



basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

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**TO: HEADS OF PROVINCIAL EDUCATION DEPARTMENTS
HEADS OF PROVINCIAL GOVERNANCE SECTIONS
DISTRICT DIRECTOR
SCHOOL GOVERNING BODY ASSOCIATIONS
NATIONAL ALLIANCE OF INDEPENDENT SCHOOLS ASSOCIATION
SCHOOL PRINCIPALS**

CIRCULAR No. 2024

ADMISSION OF UNDOCUMENTED LEARNERS TO SCHOOLS AND THE REGISTRATION OF LEARNERS TO WRITE THE NATIONAL SENIOR CERTIFICATE EXAMINATION.

1. **Circular 1 of 2020**, which refers to **Admission of Learners to Public Schools**, is hereby withdrawn. This circular is issued as a reminder that undocumented learners may not be denied the right to admission to a school on account of not possessing the necessary documents such as amongst others, a birth certificate or an identity document. This also includes the right to be registered and to sit for the National Senior Certificate Examinations. There are also new legislative provisions in the Basic Education Laws Amendment Act that have important provisions regarding this matter.
2. The Department of Basic Education has received complaints from Civil Society Organisations that learners have been denied admission to schools or have been prevented from registering and writing the final National Senior Certificate examinations, because of their failure to amongst others produce an identity

document or a birth certificate or in the case of foreign learners an asylum seekers permit.

3. There are various reasons that learners may not have an identity document and this includes the following:
 - a. They are South African learners who have a birth certificate but have not yet applied for their identity documents for reasons beyond their control;
 - b. They are undocumented South African learners who are waiting for the Department of Home Affairs to finalise their applications for late registration of birth;
 - c. Caregivers have not yet lodged applications for birth registration;
 - d. They are undocumented foreign/immigrant learners; or
 - e. They are foreign/immigrant learners who have a regular status (e.g. a learner on an asylum seeker permit who possesses an asylum number) but does not have an identity number.
4. The court in the case of *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECHGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG) (12 December 2019) affirmed the principle that the lack of documents should not be used as an obstacle or impediment to deny a learner the right to basic education.

The court made the following order:

- a) Clauses 15 and 21 of the Admission Policy for Ordinary Public Schools were declared to be inconsistent with the Constitution and therefore invalid;
- b) The Eastern Cape Education Department Circular 6 of 2016, dated 17 March 2016, was declared to be invalid and was set aside. (Circular 6 of 2016 deals with the payment of norms and standards funding, school nutrition and post provisioning to public schools and provides that payment of such funding will be based on learners with valid identity numbers on the SASAMS system);
- c) The first to third Respondent (Minister, Member of the Executive for Education Eastern Cape and Superintendent-General Eastern Cape Education Department) were directed to admit all children not in possession of an official birth certificate into public schools in the Eastern Cape Province

and where a learner cannot provide an official birth certificate the principal of the relevant school is directed to **accept alternative proof of identity such as an affidavit or a sworn statement deposited to by the parent, care giver or guardian of the learner wherein the learner is fully identified;**

- d) Sections 39 and 42 of the Immigration Act, 2002 (Act No. 13 of 2002) does not prohibit the admission of illegal foreign children into schools and does not prohibit the provision of basic education to illegal foreign children; and
 - e) The first, second and third respondents were interdicted and restrained from, in any manner whatsoever, removing or excluding from schools, children, including illegal foreign children, already admitted, purely by reason of the fact that the children have no identity document number, permit or passport, or have not produced any identification documents.
5. The Court reiterated the importance of section 29 of the Constitution of the Republic of South Africa, 1996, in that: "Everyone has a right to basic education" and the right to education is an immediately realisable right and stands on a higher pedestal.
6. The Basic Education Laws Amendment Act provides in section 4(b) that any learner whose parent or guardian has not provided any required documents, whether of the learner or such adult person acting on behalf of the learner, during the application for admission, shall nonetheless be allowed to attend school. The principal of the school must advise the parent or guardian to secure the required documents.

"Required Documents" have the following meaning:

- (a) *Where at least one or both biological or adoptive parents of a learner are South African citizens, the following documents:*
 - (i) *An unabridged birth certificate of the learner;*
 - (ii) *the South African identity documents or cards of the learner's parents; and*
 - (iii) *where either or both parents are deceased, the relevant death certificates;*

- (b) *where both parents of the learner are foreign nationals and hold either permanent residence permits or temporary residence visas, the following documents:*
 - (i) *the learner's foreign issued birth certificate;*
 - (ii) *the learner's passport;*
 - (iii) *a study visa or permanent residence permit issued to the learner;*
 - (iv) *the parents' passports; and*
 - (v) *the parents' temporary residence visas or permanent residence permits;*
- (c) *where the parents of the learner are refugees or asylum seekers, the following documents:*
 - (i) *the parent's asylum seeker or refugee visa;*
 - (ii) *the learner's asylum seeker or refugee visa;*
 - (iii) *the learner's birth certificate if the learner was born in the Republic;*
and
 - (iv) *where asylum seeker visas are provided, a refugee or long term study visa must be provided within three years of admission of the learner; and*
- (d) *where the learner is in alternative care, the following documents:*
 - (i) *the relevant court order granting guardianship or custody; and*
 - (ii) *the learner's unabridged birth certificate.”;*

7. Undocumented learners cannot be prevented from registering and writing the National Senior Certificate examination. Umalusi has also confirmed that an identity document is not compulsory for the issuing of a National Senior Certificate. The policy position of Umalusi is articulated in this statement: “Whether documented or not, all registered candidates will be certified if they fulfil the qualification requirements. In short, the Identity document is not a requirement for the issuing a certificate”. In instances where the DBE and the Provincial Education Departments submit learner information using their names and date of birth, such a learner will not be rejected (denied access to their NSC) if no ID is submitted.

8. All education officials are hereby directed to refrain from any actions or messaging that could result in undocumented learners not being admitted to schools, and thereby dropping out of school or not writing their National Senior Certificate examinations due to a notion that they will not be issued with the National Senior Certificate.
9. Please ensure that the contents of this circular is shared with all provincial, district and circuit officials as well as School Principal in the province.

A handwritten signature in black ink, appearing to be 'HM Mweli', written in a cursive style.

MR HM MWELI

DIRECTOR-GENERAL

DATE: 05/12/2024