

EE/EELC SUBMISSION IN RESPECT OF THE DRAFT BASIC EDUCATION LAWS AMENDMENT BILL, 2019

Clause reference in the revised draft Bill	Section in the South African Schools Act, 84 of 1996, being amended	EE/EELC comments	EE/EELC recommendations
General Comments			
The need for specific timeframes to guide processes	<p>EE and EELC acknowledge that the draft Basic Education Laws Amendment Bill, 2019 (revised draft Bill) now includes important timeframes that will assist in addressing some processes more efficiently and timeously. However, a number of provisions throughout the revised draft Bill still fail to stipulate clear timeframes within which relevant role players must respond in specific procedural processes.</p> <p>For example, section 8 (disciplinary processes), sections 22(2)(d) and 22(3)(d) (withdrawal of functions of governing bodies), section 25(5)(d) (governing body dissolution) and section 33 (school closure) of the revised draft Bill.</p> <p>The inclusion of specific and reasonable timeframes will ensure that prescribed procedures are effective and that relevant role players, particularly learners and parents, are not subject to unreasonable delays in receiving feedback on critical issues. EE and EELC therefore urge that the provisions of the revised draft Bill be adjusted to ensure that all prescribed procedures contain appropriate timeframes within which relevant role players must act.</p>		
Obligation to publish norms and standards for public schools	<p>Section 5A of the South African Schools Act, 84 of 1996 (SASA) requires the publication of minimum norms and standards for school infrastructure, capacity of a school, and provision of learning and teaching support material. Whilst section 5A(1) refers to “may”, EE and EELC are of the view that the provision as it currently stands can only be properly interpreted as a peremptory obligation. Nonetheless, for the avoidance of doubt, the revision process offers an opportunity to clarify the section and indicate as follows: “(T)he Minister <u>must</u>, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-”</p>		
Specific Comments			
3(a)	3(1)	The proposed amendment expands compulsory schooling to include grade R, commencing on the first day of school in which the learner	We note that the legislation will in time also need to be amended to include grade RR as part of compulsory

		will turn 6. In the February 2019 State of the Nation Address (SONA), President Cyril Ramaphosa directed that “two years of compulsory ECD” will be introduced for all children before they enter grade 1.	schooling, as alluded to in the President’s SONA announcement.
3(b)	3(6)	The draft Basic Education Laws Amendment Bill, 2017 (previous draft Bill) proposed that the penalty for parents who fail to take their children of compulsory school-going age to school, or people who prevent such learners from attending school, be increased considerably from six months to six years. In the revised draft Bill, the six month penalty currently contained in SASA is increased to 12 months. Despite lowering the penalty from the previous draft Bill, we remain concerned that this amendment harshly and unfairly punishes parents. It primarily targets female caretakers, and ignores the potential negative effects of parents’ incarceration on learners’ lives.	EE and EELC recommend that the paragraph be amended to remove the prospect of criminalising and increasing the penalty for parents. Instead, we recommend that holistic social interventionist methods be implemented, in line with recommendations made in our previous submissions. For example, the department can design a programme that offers parents information on how schools function and advice on supporting and monitoring children’s school work, or could offer other supportive steps such as mediation programmes, parenting classes, or substance abuse treatment.
3(c)	3(7)	This amendment pertains to penalties for any person who “unlawfully and intentionally” interrupts, disturbs or hinders a school activity or hinders or obstructs any school in the performance of its activities. We are encouraged that the revised draft Bill narrows the application of this provision to <i>unlawful</i> activities; however, this provision remains concerning to EE and EELC as there are sufficient existing laws pertaining to criminal conduct and violent protests, and SASA should not be the legislative tool where such activities are dealt with. The amendment which increases the penalty from 6 to 12 months is also of concern.	EE and EELC strongly urge that the offence created by this amendment be removed.
5	6	The revised draft Bill has made some welcomed changes and additions to this amendment. However, EE and EELC remain concerned that they do not provide sufficient safeguards against language policies being used to preserve privilege and/or as a proxy for racist practices.	EE and EELC recommend that a clause be inserted which makes it clear that it is not for the governing body itself to apply the school’s language policy directly in the admission of entry phase learners. In particular, it should

			<p>be made clear that schools should not be permitted to refuse applications from learners whose choice of language of learning and teaching differs from a school's language of tuition, or to exclude these learners on admissions waiting lists for consideration by the Head of Department (HoD).</p> <p>We further recommend that a clause be inserted that clarifies that school language policies must be applied by the HoD when it places entry-phase learners at public schools, subject to the HoD's proposed power to alter a school's language policy.</p>
8(c)	8A	<p>The proposed amendment empowers governing bodies to allow the possession, consumption or sale of liquor during school activities, both on and off the school premises, provided this does not happen during school hours. Even though this will be regulated, we are deeply concerned that this proposal will harm learners and that it will not be properly implemented and monitored. EE's learner members have noted that it will be very difficult to ensure their safety at school functions where alcohol is consumed, and that it is unlikely that schools will be able to monitor whether learners access alcohol at such functions. Drug and alcohol abuse has devastating effects on communities and families in South Africa. Schools should thus be alcohol and drug-free zones and should take proactive steps to promote healthy behaviour and lifestyles and prevent alcohol and drug abuse.</p>	<p>EE and EELC strongly urge that this clause be removed in its entirety.</p>
12	12A	<p>The proposed amendment in the revised draft Bill has provided more detail on the process for ensuring notification and participation of school stakeholders and the broader community where a merger is being considered. These amendments are welcome.</p>	<p>We recommend the addition of a sub-section listing factors which the Member of the Executive Council (MEC) should take into account when determining whether two or more schools should be merged. In this regard, we note that the proposed revision of section 33(8) lists certain factors that the MEC must take into account when considering the closure of schools. In addition, we</p>

		The proposed amendment does not, however, list any factors that should be taken into account when determining whether two or more schools should be merged. The listing of such factors will enhance rational and consistent decision-making with regards to school mergers, and will align the proposed amended section 12A with the proposed amended section 33(8) in respect of school closures.	recommend that both section 33(8) and section 12A could include more specific factors such as population demographic and economic trends in the area the school(s) are located; Learner enrolment trends in relevant schools; levels of education offered by the relevant schools; curriculum considerations; availability of resources such as school infrastructure, learner transport, hostel accommodation, school nutrition, and school furniture.
16 & 21	24(2) & (4) and 28	Section 24(2) & (4) as well as section 28 of the revised draft Bill transfer functions currently ascribed to MECs to the Minister. As such, the revised draft Bill obliges the Minister to make various determinations regarding the appointment of governing body members in public schools, including public schools for learners with special education needs. EE and EELC recognise that this amendment may result in the national standardisation of processes related to the appointment of governing bodies in public schools. This would potentially provide valuable procedural consistency across provinces and is a welcomed revision.	None.
29	41(2)	The previous draft Bill introduced an amendment providing a closed list of the documents a governing body may take into consideration when deliberating a fee exemption. In the revised draft Bill, this amendment has been removed. This is concerning because the amendment in the previous draft Bill was an important means of curtailing practices where schools place unnecessarily onerous requirements on parents during the fee exemption process.	We recommend that the amendment made in the previous draft Bill - restricting the information that may be taken into consideration when a fee exemption is considered - be retained.
35	59(3)	This subsection of the revised draft Bill criminalises parents who submit false or misleading information or a forged document in an admission or fee exemption application. It increases the term of imprisonment from 6 months to a period not exceeding 12 months, and allows for both a fine and imprisonment. EE and EELC are	We strongly urge the removal of this subsection in its entirety.

		<p>concerned that this amendment will primarily affect disadvantaged groups, such as undocumented learners and their families. Furthermore, simply criminalising these parents' conduct ignores complex social contexts, rather than addressing them.</p>	
36	59A	<p>The proposed amendment provides for a dispute resolution mechanism between a governing body and the HoD. While the inclusion of an alternative dispute resolution mechanism is welcomed, the proposed amendment does not address disputes between the MEC and the governing body, or even multi-party disputes between the governing body, the HoD and the MEC. The proposed amendment also introduces an appeal mechanism, allowing a governing body to appeal to the MEC against the decision which gave rise to the dispute. Consequently, this mechanism does not allow for the possibility of the MEC being party to the dispute.</p> <p>We are concerned that a lengthy dispute resolution process affects a learner's access to education and will not be in a learners' best interests.</p> <p>The proposed amendment is silent on the rights of the learner, who may be the subject of the dispute, while the dispute resolution unfolds. It is not clear whether the learners' education will be protected or disrupted.</p>	<p>We strongly urge that the clause be amended to include disputes between the MEC and the governing body; as well as between the governing body, MEC and HoD.</p> <p>We further recommend that a clause be inserted requiring that, notwithstanding the time limits contained in the paragraph, the dispute resolution process be conducted as expediently as possible so as to limit the impact on learners' education and to ensure that the best interests of learners are safeguarded. In this regard, if the parties cannot resolve the dispute, we recommend that the governing body be given a maximum of 7 days to appeal to the MEC.</p> <p>During the dispute resolution period, we strongly urge that adequate measures be put in place to ensure that a learner's education continues without disruption and that their best interests are safeguarded.</p>