The term ‘language in education’ is made up of the following concepts that inform, firstly, how teachers communicate with learners; and secondly, the content of what they teach:

• **The language of learning and teaching** (often referred to as ‘LOLT’, ‘medium of instruction’ or ‘language of instruction’) is the language used in the classroom throughout the school day. If the language of instruction is isiZulu, for example, this means that the teacher will speak isiZulu when teaching mathematics, natural science, and economic and management studies. Learners will be evaluated on their grasp of the subject matter of that particular learning area, rather than the language of instruction itself. They will be required to complete the assessments in isiZulu. They must therefore have a good understanding of the language of instruction, so that they are able to grasp the subject matter of their learning areas.

• **The home language** (sometimes referred to as the ‘mother tongue’) is one of the learning areas included in the school curriculum. This is the language the learner knows best, and is most comfortable reading, writing and speaking. For this reason, the home language taught to the learner at school is often (but not always) the same as the language the learner speaks at home.

• **The first additional language** (referred to as the ‘FAL’) is a learning area included in the curriculum as a second language for learners. The learner is less fluent in this language than his or her home language, but will reach a stage at which he or she is comfortable to speak, read and write this first additional language.

• **A second additional language** (referred to as the ‘SAL’) is an additional language that forms part of the curriculum, and will be counted as a third language for learners.

The introduction of different languages as part of the school curriculum is referred to in government policies as ‘additive multilingualism’. What this means is that a learner’s skills in his or her home language are developed and strengthened, and then other languages are introduced into the learner’s curriculum once this has happened. The reasoning behind this is that the learner will be able to consolidate his or her language and other skills in their home language, and will then easily be able to acquire skills in other languages. For this reason, many experts in education support this approach. This is different from language immersion, which means that the LOLT is different from a learner’s home language, and so the learner learns both the language skills and the substance of the learning area at the same time.
There are a number of ways in which schools can give protection to different languages in education, and particularly to the right of learners to choose their language of instruction. As we discuss below, these are specifically recognised under Section 29(2):

- **A single-medium school** will have only one medium of instruction, and so all learners in all grades will receive their education in isiXhosa or English or whatever language of instruction the school governing body has opted for in its language policy. Other languages will be taught only as first additional languages (or second additional languages, as discussed in the draft policy for the incremental implementation of African languages).

- **At a parallel-medium school**, learners can give protection to different languages, and particularly to the right of learners to choose their language of instruction. As we discuss below, these are of learners to choose their language of instruction, and the development of the language in that particular area.

- **A dual-medium school** provides education through two languages of learning and teaching, and learners receive their education in both languages (as well as a first additional language, and in terms of the draft policy on the incremental introduction of African languages, a second additional language). Therefore, at a dual-medium school, learners will receive education in (for example) both Afrikaans and Setswana.

The remainder of this chapter deals primarily with the language of instruction, and the development of the language in that particular area.

### Background: Language in Education in the Context of Our History

The apartheid government used education as one of its primary tools to enforce separate development, and to systematise the deep discrimination against the majority of our population. A key aspect of this was the apartheid government’s policies on language in education.

The primary trigger for the Soweto Uprising on 16 June 1976 was the apartheid government’s issue of a decree relating to the language of instruction in senior primary and secondary schools. The Bantu Education Department imposed on schools an instruction that English and Afrikaans would be the language of instruction at school, on an equal basis. Understandably, the learners felt that Afrikaans was being forced on them, and that their home languages were being undermined.

The resistance to this, and the denial of access to education in the language of a learner’s choice, gave rise to one of the most significant days in our history. Twenty thousand learners protested against this decree, and were met with violence from the police. Hundreds of young South Africans lost their lives fighting for recognition of their home languages, and the right to receive a quality basic education in those languages.

As we discuss below, there is now express constitutional recognition of that right. However, there are many obstacles to its effective implementation.

### The Constitution

Arising from this context, Section 29(2) now specifically protects the right to receive basic education in the language of one’s choice:

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account:

- **a.** equity
- **b.** practicability
- **c.** the need to redress the results of past racially discriminatory laws and practices.

As is discussed below, the national Department of Basic Education (DBE) has interpreted this provision to mean that learners may select any one of the official languages of South Africa, which, as per Section 6(1) of the Constitution, are Sepedi, Sosotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiXhosa, isiZulu and isiNdebele.

Section 6 of the Constitution sets out specific measures to promote the official languages of South Africa, against the background of the historically diminished use and status of our indigenous languages.

In line with this, Section 9(5) of the Constitution specifically prohibits unfair discrimination on one or more of the grounds listed in that section, including race and language. As we discuss below, language in education – and particularly, the language policies adopted by school governing bodies – have the potential to bring about issues on the grounds of race, culture and ethnic and social origin.

### National Education Policy Act

The National Education Policy Act (NEPA) sets out the principles according to which the Minister of Basic Education must determine language policy. The Act specifically empowers the Minister to determine a national policy for language in education. In terms of Section 4, the policy must be directed towards (among other things) the right of every learner to be instructed in the language of his or her choice, where this is reasonably practicable. The policy must also be directed towards the advancement and protection of the following rights:

- **The right to be protected against unfair discrimination**
- **The right to basic education and equal access to education institutions**
- **The right of every person to use the language and participate in the cultural life of his or her choice within an educational institution.**

### Schools Act

Section 6 of the South African Schools Act deals with language policy in public schools, providing as follows:

- The right of a school governing body to determine a school’s language policy must be interpreted within this framework, such that a provincial education department may override a school language policy to give effect to learners’ rights. This is in line with the provincial education department’s obligation to provide education to learners in the language of their choice, and to take positive steps to make this reasonably practicable.
1. Subject to the Constitution and this Act, the Minister, by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.
2. The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.
3. No form of racial discrimination may be practiced in implementing policy determined under this section.
4. A recognised Sign Language has the status of an official language for purposes of learning at a public school.

This section therefore deals with language policy on two levels: norms and standards for language policy to be determined by the Minister of Basic Education, and the determination of the language policy of an individual school by that school's governing body. In doing so, the school governing body is specifically required to promote the best interests of the community in which the school is situated. In addition, Section 3(3) of the Schools Act requires the Member of the Executive Council (MEC) responsible for education in each province to ensure that there are sufficient places in schools so that every child of compulsory school-going age—this is, between the ages of seven and 15 years—can attend school. This means that the MEC must ensure, within reason, that every learner has a place in a school that offers his or her preferred medium of instruction. The school governing body's power to determine the school’s language policy is therefore limited by the following:

• The language policy must be consistent with the norms and standards, as determined by the Minister
• The language policy cannot discriminate against learners on the grounds of their race
• The language policy must facilitate access to school for learners in the community (and not just the particular group of learners enrolled at the school at the relevant time), and therefore be responsive to what the community's needs and desires are in relation to the language of instruction
• The language policy must otherwise promote the best interests of the broader community

What this means in practice is that while the school governing body determines the language policy of the school, the MEC may intervene if the language policy is discriminatory, unduly restricts access to the school, or is unreasonable in any other way.

The Language in Education Policy was published together with the norms and standards regarding language policy, which emphasise diversity, in line with the Constitution. The norms and standards set out the rights and duties of all of the relevant actors in the protection of individual language rights. A learner (or if the learner is still a minor, his or her parents) is required to choose a language of instruction on the grounds of their race. A learner has the capacity to take the learner, then the school must admit the learner. If there is no school in the district that offers the learner’s preferred language of instruction, the learner may request the provincial education department to make provision for that learner:
• If there are at least 40 learners in the same grade (in grades 1 to 6), or at least 35 learners in the same grade (in grades 7 to 12), seeking a particular language of instruction, the norms and standards provide that it will be reasonably practicable to provide education in that language, and the provincial education department must facilitate this.

If a smaller group of learners seeks a particular language of instruction, it may not be reasonably practicable to offer that language. However, the head of department of the provincial education department must still consider how the learners' needs may be met, and must consult the school governing body and the principals of the public schools concerned to make this determination.

Even if the school cannot offer education in a particular language, the head of the provincial education department must still consider how it can provide additional support to learners whose home language differs from the language of instruction at school. In this way, the power of the school governing body to determine a school’s language policy is limited by the demands of the community. This ties in with the governing body’s obligations to consult with the members of the community in which the school is situated, just like any other democratically elected government would be required to do.

The school governing body is also required, in terms of the norms and standards, to promote multilingualism in the school. This can be through the adoption of more than one language as the medium of instruction, through teaching different languages as the first additional language, and the second additional language, through language immersion programmes, or through any other means approved by the head of the provincial education department. The emphasis in the norms and standards and in the Language in Education Policy on diversity—which in turn forms a good foundation for respect and dignity—marks a break from the historical treatment of languages in South Africa. It also serves as a foundation for the draft policy on the incremental introduction of African languages in South African schools.

The emphasis in the norms and standards and in the Language in Education Policy on diversity—which in turn forms a good foundation for respect and dignity—marks a break from the historical treatment of languages in South Africa. It also serves as a foundation for the draft policy on the incremental introduction of African languages in South African schools.
Our courts have had a number of opportunities to consider the right to receive a basic education in the language of one’s choice. These cases focus on the right of learners to choose their language of instruction, rather than on the protection of any specific languages. This is in line with the policies discussed above, which promote diversity, and the rights of individuals and languages.

**EARLY CASES ON LANGUAGE IN EDUCATION**

The cases dealing with language in education clearly illustrate the intersection between race, language and culture, and unfair discrimination on any or all of these grounds. These principles arise in the context of the powers of school governing bodies regarding the content of the language policies they adopt, and to what extent the provincial education department can override these policies.

In the case of Mamatane and Others v Lazaarspotegagterus (‘Matatane’), the school governing body tried to exclude black learners seeking English-medium instruction from a parallel-medium school. It relied on its desire to maintain the culture and ethos of the school, which was closely connected to the Afrikaans language, and would be diluted if the school was ‘swamped by English-speaking pupils.’

The Court found that this constituted unfair discrimination, and directed the school to admit the learners, even though this was inconsistent with the school governing body’s language policy.

The case of Laerskool Middelburg v Department of Education confirmed that the powers of a school governing body to adopt a language policy are not without qualification. In this case, the provincial education department instructed an Afrikaans-medium school to admit 20 learners seeking English-medium instruction, and the school governing body asserted that the education department did not have such a power. Considering the meaning of the right to receive education in the language of one’s choice against the claim of a right to a single-medium school, and the emotional, cultural, religious and social-psychological security that accompanies single-medium education, the Court held that the learners’ right to choose their medium of instruction took precedence, and could not be undermined where there was a need to share the school facilities with other language and cultural groups.

The procedures to be followed by a provincial education department in overriding a school governing body’s powers were set out in the case of Minister of Education, Western Cape, and Others v Governing Body, Mitchs Primary and Another (‘Mitchs’). In this case, the provincial education department directed an English-medium school to operate as a parallel-medium school, offering education in both English and Afrikaans. In deciding whether the education department had the power to issue such a directive, the Supreme Court of Appeal held as follows:

- The right in Section 29(2) of the Constitution is a right enforceable against the state, or not against a particular school. In other words, the right to receive education in a particular language cannot choose the school that will offer this instruction; it is up to the state to take that request into account, and find a school for the learner to attend.

In exceptional circumstances, the head of the provincial education department may withdraw the school governing body’s power to determine the language policy, and appoint someone else to perform this function.

Because the education department in this case had not followed the prescribed procedures, the court upheld the language policy adopted by the school governing body.

- In exceptional circumstances, the head of the provincial education department may withdraw the school governing body’s power to determine the language policy, and appoint someone else to perform this function.

The Court found that this constituted an irrational exercise of power. The decision was based on the principal of racial superiority, which was not a reasonable educational alternative, which is not in line with the policies discussed above.

**EARLY CASES ON LANGUAGE IN EDUCATION**

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The second part of Section 29(2) of the Constitution points to the manner in which the state must ensure effective access to and implementation of the right to be taught in the language of one’s choice. It is an injunction on the state to consider all reasonable educational alternatives, which are not limited to, but include, single-medium institutions. In deciding which option the state may direct an English-medium school to operate as a parallel-medium school, the court held that this was an issue directly before the Court, and not a remedy for the results of past racially discriminatory laws and practices.

The provision makes a clear distinction between the first and second parts. The first part places an absolute premium on receiving education in a public school in a language of choice. That right, however, is internally modified by the choice of languages available, which is not a reasonable educational alternative.

Therefore, where a school governing body exercises its powers unreasonably – that is, not in the best interests of the community in which the school is situated – the provincial education department is not only permitted but required to intervene.
**LEGAL AND PHILOSOPHICAL DEBATES**

**THE DANGERS OF LANGUAGE AS A SUBSTITUTE FOR RACE DISCRIMINATION**

In dealing with language policy, Section 6 of the Schools Act expressly prohibits a policy that would have the effect of racial discrimination.

As we address elsewhere in this handbook, our laws specifically prohibit discrimination on the grounds of race or ethnicity. This includes, for example, an admission policy adopted by a school governing body that excludes a particular racial or ethnic group. This provides very clear guidelines to school governing bodies as to what they may and may not do.

However, the close association between race and language creates a more complex position. While the Schools Act allows a school governing body the power to determine a school’s language policy, it is not permitted to exercise that power in a way that unfairly excludes learners on the grounds of their race or ethnicity.

The cases above deal with language policies that exclude learners seeking English-medium instruction. On the facts of these cases, however, the majority of these learners were black, and the majority of the learners receiving Afrikaans-medium instruction were white. This being the case, it is necessary to dig deeper than the language issues, to determine if the language policy in question in each case is being used as a proxy for discrimination on the grounds of race.

This will of course depend on the facts of each case, and is not confined to schools with any particular medium of instruction. However, it is important to be aware of this, to ensure that no indirect unfair discrimination occurs.

**LANGUAGE IN EDUCATION AND A MEANINGFUL RIGHT OF ACCESS TO EDUCATION**

The availability of education in a particular language must take account of the demand for that language of instruction, and the availability of education in that language at other schools in the area.

These were important considerations in the case of Hoërskool Fochville, in which the school governing body adopted a language policy in terms of which the language of instruction would be Afrikaans. However, the school was operating under capacity, and there were no more Afrikaans-speaking learners in the community that needed to be accommodated there.

However, there were many learners living in Fochville and in the adjacent township of Kokosi who wanted English-medium instruction. Because there was no school in Fochville or Kokosi that had the capacity to accommodate learners wanting English-medium instruction, they had to attend school in Carletonville, approximately 30km away. They were required to travel by bus to school and back each day, and had complained that the roads were unsafe and the buses were unreliable. If the buses broke down, learners would sometimes miss school for days on end.

Similarly, where the transport companies ceased providing their services because of late payment by the department of education, the learners who could not get to school would feel the worst impact. They could also not participate in extramural activities, or stay after school for extra lessons and other activities, because they relied on public transport, which left straight after the end of the school day. They therefore felt that they could not integrate properly into the school community.

The Gauteng Department of Education therefore instructed the school governing body of Hoërskool Fochville to amend its language policy so that the school would operate as a parallel-medium school.

The school refused, and referred the matter to court. The learners seeking English-medium instruction and their parents supported the Department’s stance, because of their difficulties in accessing education in the areas in which they lived.

The matter settled out of court, on the following basis:

- The department of education undertook to build a new school offering English-medium instruction in Kokosi, close to where the learners lived.
- Until construction of this new school had been completed, the department would closely monitor the transport to Carletonville, and provide different shifts to enable learners to participate in after-school activities.
- As a result, there is no court pronouncement on whether the school could be compelled to admit these learners and operate as a parallel-medium school. The cases on this issue discussed above, however, suggest that as long as the department follows the correct procedure, they may compel a school to admit learners and to offer them education in the language of their choice, and close to where they live.

**MOTHER TONGUE EDUCATION AND ENGLISH MEDIUM INSTRUCTION**

There is a lot of debate around which language learners should select as their LOLT, home language, and first additional language. The considerations that parents need to take into account include the following:

- Because learners need to be very comfortable with their language of instruction, to enable them to grasp concepts in other learning areas, many people favour choosing their first additional language. This enables them to achieve a high level of proficiency in English, without compromising their ability to grasp the subject matter in their other learning areas, or their parents’ ability to participate in their education.

There seems to be widespread appreciation in our laws and policies of the benefits of home-language instruction. However, this does not replace the right of learners guaranteed in Section 29(2) of the Constitution to choose the language in which they receive their education.
The constitutional protection of language in education is expressly limited by considerations of practicability: if it is not possible to offer education in the particular language that a learner prefers, then the learner will not be immediately entitled to education in that language.

We discussed above the Language in Education Policy, and the norms and standards on language in schools, which provide considerations to use in deciding whether there are sufficient learners seeking a particular language of instruction to justify providing education in that language. If there are at least 40 learners in a particular grade (for Grades 1 to 6) or 35 learners in a particular grade (in Grades 7 to 12) who want a particular language of instruction, then the provincial education department cannot refuse, on the basis that it is reasonably practicable.

The reason for this is that it would not be reasonably practicable to have one school that has 50 children learning in isiZulu, 17 children learning in Tsivenda and two children learning in Africans. However, if there are enough learners to make up an isiXhosa-medium class in an isiZulu-medium school, then the provincial education department must make provision for this. This is essentially a numbers game, which requires the provincial education departments to provide education in a particular language once that threshold of sufficient learners has been met.

However, even where there are enough learners seeking education in a particular language, there are at least two additional requirements that must be met. isiXhosa-medium education requires teachers who are able to teach in isiXhosa, and isiXhosa textbooks in each learning area, such as mathematics and life orientation. As we discuss elsewhere in this book, there is a serious shortage of adequately trained teachers, and a shortage of vacant posts in schools to accommodate these teachers. If an isiXhosa-medium class were to be included in an isiZulu-medium school, this would require creating a new post for at least one teacher (depending on the grade), as well as appointing a suitably qualified teacher who is able to provide isiXhosa-medium instruction. It is not clear whether this is possible in the current context. An extreme example of this arose with the introduction of South African Sign Language as a recognised language of instruction. While this was a critical step in the realisation of the right to basic education for learners with hearing impairments, the department of education introduced sign language without ensuring that there were sufficient teachers who could communicate in South African Sign Language. The result of this was restricted access to education for learners. In 2013, SECTION27 was approached for assistance in challenging a decision by the Western Cape Education Department that a secondary school for learners with hearing impairments would no longer accommodate learners in Grades 10 to 12. This was the only secondary school that offered English-medium sign language as the LOIT. Learners seeking education through English-medium sign language would therefore have no place to receive it in Grades 10 to 12. It emerged that the problem was that there were no teachers suitably trained to teach the learners using English-medium sign language, in any of the schools in the province. Fortunately, the Western Cape Education Department accelerated its teacher training to ensure that all learners with hearing impairments could be adequately catered for. The learners were then transferred to another school that had appointed suitably trained teachers to teach them. Similarly, there have been problems with the procurement and delivery of textbooks to schools across South Africa, including the delivery of textbooks in the correct language to schools. Limited funding, weak procurement systems and poor data management to assess and meet the requirements of each school affect this. The provincial education departments will need to improve their systems substantially to support the more complex needs of schools in each province offering different languages, as well as different languages offered within a particular school.

It will also be important for the national Department of Basic Education to engage publishers to ensure that textbooks are available in all of the official languages in each learning area, so that learners all have access to their required learning materials, regardless of their chosen language of instruction. However, the existence of these obstacles to the ‘reasonable practicability’ of offering education in different languages does not excuse the state from taking positive steps to remove these obstacles. The national and provincial education departments cannot rely indefinitely on a lack of qualified teachers and appropriate textbooks to justify their failure to provide education in a particular language, especially where there is a large number of learners wanting a particular language of instruction. They must take positive steps to ensure that these challenges are addressed, in line with their constitutional obligations.

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POLICY AND GUIDELINES

Department of Education ‘Language in Education Policy’, 1997

Head of Department, Mpumalanga Department of Education v Hoerskool Emotla 2010 (2) SA 415 (CC); [2009] ZACC 32.

Minister of Education, Western Cape, and Others v Governing Body, Mihos Primary School and Another 2006 (1) SA 1 (SCA).


 MATUKANE AND OTHERS VS LAERSKOOLD, POLGETJERUS VS LAERSKOOLD, AND OTHERS vs LAERSKOOLD


South African Schools Act 84 of 1996.

CASES

Source Material and Further Reading