ROLE PLAYERS IN SCHOOL GOVERNANCE

There are a number of different groups of people responsible for governing a school.

Various levels of government govern at national, provincial, district and circuit levels, while school governing bodies (SGBs) govern at a school level.

SGBs are made up of parents of learners, learners, educators at the school and community members where the school is located.

The Minister of Basic Education, representing the Department of Basic Education (DBE), is responsible for governing schools on a national level.

The head of the provincial department of basic education (provincial DBE) in each province is responsible for carrying out school governance on a provincial level.

Each province is divided into a number of education districts, which are run by district directors based at the district office.

Education districts are themselves divided into a number of education circuits, which are areas run by circuit offices and headed by circuit managers. Circuit offices act in terms of functions delegated by each district office, and play a key role in connecting schools with district offices and provincial DBEs.

BACKGROUND

Under apartheid, South African schools were divided along racial lines. The government during those years provided five times more funding to schools for white children than it did to schools for black children.

This resulted in an unequal education system that we are still trying to fix today. However, there were some significant changes to our education system when South Africa became a democracy.

These changes included embedding certain values into education law, with the aim of improving the quality of education for all learners. One such value was to run schools democratically, such that parents, educators and community members could all get involved. Another value is the idea that the people and groups who run a school should work in co-operation with each other and avoid power struggles. Another change is that school rules and policies must be be in conformity with the Constitution, and must meet basic minimum standards established by national laws and policies.

The details of how the various groups and tiers of government in education work together is set out in laws on school governance such as the South African Schools Act 84 of 1996 (the Schools Act).

The Schools Act sets out important rules concerning who is involved in running a school and what they are responsible for.
RESPONSIBILITIES OF THE ROLE PLAYERS

All of these role players must work together to achieve every learner’s right to education. The different jobs that these role players have are set out in the law, such as the Schools Act and its regulations.

The school governing body (SGB) in each school is responsible for the everyday management of the school. The SGB must decide on and carry out school policies that are suitable for the school. Having fair policies about admissions to and exclusions from school helps to protect the rights of children to education.

The work done by SGBs also aims to protect the rights of children in schools by facilitating the fair implementation of school rules. SGBs are required to protect the rights of children to education.

The SGB also has a supportive role to play in the school, in addition to the functions described above. It must make sure that the school is governed in the best interests of all the stakeholders. The SGB must not interfere in the professional management of the school, but should support academic staff in executing their duties.

The SGB should also encourage partnerships with people with expertise to assist the school. Fundraising is another supportive duty. The SGB can raise funds to supplement the school’s income.

The role of the Minister of Basic Education is to create basic standards that are set by the Minister. They also have other responsibilities, which will be described in more detail below.

The school principal is automatically a member of the SGB. People who can be elected to the SGB include parents of learners at the school, teachers at the school, certain learners at the school, and members of staff who are not educators. Members of the community can also form part of the SGB, as they can assist the school with various kinds of special knowledge or skill. They may include people such as doctors, accountants or lawyers.

The school governing body (SGB) publishes the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, to which all provincial governments are required to adhere.

The provincial DBE has a duty to create enough schools for all the learners in the province. They must meet the standards that are set by the Minister. They also have other responsibilities, which will be described in more detail below.

District offices do not create any policies, but they support the provincial DBE by carrying out delegated functions. For example, district offices have other responsibilities, which will be described in more detail below.

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District offices do not create any policies, but they support the provincial DBE by carrying out delegated functions. For example, district offices have other responsibilities, which will be described in more detail below.

An SGB is expected to elect office bearers from among its members, including a chairperson, a treasurer and a secretary. The chairperson should be a parent member. An SGB election follows a specific procedure, as set out in the Schools Act.

The school’s electoral officer must send out notices announcing the nomination meeting and the election meeting. A school electoral officer is a person who has been trained by the Independent Electoral Commission (IEC) – this person may be a principal or teacher from another school.

The date, time and place of a meeting must be stated on the notice. The notices should be sent out at least 14 days before the election meeting.

The school principal must organise the first meeting of the SGB within 14 days of the election, so that the new SGB members may be elected. Once they have been chosen, the principal must inform the district manager in writing of people who have been elected.

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A person who is willing to be a member of the SGB may only be nominated and seconded by a person belonging to the same SGB membership category. A nomination form, completed by the nominator, candidate (person who is willing to be a member of the SGB) and seconder (seconded by a person belonging to the same category) seconds the nomination meeting.

The vote is cast by the members present at the meeting, provided that another person from the same category seconds the nomination on the relevant template. A quorum of 15% of parents on the voters’ roll is needed for the election and nomination meeting to proceed, if this quorum is not present, the meeting must be set for another day (for example, if there are 200 parents in the school, then 30 of them must be at the meeting).

Voting happens on ballot papers. Each ballot paper should have the school stamp on it, or some other distinguishing feature to prevent tampering. A person with the right to vote must record their vote secretly and deposit it into the ballot box. After the votes are counted, each chosen SGB member must be informed of their election in writing.

The school principal must organise the first meeting of the SGB within 14 days of the election, so that the new SGB members may be elected. Once they have been chosen, the principal must inform the district manager in writing of people who have been elected.
Personifications and accountability are assumed, not just by the learners and teachers, but also by parents. The different role players in school governance must work together on good faith and with mutual trust. They must provide support to one another and consult with each other on various issues. The aim is to ensure that the right to education is achieved, and that the learners’ best interests come first. However, there are occasionally disputes between the various parties. While parties can go to court to resolve their disagreements, the law prefers this to be the last option. The courts prefer the parties to use all the internal processes available to resolve any disputes before turning to litigation.

In Head of Department, Department of Education, Free State Province v Welkom High School (the Welkom case), the Constitutional Court elaborates on how the various role players in school governance should work together:

Co-operative governance is a transnational term of our constitutional order and has been incorporated into the Schools Act through the processes of Section 22. It is incumbent upon HODs and governing bodies to act as partners in the pursuit of the objects of the Schools Act. In Schoonbee and Others v MEC for Education, Mpmumlanga and Another, the cooperative mandate contained within the Schools Act was described as follows: Having read the Act again, it seems to me that the new education regime introduced by the Schools Act, which came into operation on 1 January 1996, contemplates an education system in which all the stakeholders, and there are three major stakeholders – the state, the learners and teachers – enter into a partnership in order to advance specific objectives around schooling and education. It was intended, it appears, to do a migration from a system where schools are entirely dependent on the vagaries of the state to a system where a greater responsibility and accountability is assumed, not just by the learners and teachers, but also by parents. The different role players in school governance must work together on good faith and with mutual trust. They must provide support to one another and consult with each other on various issues. The aim is to ensure that the right to education is achieved, and that the learners’ best interests come first. However, there are occasionally disputes between the various parties. While parties can go to court to resolve their disagreements, the law prefers this to be the last option. The courts prefer the parties to use all the internal processes available to resolve any disputes before turning to litigation.
The Constitution guides all laws in South Africa. Laws on school governance must be consistent with the Bill of Rights in the Constitution. Anything that contradicts the Bill of Rights can be declared by a court to be invalid. Specific rights in the Bill of Rights that are relevant to school governance include Section 29(1), concerning the right to education: ‘Everyone has the right to a basic education, including adult basic education.’

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When deciding on the admission of a particular learner, the principal of the provincial school or the provincial education department, has the final say in admission decisions, and has the power to overturn decisions.

In the Rivonia case, there was a debate between the SGB of Rivonia Primary School and the Gauteng Department of Education. The HOD wanted to admit one learner to the school. However, the SGB had decided on their own capacity policy, and had determined that their classes were full. The capacity set by the SGB was lower than that of the national average in terms of the government’s norms and standards, and so, according to the HOD, there was still space for that particular learner. The result was that the HOD removed the power to decide on school capacity and admissions from the SGB, and changed their admission policy.

The Constitutional Court decided that the way in which the HOD had changed the SGB’s admission policy was not done fairly or reasonably. Despite this, the Court decided that the school could not be completely inflexible in their policies when deciding the fate of an individual learner, and that the MEC did not have the final say in such a decision.

The Rivonia case is an example of how the court can intervene in school governance issues when there is a conflict between the SGB and the MEC. The court can order the MEC to intervene when reasonable.

In this case, the court decided that the SGB should have been given the opportunity to appeal the decision, and that the MEC should have been given the opportunity to appeal the decision. The court also decided that the SGB should have been given the opportunity to appeal the decision.

A number of court cases have dealt with the issue of school capacity and admissions. In the Rivonia case, the court decided that the school could not be completely inflexible in their policies when deciding the fate of an individual learner, and that the MEC did not have the final say in such a decision.

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The SGB is responsible for creating and adopting a code of conduct. However, as stated in Section 8 of the Schools Act, the SGB should only do so after consulting with learners, parents and educators. This gives effect to the principle of participatory democracy, by including the various rights-holders in the process.

The code of conduct must also conform to the Constitution, which means it may not infringe any of the rights in the Bill of Rights. When creating the code of conduct, schools can be guided by guidelines that have been developed by the DBE at a national level. These are called the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners. The code of conduct must specify the conduct that is permissible and the conduct that is prohibited, as well as the procedure for disciplinary procedures including suspensions, expulsions and the appeals process.

With regards to suspensions and expulsions, the SGB has the authority to impose suspensions or expel a learner. While the SGB may recommend an expulsion of a learner to the HOD, it is only the latter who can make the decision to expel a learner. The governing body has the right to appeal the decision to expel them by appealing to the Member of the Executive Council of the provincial DBE.

### Case Study

**THE FEDSAS CASE**

In this case, the Federation of Governing Bodies for South African Schools (FEDSAS) brought an application challenging the validity of specific provisions of the Gauteng regulations to the admission of learners to public schools. The most contentious was a provision that until such a time that the MEC has determined that the feeder zones had to be finalised within one year from the judgment, thus ensuring that the learner’s cultural and religious practice should have been reasonably accommodated, and that an exemption should have been made for that learner.

### Case Study

**THE PILLAY CASE**

A school’s code of conduct may at times conflict with a learner’s religious beliefs or cultural practices. In such a case, the school is required by the Constitution to take reasonable steps to make a reasonable accommodation for the learner concerned. For example, in MEC for Education v Koos/Dale Hatel and Others (the Pillay case), a learner wore a nose stud to school as part of her religion and culture. However, wearing jewellery other than that permitted by the rules was against the school’s code of conduct, and so the learner was punished. The matter went to court, and the Constitutional Court found that the learner’s cultural and religious practice should have been reasonably accommodated, and that an exemption should have been made for that learner.
In the Ermelo case, Ermelo High School was an Afrikaans-medium school which was not filled to capacity according to the national average. The HOD of the Mpumalanga provincial education department maintained that the school admit English-speaking learners to the school, as other schools in the area were filled beyond capacity.

The SGB of Ermelo School refused to admit the learners for tuition in English, as it was the school’s policy to provide education in Afrikaans. The HOD subsequently tried to remove the power of the SGB to determine language policy, and appointed an interim committee that determined that the school’s language policy be dual medium.

The matter was eventually heard in the Constitutional Court. The Court decided that the HOD had acted unprocedurally when trying to resolve the dispute. However, the learners who were subject to the proceedings were permitted to complete their studies. The Constitutional Court ordered the school to revise its language policy to be dual medium.

Like all the other powers of the SGB, the power is not absolute and must be subject to the Constitution and the Bill of Rights. The courts have also held that the HOD can intervene in the language policy of a school, under reasonable grounds, in order to uphold the learners’ right to education. Section 29(2) of the Bill of Rights provides that everyone has the right to receive education in the language of their choice where reasonably practical, taking into account the need for historical redress because of past racially discriminatory laws under apartheid. In addition to this, the language policy of the school must take into account the broader needs of the community in which the school is located. This has been confirmed in case law, such as in the Ermelo case.

SCGBs have the power to determine a school’s language policy. This is set out in the Schools Act, and has been confirmed in case law in the Constitutional Court. Chapter 11 of this handbook deals with language in schools in detail. Like all the other powers of the SGB, this power is not absolute and must be subject to the Constitution and the Bill of Rights. The courts have also held that the HOD can intervene in the language policy of a school, under reasonable grounds, in order to uphold the learners’ right to education.

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SCGBs can make pregnancy policies. The courts have recognised that SCGBs are better suited than the provincial or national DBE to make policies for the individual schools. Again, like all the other policy-making functions of the SGB, this ability to make policy on the ground is not absolute. Chapter 8 of this handbook deals in greater detail with issues around learner pregnancy.

The policy must be consistent with the Bill of Rights, and in particular the policy must ensure that the learner’s right to education is upheld, and that there is no discrimination against the learner based on her pregnancy status. The policy must also be consistent with any guidelines drawn up by the relevant provincial education department (such as the Management and Governance Circular No 18 of 2010 created by the province in the Welkom case).

Pregnancy is dealt with in detail in Chapter 8.

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Schools are designated fee-paying schools or no-fee schools. A fee-paying school is required to inform parents of the school fee exemption policy. The school fee-exemption policy provides that parents who earn less than a certain income can receive a full or partial exemption from school fees. Parents need to apply for such an exemption in the required manner.

Other exemptions apply automatically. Caregivers of children in foster care and caregivers who receive the child support grant are exempted from paying fees. This occurs automatically and such caregivers do not have to apply specifically for this.

No-fee schools are certain schools where fees are abolished for learners from Grade R to Grade 9. No-fee schools are taken from the poorest schools in the country. School fees are dealt with in detail in Chapter 7.
CONCLUSION

While there are a number of different role players in school governance, their roles are intertwined, and co-operation is required between them to put the learner’s best interests first. There has been criticism of the various judgements concerning school governance, particularly that they have been too focused on procedure and power struggles between the parties. Despite this, there is a strong theme in case law and the legislation that the starting point must always be the learner’s best interests, and that parties must co-operate.

RESOLVING DISPUTES BETWEEN THE VARIOUS STAKEHOLDERS

The Schools Act makes provision for various methods of resolving dispute that might arise between people involved in the running of a school.

Co-operative governance, a key principle in school governance, requires parties to resolve matters in good faith, and to engage meaningfully with each other. They must also go through all the internal processes provided for resolving disputes before turning to the court. Court action must be a last resort. As confirmed in case law, such as the Rivonia case, the starting point for resolving disputes is the best interests of the learner. The internal processes that are provided in the Act include, for example, learners or parents being able to appeal decisions of suspension to the provincial head of education, and decisions of expulsion to the education MEC. The process for these procedures is set out in a school’s code of conduct, which must also be constitutional.

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