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To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Circuit Managers, Principals and Chairpersons of governing bodies

Short summary: *Admission of undocumented South African or foreign learners.*

**Subject: Admission of undocumented South African or foreign learners**

1. This circular serves to inform Western Cape Education Department (WCED) schools of policies and procedures with respect to the admission of undocumented South African and foreign learners. This is in line with the precedent set in *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG) (12 December 2019), ("Phakamisa case"), and the Constitutional Court Order (CCT19/19), dated 15 February 2019.
2. While the South African Schools Act, 1996 (Act 84 of 1996), *Admission Policy for Ordinary Public Schools* published under Notice No. 2432 of 1998 in *Government Gazette* 19377 on 19 October 1998 (the "National Admission Policy") and the *WCED Policy for the Management of Admission and Registration of Learners at Ordinary Public Schools* set out the requirements for admission of learners, schools often find themselves facing a dilemma when a child who does not have the relevant documentation required for admission (e.g., a birth certificate, study visa, permanent residence permit, asylum seeker's visa, refugees visa, passport or identity document), applies for admission to a public school. Learners lacking identification documents are categorised as undocumented learners.
3. Section 29(1)(a) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") guarantees everyone the right to basic education and section 7(2) obliges the state to respect, protect, promote and fulfil these rights set out in the Bill of Rights. Section 29(1)(a) of the Constitution is unqualified, unconditional and applies to everyone, including foreigners.

4. Clause 15 of the *National Admission Policy* applies to South African children who do not have official birth certificates. This policy makes the admission of South African children to public schools conditional upon the production of a birth certificate within three months, failing which, the child of the defaulting parent will be excluded from enrolment.
5. In the "*Phakamisa case*", the court found that clauses 15 and 21 of the *National Admission Policy* effectively deny children access to education on the basis of their lack of documentation, which constitutes unfair discrimination. It was found to be inconsistent with the Constitution and, therefore, invalid.
6. The right to education extends to **everyone** within the borders of South Africa. The nationality or immigration status of the child is immaterial. In the above-mentioned court case, the court found that children, including those with an illegal status, also have the right to education.
7. Furthermore, the court found that sections 39 and 42 of the Immigration Act, 2002 (Act 13 of 2002), do not prohibit schools from providing basic education to children who are illegal foreigners.
8. Therefore, this circular serves to inform schools that children not in possession of official identification documents must not be refused admission solely on the basis that the parent/guardian/ward cannot provide proof of birth in South Africa or a foreign country.
9. If the parent/guardian/ward does not have any of the following required documentation, the learner must be enrolled at a school provided that the parent/guardian/ward submits a sworn written affidavit which confirms the learner's details, the parent's details, and date of birth. This is applicable to learners without a:
  - 9.1 South African birth certificate/identity document
  - 9.2 Foreign passport (in the case of a foreign learner)
  - 9.3 Asylum seeker's permit
  - 9.4 Refugee permit
  - 9.5 Study permit
10. Principals can enrol learners without the above documents, but must, however, inform parents of their obligation to apply for the necessary documents at the Department of Home Affairs (DHA).
11. Principals must also inform the parent that section 31 of the Births and Deaths registration Act, 1992 (Act 51 of 1992), makes it an offence to make a false statement or cause a false statement to be made about the age of a child.

12. Parents should work via the DHA or their foreign embassies to acquire the relevant documents where necessary.
13. Kindly bring the contents of this circular to the attention of all concerned.

**SIGNED:** B WALTERS  
**HEAD: EDUCATION**  
**DATE:** 2022-03-09