on an admissions policy for the school;
- b. Decide on the language policy of the school; and
- c. Adopt a code of conduct for learners that sets out disciplinary procedures.

The PED may grant one or more of the following additional powers to the SGB:

- a. Maintaining and improving the school's property, buildings and grounds;
- b. Deciding on the extramural curriculum and subject options for the school;
- c. Buying textbooks, educational material and equipment for the school; and
- d. Paying for services to the school.

All policies must be in line with the Constitution, the Schools Act and all other laws. The SGB's policies cannot unfairly discriminate directly or indirectly on any grounds, including sex, race, religion, language or social class.

What are the powers of the PED?

In terms of the Schools Act, PEDs have overall responsibility to provide education to all learners of school-going age. The PED must ensure that every learner in the province has

access to a place in the public education system. In so doing, the PED is responsible for the following:

- a. Determining the overall capacity of each school in the province;
- b. Providing the necessary resources and support to public schools; and
- c. Constructing new schools where existing schools do not have capacity.

How should power be balanced between PEDs and SGBs? The case of two schools in Gauteng.

The Rivonia case

The *Rivonia* case involves the admission policy of Rivonia Primary School, a former model-C school in Johannesburg. The school refused the admission of one learner to Grade 1 for the 2011 academic year on the grounds that it had no capacity. The Gauteng Department of Education (“GDE”) instructed the SGB to override its admission policy and to admit the learner. The dispute is around who has the final say in determining the capacity of a school: the SGB or the PED.

Hoërskool Fochville and another v Gauteng Department of Education and others (“the Fochville case”)

Hoërskool Fochville is an Afrikaans-medium high school in Gauteng. The language policy of the school excludes English-speaking learners. Although the school is operating under capacity, hundreds of learners from the Fochville and Kokosi communities must travel 25 km to attend English-medium schools in Carletonville. The GDE has instructed the school to admit English-speaking learners and offered the resources necessary to operate as a parallel-medium school. The school has refused. There is one English-medium Grade 9 class at the school. However, all meetings and communication from the school are in Afrikaans and these parents are not afforded an opportunity to participate meaningfully in their children’s education.

The case is currently before the High Court, which has been asked to determine who has the final say in determining the language policy of a school: the SGB or the PED. The judgment of the Constitutional Court may have a major influence on how this dispute is resolved.

Why is the Rivonia case so important?

The *Rivonia* case will be the landmark case in determining the balance of power between the PEDs and SGBs. This is a delicate balance that must allow effective governance of schools in a way that promotes rather than undermines the Constitution and the Schools Act. The decision of the Constitutional Court will determine how PEDs and SGBs exercise their powers going forward, and whether all learners have equal access to quality basic education.