

**CHAPTER 3**  
**SCHOOL  
GOVERNANCE**



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## 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 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.

## 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.

### NATIONAL LEVEL

Minister of Basic Education & Department of Basic Education

### PROVINCIAL LEVEL

MEC & Provincial Department of Basic Education

### DISTRICT LEVEL

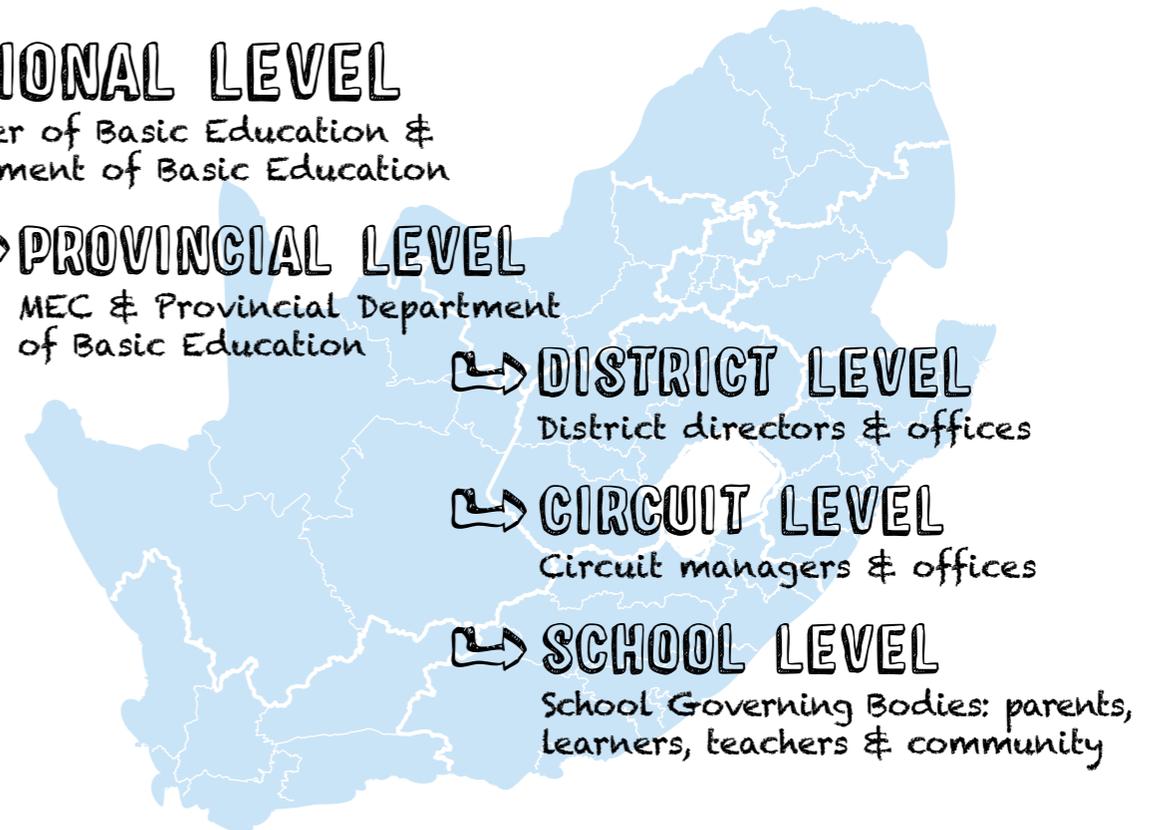
District directors & offices

### CIRCUIT LEVEL

Circuit managers & offices

### SCHOOL LEVEL

School Governing Bodies: parents, learners, teachers & community



## 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 have policies that protect and promote learners' rights in respect of the following: school discipline; pregnancy; school fees; language; religion and culture.

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 all schools should meet in order to provide adequate education for everyone. For example, the Minister

published 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 the authority to dissolve ineffective SGBs and can allocate or withdraw certain functions of the SGB, on reasonable grounds.

## MEMBERS OF SGBS AND HOW THEY ARE ELECTED

A school governing body is made up of automatic members, elected members and co-opted members. 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.

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 meeting; a hard copy should be handed to every learner, which they must give to their parents. Other methods of communication (such as SMS) can be

used, as long as they do not disadvantage any member of the school community.

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 must be handed to the electoral officer not more than seven days and not less than 24 hours before the election meeting.

A member can be proposed during the nomination section of 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.

## KEY CONCEPTS

### PARTICIPATORY DEMOCRACY

Participatory democracy means that people can be involved in a meaningful way in the decisions which affect them. Previously, education was seen as a benefit provided thanks to the state's generosity. Now education is viewed as a right that can be claimed from the state, and the state has a duty to provide it.

The Schools Act states that representatives of parents, learners and educators must all have a say in learners' right to education. This is done through the SGB. The Constitutional Court has referred to SGBs as an example of 'grassroots democracy', because they allow the people who are directly affected by the right to education to be involved in achieving this right.

### DEMOCRATISATION OF EDUCATION

School governance is now seen as a democratic process. This is to

redress the legacy of apartheid; there is a requirement for people to fix and change past inequalities.

The Schools Act ensures that SGBs are involved in making decisions for schools. They must do so in a democratic manner, by consulting with everyone whose needs are affected. In addition, the SGB is elected using a democratic process, whereby people are voted onto the SGB by the parents of the children at the school.

The Schools Act was designed to allow parents, learners and the community to have a greater role in managing the right to education. This is also linked to the idea of participatory democracy, which means that people can be involved in a meaningful way in the decisions that affect them.

### CO-OPERATIVE GOVERNANCE

Co-operative governance means that all the parties involved in governing schools must work with each other in a supportive and collaborative way. This is a key feature

of participatory democracy, because it ensures that all the parties are involved in achieving the right to education.

The Schools Act sets out how the parties must work together. Various cases in the Constitutional Court have elaborated on the concept of co-operative governance. In the *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* (the *Ermelo* case), the Constitutional Court explains:

An overarching design of the [Schools] Act is that public schools are run by three crucial partners. The national government is represented by the Minister for Education, whose primary role is to set uniform norms and standards for public schools. The provincial government acts through the MEC for Education, who bears the obligation to establish and provide public schools, and together with the Head of the Provincial Department of Education exercises executive control over public schools through principals. Parents of the learners and members of the community in which the school is located are represented in the school governing body, which exercises defined autonomy over some of the domestic affairs of the school.

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:

Cooperative governance is a foundational tenet of our constitutional order and has been incorporated into the Schools Act through the provisions 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, Mpumalanga 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 four major stakeholders – the State, the parents, educators and learners – enter into a partnership in order to advance specified objectives around schooling and education. It was intended, it appears, to be a migration from a system where schools are entirely dependent on the largesse 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 in 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.

### MEANINGFUL ENGAGEMENT

Meaningful engagement forms part of co-operative governance. Courts have referred to meaningful engagement as a process used to resolve issues or disagreements that the parties may have with each other.

The parties are encouraged to talk with each other – and to do so in a constructive way, in order to provide clarity on a certain policy or issue. This is seen as the most effective way to resolve a dispute, as the parties are better suited to resolving the issue than the courts, whose area of expertise is not necessarily school governance. This is what courts have acknowledged as the practical value of meaningful engagement. In addition to this, the courts acknowledge the symbolic value of the parties working together, which is a means of exercising participatory democracy.

For example, in the *Welkom* case, the court ordered that the *Welkom* SGB engage meaningfully with the HOD when revising their pregnancy policies. The SGB had created a policy that was not constitutional and did not conform to provincial DBE guidelines. In order to resolve the issue, and to make use of the expertise of the various parties, they were encouraged to work together to create a better policy for the learners.



## BRIEF OVERVIEW OF THE LEGAL FRAMEWORK

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.’

Another important provision in the Constitution is Section 41(1)(h), on co-operative governance. This sets out how the various parties involved in governing schools should interact together:

All spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith, by –

- i. fostering friendly relations;
- ii. assisting and supporting one another;
- iii. informing one another of, and consulting one another on, matters of common interest;
- iv. co-ordinating their actions and legislation with one another;
- v. adhering to agreed procedures; and

vi. avoiding legal proceedings against one another.

Then there are specific laws that concern school governance. These include the South African Schools Act, which sets out the roles that different parties play in governing schools. There is also the National Education Policy Act.

These Acts are supported by regulations made by the Department of Basic Education. These regulations provide further guidance as to how each of these laws work.

The laws and regulations apply to all schools in the country.

Provincial governments create their own laws or rules, which apply

to their province only. These are called provincial circulars and regulations.

A number of court cases have dealt with issues in school governance. These will be discussed further below. A list of relevant cases can be found in the ‘Cases’ section at the end of this chapter; the list includes the *Ermelo* case; the *Welkom* case; *MEC for Education in Gauteng and Others v Governing Body of the Rivonia Primary School and Others (Equal Education and Centre for Child Law as Amici Curiae)* (the *Rivonia* case); and *Member of the Executive Council for Education, Gauteng and Another v Federation of Governing Bodies for South African Schools* (the *FEDSAS* case).

## POLICY-MAKING FUNCTIONS

This section reveals who is responsible for what in terms of the different policies under school governance laws.

### ADMISSIONS POLICY

The SGB of a school can decide on the admissions policy of their school. However, this policy must conform to the standards set in the Constitution.

The Constitution stipulates that there must be no unfair discrimination against anyone on any of the following grounds: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religious conscience, belief, culture, language or birth.

The SGB’s policy must also conform with the South African Schools Act, regulations and any other relevant provincial law. The policy must also be flexible enough to allow for the MEC to intervene when reasonable.

When deciding on the admission of a particular learner, the principal of the school will only make such a decision provisionally on behalf of the provincial HOD. The MEC, who is the political head of the provincial education department, has the final say in admission decisions, and has the power to overturn decisions.

It has been noted in court cases, such as the *Rivonia* case, that even though MECs have this power, this must be exercised in a fair way and in a reasonable manner.

The Department of Basic Education has developed the ‘Admission Policy for Ordinary Public Schools’. The MEC and the HOD must ensure that each SGB’s admission policies comply with national norms and standards.

Schools may not discriminate when deciding on a learner’s admission, and therefore admission policies must also be non-discriminatory. For this reason, schools may not administer any tests in order to determine the admission of learners (as stated in Section 5(2) of the Schools Act). This is because schools have the obligation to assist all learners, and not only the learners who will make their school results look impressive. This is especially important in light of South Africa’s legacy of apartheid, and the current reality of unequal access to education. It is important that admission policies ‘help achieve universal and non-discriminatory access to education’.

### CASE STUDY

#### THE RIVONIA CASE

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 have the final say in such a decision.

While the Court declared that the HOD did not act in a procedurally fair manner by placing the learner in the school, the HOD did have the power to order that the principal should admit the learner despite the SGB’s admission policy.



### CODE OF CONDUCT

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 on 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 learner 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 a feeder zone for schools, parents must enrol their children in schools within a 5km radius of their homes or place of work. FEDSAS argued that the provision entitling the MEC to declare school feeder zones undermines the powers of school governing bodies to formulate their own policies. The Court held that the regulations, including the power of the MEC to declare feeder zones were valid; but simultaneously held that such feeder zones had to be finalised within one year from the judgment, thus ensuring that the default interim provision would not exist.

### 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 positive steps to make a reasonable accommodation for the learner concerned. For example, in *MEC for Education: KwaZulu-Natal and Others v Pillay* (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 practices should have been reasonably accommodated, and that an exemption should have been made for that learner.

### CASE STUDY

#### PRETORIA GIRLS HIGH

In August 2016, black learners at Pretoria Girls High School received nationwide attention for protesting against institutional racism at the school. The major complaint of the learners was in respect of the implementation by the school of its Code of Conduct – in particular, its policy on hairstyles.

Following the protest, many other schools have sought to pre-empt similar protests by revising their own codes of conduct.

Pretoria Girls High School's Code of Conduct describes 'ubuntu' and 'equality and inclusivity' as the school's core values. These must be used to interpret the code. It then goes on to say that 'all hair must be brushed', and that 'all styles should be conservative, neat and in keeping with the school uniform'.

According to the learners, this hair policy has been interpreted by the school in such a way as to prevent black learners from wearing their hair in Afros, because this type of hairstyle was viewed as 'exotic'. Black learners argued that the prohibition against Afros amounted to racial discrimination. The learners stated that for a black girl, an Afro is just one of the many ways in which natural black hair can be treated, and it should be up to them to decide how to wear their hair. The girls therefore wanted to be allowed to wear an Afro if they chose to do so.

These learners also noted some of the prejudicial statements that had been made about black hair. In previous years, learners had been told they would not be allowed to write exams if they didn't 'fix' their hair. Learners say comments were made by staff about black girls' hair. These included '[Your hair] looks like a bird's nest', 'Comb your hair, it looks terrible', and '[Your dreadlocks are] dirty old braids'; and a learner alleged that in two separate incidents, teachers had referred to her hair as 'kaffir hair'.

Learners at the school also reported that they had been reprimanded for wearing 'doeks', which they consider to be culturally significant, and told to 'stop making those

funny noises' when speaking isiXhosa at school. The chapter in this handbook on religion and education in schools covers in detail learners' religious and cultural rights in terms of dress, hair and practices.

Following the protests at the school, the Gauteng MEC for Education intervened and suspended the provision in the Code of Conduct dealing with hairstyles. He instructed the school governing body (SGB) to develop a new hair policy, which he said had to be workshopped before being introduced.

The Department of Basic Education's 1998 Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners acknowledges that the 'freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression, as seen in clothing selection and hairstyles'.

In *A v Governing Body, The Settlers High School and Others* the High Court indicated that the values entrenched in the Department's Guidelines and schools' codes of conduct must be used in interpreting codes of conduct.

It is therefore important for all school governing bodies, when developing codes of conduct, to consider the religious, cultural and racial diversity of the school populations they serve; and then develop rules – after proper consultation with these different groupings – that are inclusive, and which accommodate and reflect this diversity. This is because what is considered neat cannot be based on the subjective views of one particular group; what is considered neat must be negotiated and discussed with the entire school population.

## LANGUAGE CASE STUDY

### THE ERMELO CASE

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 requested 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 altered the school's language policy to 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 take cognisance of the broader community in which the school was based:

It is correct, as counsel for the school emphasised, that Section 20(1) compels a governing body to promote the best interests of the school and of all learners at the school. Counsel also emphasised, rightly, that the statute places the governing body in a fiduciary relation to the school. However, 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. (*Ermelo* case para 80)

In addition, the Court ordered that the SGB take reasonable steps to satisfy the likely demand for English places in the following year, and file a report in that regard.



#### LANGUAGE POLICY

SGBs 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.

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.



#### PREGNANCY POLICY

SGBs can make pregnancy policies. The courts have recognised that SGBs are better suited than the provincial or national DBEs to make policies for their individual schools. Again, like all the other policy-making functions of the SGB, this ability to make policy on pregnancy 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.



#### RELIGIOUS POLICY

Culture and religion in schools is dealt with in detail in Chapter 10 of this handbook.

SGBs can make rules regarding religious observances, but these rules must also be consistent with the Constitution, which protects everyone's right to freedom of thought, conscience, religion and opinion. This means that the religious policies of individual schools must be in accordance with the DBE's National Policy on Religion in Education, and must promote understanding and respect for South Africa's diverse religious beliefs.

In addition, attendance at a school's religious observances should be done on a free and voluntary basis. The national education department has drawn up a policy in this regard, called the National Policy on Religion and Education.

An example of the reasonable accommodation of someone's religion was found in the *Pillay* case, in which the learner's wearing of a nose stud was seen as part of her religion. While wearing earrings and piercings was contrary to the school's policy, the school was ordered to take reasonable steps to accommodate this and thus provide an exception to the school rules for the learner.



#### SCHOOL FEES

School fees supplement funding provided by government. School fees are determined at a public school by a resolution adopted by a majority of parents at a general meeting. The SGB must implement the resolution as determined at this meeting. This is set out in Section 39 of the Schools Act.

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.

## PREGNANCY CASE STUDY

### THE WELKOM CASE

An example of the clash between the SGB and the HOD when it comes to the pregnancy policy can be seen in the *Welkom* case. This concerned two schools, namely Welkom High School and Harmony High School. Both schools had adopted pregnancy policies that provided that any learner who becomes pregnant is automatically excluded from the school, and cannot return until at least one year after the birth of the baby.

The conflict in the case centred on whether the HOD of the Free State provincial education department had followed the correct procedure in trying to remedy the policies, and not on the content of the policies themselves. Therefore the Constitutional Court could not make a formal decision on whether the pregnancy policies went against the Constitution. However, the Court did acknowledge that at face value, the policies infringed on the constitutional rights of pregnant learners to education, dignity, privacy and bodily and psychological integrity. The Court ordered that the schools review their policies, in light of constitutional values and of the guidelines set out by the head of the Free State provincial education department.

# 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.

## 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.

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### CASES

*Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another* 2016 (4) SA 546 (CC); 2016 ZACC 14.

*Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another* 2014 (2) SA 228 (CC); 2013 ZACC 25.

*Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC); 2009 ZACC 32.

*MEC for Education in Gauteng and Others v Governing Body of the Rivonia Primary School and Others* (Equal Education and Centre for Child Law as Amici Curiae) 2013 (6) SA 582 (CC); 2013 ZACC 34.

*MEC for Education, KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC); [2007] ZACC 21.

### CONSTITUTION AND LEGISLATION

Constitution of the Republic of South Africa, 1996.

South African School's Act 84 of 1996.

National Education Policy Act 27 of 1996.

### POLICY AND GUIDELINES

Department of Basic Education 'Policy on the Organisation, Roles and Responsibilities of Education Districts', 2013.

Department of Basic Education 'National Policy on Religion and Education', 2003.

Department of Basic Education 'Admission Policy for Ordinary Public Schools', 1998.

Department of Basic Education 'Examples of a Code of Conduct for a School', 2016.

Department of Basic Education 'Information for Parents and Guardians: SGBs', 2016.

Department of Basic Education 'Play Your Part on Your School Governing Bodies (SGBs)' 2016.

### SOURCE MATERIAL AND FURTHER READING

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HJ Joubert & IJ Prinsloo *Education Law: A Practical Guide for Educators* (2001).