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5 December 2025

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Submission on the draft regulations on public school admissions¹

1. Introduction

The Basic Education Law Amendment Act of 2024 (BELA)², is aimed at addressing discriminatory and unfair practices at schools. In particular it is aimed at incorporating into the law, the various court judgements that challenged unfair practices. Whether it's aim can be achieved is very much dependant on whether the regulations give effect

¹ GN 3415 in GG 53119 on 6 August 2025

²Act No. 32 of 2024

to the letter, intent and spirit of the Amendment Act and the High Court judgments that stand behind the Amendment Act.

In our submission, we focus attention on:

- learners who do not have immunisation records [Regulation 14] and
- South African citizen learners who do not have birth certificates or Identity Documents [Regulation 13 and 17]

These learners are already vulnerable due to being undocumented and unvaccinated. These two deprivations are markers of children in need of extra support. If the BELA admission regulations promote an inclusionary and supportive approach - these learners have a greater chance of becoming documented and vaccinated. Such an outcome would be in the children's best interests and have numerous benefits for all government departments and the success of the nation as a whole.

On the other hand, an exclusionary and punitive approach, that is based on an incorrect assumption that a lack of documents or vaccination records is due to parental neglect or laziness, will result in already vulnerable children being excluded from school, thereby re-inforcing their vulnerability and making them more invisible to the state and society.

Our recommended amendments are aimed at promoting an inclusionary and supportive approach.

2. Immunisation records

The text of the draft regulation is captured below for ease of reference.

“Proof of immunisation

14.(1) Subject to subregulation (2), on application for admission of a learner to a public school, the parent of the learner must show proof that the learner has been immunised against—

- (a) polio;
- (b) measles;
- (c) tuberculosis;
- (d) diphtheria;
- (e) tetanus; and
- (f) hepatitis B.

(2) A parent of a learner may apply in writing to the HOD for exemption of that learner from being immunised: Provided that the medical diagnoses of the learner is supported by a motivation a healthcare practitioner registered with the Health Professions Council of South Africa who is suitably qualified to determine that the learner should be exempted.

- (3) The motivation referred to in subregulation (2) must clearly state the medical diagnosis, risks, and reasons why the learner should not receive immunisation and if necessary, the HOD may request further medical assessments before deciding.
- (4) If the motivation for exemption from immunisation is based on cultural or religious observances, the motivation must be supported by proof of past conduct in support of the cultural or religious practice which proof may include—
- (a) a sworn affidavit;
 - (b) confirmation from a recognised religious or cultural leader; or
 - (c) historical medical records showing prior exemptions based on religious or cultural beliefs.
- (5) Upon receipt of an exemption application the HOD must—
- (a) acknowledge receipt of the application within seven working days of receiving the application;
 - (b) conduct an initial assessment to verify completeness and request any missing information within fourteen working days of receiving the application;
 - (c) consider and decide on the application within thirty working days of receiving a complete application;
 - (d) if the application is granted, provide the parent with written confirmation of the exemption; and
 - (e) if the application is declined, provide the parent with the decision in writing together with reasons.
- (6) If a parent is unable to show proof that the learner has been immunised or proof of exemption from immunisation by the HOD, the principal of the public school must immediately advise the parent that—
- (a) the learner must be immunised as part of the free primary health care programme within thirty days; and
 - (b) in the best interests of other learners at the school, the learner will not be permitted on school premises or admitted to the school while he or she has not been immunised or exempted from immunisation.
- (7) If the parent refuses or fails, within thirty days from the date of the written communication referred to in subregulation (6), to submit proof of immunisation or exemption from immunisation, the principal of the public school must, in the best interest of other learners at the school, not admit the learner to the school.”

The implications of making immunisation records a legal requirement

Requiring immunisation records for admission into school has been a provision in the National Admission Policy and individual School Policies for many years. The draft regulations retain immunisation records as an admission requirement. However, what is new is that:

- by specifying the requirement in the regulations, as opposed to in a policy, the requirement is being elevated to a legal requirement, and
- principals will be legally obliged to inform parents that learners without immunisation records will not be permitted to attend school.
- Principals will be legally obliged not to admit children without immunisation records.

This change in the status of the requirement from policy to law and the express legal instruction that learners without records will and may not be permitted to attend school,

is likely to cause schools to enforce the immunisation requirement more strictly than they have done in the past. **This could result in many children being refused access to school at both the application stage and on the first day of school, particularly in Grades R, 1 and 7.**

How many children in SA are not immunised?

Before making immunisation records a legal requirement for school admission, DBE should know the number of children likely to be refused admission and the profile of these children at high risk of exclusion.

Immunisation coverage in South Africa remains suboptimal: only 83.3% of infants under one year were fully immunised in 2023/24, well below the national target of 90%. And there are striking inequalities in coverage across provinces and districts. For example, only 74.8% of infants were fully immunised in the Western Cape.³

Immunisation coverage was lower during the first year of COVID - 79.5% in 2020/21⁴ and these children will be turning 5 and 6 years old in 2026. The Grade R and Grade 1 intakes in 2026 may therefore be faced with a larger number of children who are not immunised or not fully immunised than previous age cohorts.

Children that they have not received any doses of the BCG, polio, hexavalent or measles vaccines are classified as zero-dose. Some children are classified as 'penta-zero' dose which means that they haven't received the hexavalent (DTaP-IPV-Hib-HBV) vaccine. A study using Demographic and Health Survey data of non-immunised children between 2010 and 2020 found that 5.8% of children aged 12 – 23 months were zero-dose, while 10.8% of children were penta-zero dose ⁵

In 2023, approximately 220 000 children in South Africa were considered zero-dose based on whether they had achieved access to the first dose of diphtheria, tetanus

³ Ndlovu N, Mokganya M, Blose N, Padarath A, editors. *District Health Barometer 2023/24*. Durban: Health Systems Trust; March 2025.

⁴ Ndlovu N, Mokganya M, Blose N, Padarath A, editors. *District Health Barometer 2023/24*. Durban: Health Systems Trust; March 2025.

⁵ Wonodi C, Farrenkopf BA. Defining the zero dose child: A comparative analysis of two approaches and their impact on assessing the zero dose burden and vulnerability profiles across 82 low- and middle-income countries. *Vaccines*. 2023, 11(1543).

and pertussis (DTP) vaccine.⁶ WHO and UNICEF estimates of National Immunisation Coverage show that coverage of DTP1 in babies younger than one year declined from 91% in 2021 to 76% in 2024. This amounts to a 15% drop in coverage, far below the 95% target.

Why are so many children not immunised?

It is in children's best interests and in the public's health interests to use school admissions as an opportunity to identify and address gaps in immunisation coverage. However, the design of the intervention should be based on an evidence-based understanding of why children may not be immunised or fully immunised at age 5 or 6 when their parents or caregiver apply for their admission to school.

Recent evidence shows that the majority of unvaccinated children are not as a result of vaccine hesitancy or parental neglect but are more likely the result of health system failures such as vaccine stock-outs or socio-economic barriers to access for people living in poverty. A retrospective analysis of data collected in a national immunisation coverage survey, found that health facility obstacles accounted for 68% of missed vaccinations.⁷ These included:

- vaccine stockouts,
- lack of access to vaccination services because:
 - the clinic was not open after working hours,
 - the clinic was closed on the day of visit,
 - there was no vaccinator on duty, or
 - there was no clinic nearby.
- caregivers were not told that they needed to return for catch-up doses.

The regulations oblige school principals to inform parents that their child will not be admitted until their immunisation record is submitted and to advise them to visit their nearest clinic to access free immunisation services and that they must do so within 30

⁶ WHO/UNICEF Estimates of National Immunisation Coverage (WUENIC), 2023 revision. [Internet]. WHO, UNICEF. 2023 [cited 27 May 2025]. Available from: <https://worldhealthorg.shinyapps.io/wuenic-trends/>

⁷ Masemola NM, Burnett RJ, Makamba-Mutevedzi PC, Schönfeldt M, Bamford LJ, Ismail Z, Madhi SA, Meyer JC. Vaccine stock-outs: A preventable health facility obstacle contributing to missed vaccinations in South African children. *Vaccine*, 45: 126583. 2025.<https://doi.org/10.1016/j.vaccine.2024.126583>.

days. The advice to visit a clinic will be useful for the parents whose children have incomplete immunisation records due to lack of knowledge or having simply forgotten to complete the protocol. It may not be as effective for parents whose children do not have any immunisation records or are missing several vaccines or follow-up doses, or have lost their records. Giving these parents only 30 days to complete all the vaccines and follow-up doses is possibly out of sync with the DoHs catch-up plan for vaccines for children aged 5 or 6 and also does not allow for delays that could occur due to stock-outs, long queues or working parents being unable to take time off work during clinic open hours.

The catch-up plan should be based on the medically indicated vaccines for the relevant age-group, the time-period recommended by the Department of Health and also allow for demand and supply side challenges that could occur.

The DOHs immunisation catch-up plan

The Department of Health's (DoH) immunisation catch-up plan of 2024⁸ provides for when - and if - children can receive a catch-up dose.

- For example, the BCG vaccine for TB cannot be given to children older than 12 months. A 5-year-old missing the BCG vaccine on their records will therefore not be able to obtain this vaccine and return with a completed record. The regulations need to acknowledge this so that school principals who are unfamiliar with the DoHs vaccine schedule, do not insist on a record of the BCG vaccine from a parent of a 5-year-old who did not receive the vaccine when he/she was an infant.
- The second dose (booster) of the measles/rubella vaccine is normally given around age 6 years. If a 5-or-6-year old did not have the first dose when they were an infant then they will need to be given their first dose and then wait 4 weeks before the second dose can be given.
- For diphtheria, tetanus and whooping cough – only one dose is required for a 5-yr-old, with the second dose at age 12 yrs.

⁸ https://knowledgehub.health.gov.za/system/files/2024-05/VACCINE%20HESITANCY%20WEBINAR_OVERVIEW%20OF%20EPI_MAY_2024_FINAL.pdf.

The draft admission Regulations prescribe that children who do not have immunisation records should not be allowed into school and that their parents have 30 days to return with their child's completed immunisation records. However, to complete the immunisation protocol according to medical advice and taking into account supply and demand side challenges that could delay access to the vaccines for the learner - a 30-day period is not recommended.

It is also not clear if the learner will be excluded from attending school for these 30 days or may attend school while completing the vaccine record. It should be clarified whether the 30-day period applies only at the application stage or also at the admission stage.

There are some children who are both late applications and late admissions in January and February each year. For some families late application is unavoidable due to having to move for economic reasons or due to a death in the family. The Western Cape High Court has recently ruled that the Department must have a plan to accommodate late applications and late admissions. These children who often already start the school year late, are most at risk of having their attendance at school further delayed if school principals interpret the regulations to mean they may be excluded from school until their completed vaccine record is submitted.

We advise DBE to consult with the DOH with regards to the medically acceptable time-period for a 5-or-6 year old to receive the full list of vaccines and follow-up doses and to adapt their regulations accordingly.

We further advise that learners without vaccine records or incomplete vaccine records should not be excluded from admission but should rather be supported to obtain the required vaccines through increased collaboration between DBE and DoH at a district level.

- For example, once a school principal has assessed how many children need vaccines, it could relay that information to the DoH. Schools with high numbers of unvaccinated children could organise with DoH to provide a vaccine clinic at the school at the end of January when all Grade Rs and 1s have settled into their new classes. Follow-up doses could be done in later months as medically indicated.

- For schools with lower numbers of unvaccinated children, parents should be advised to attend the local clinic and they should then be given enough time to complete the schedule and return with the completed immunisation record.
- Rather than having to apply to the HOD for exemption, parents or learners who refuse immunisation for religious, cultural or medical reasons could be requested to complete a declination form which could also be used to collect data on the reasons why parents or learners refuse vaccines. This data could be used by DoH to adapt public health messaging.

Learners whose Road to Health Cards have been lost or destroyed

There is currently no recognition in the regulations that there will be many cases of learners who have “lost” immunisation records due to being separated from their parents (eg orphaned and abandoned children), or due to moving caregivers, or due to migrating from another province or country. There will also be cases of learners whose immunisation records have been destroyed in a fire or flood, events likely to become more common as the effect of climate change increase.

Due to the DoH not having an electronic patient record system for immunisations, once the Road to Health Booklet has been lost or destroyed, the child has to be treated as a zero-dose child and re-vaccinated again. Learners in this situation need to be supported to re-vaccinate and obtain a new Road to Health Booklet, rather than penalised or excluded.

3.Undocumented learners

Introduction

In the case of *Centre for Child Law v Minister of Basic Education 2020*⁹ the High Court held that preventing undocumented learners from enrolment at schools was unconstitutional, as it infringed on the rights to basic education, equality, dignity, and the best interests of the child. The court held that an affidavit including the learner's details is sufficient for enrolment at school.

BELA amends section 5 of SASA, making it clear in the law that a learner who is undocumented must be allowed to access school. It states that principals must advise learners and their parents to obtain the necessary documentation. These provisions were inserted to bring SASA in line with the *Centre for Child Law* judgment.

The National Admission Policy¹⁰ that used to govern this area, but is now overruled since BELA came into effect, specified that a parent must present a birth certificate, and non-national parents must produce a study permit for their child. Without these documents, admission was conditional and the parent was expected to submit the documents within three months to finalise the admission. This resulted in parents and learners who did not submit the documents within three months being threatened with exclusion from school and various education activities such as sport, the school feeding programme or writing matric. **Many school admission policies today still contain these discriminatory provisions, despite this not being in line with the 2020 High Court judgment or BELA which has been in force since December 2024.** The practice of excluding undocumented children or threatening that they may not register for or write matric exams is also still rife.

Taking this exclusionary context into account, the regulations need to be unequivocally clear that undocumented learners may not be excluded from admission or any education programme. We therefore recommend that Regulation 10 be amended to include a prohibition on discrimination against undocumented children. Our proposed amendment is indicated in bold text below.

Mandatory admission of learners to public schools

10. A learner must be admitted to the total school programme on or after admission and may not be suspended from classes, denied access to cultural, sporting or social activities of the

⁹ *Centre for Child Law v Minister of Basic Education 2020* (3) SA 141 (ECG).

¹⁰ Department of Education's Admission Policy for Ordinary Public Schools, 1998.

school, denied the right to write examinations, denied a school report or transfer certificate, or otherwise discriminated against on the grounds that his or her parent—

(a) is unable to pay school fees or has not paid the required school fees or has been exempted from payment of school fees in terms of the Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools;

(b) does not subscribe to the mission statement of the school on or after admission due to cultural beliefs, religious observances, medical circumstances or any other reasonable grounds submitted by the learner or parents of the learner; or

(c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner; or

(d) has not submitted or is unable to submit a birth certificate, identity document, passport or visa for the learner and/or the parent.

In alignment with BELA, the draft regulations at 13(1) and (3) and 17 (1) and (2) emphasise that an application for an undocumented learner should be considered, and undocumented learners should be admitted. There is no longer any reference to such admission being conditional or for a limited time period.

However, the draft regulations add that the school should refer the matter to the HOD and that the HOD, or a person duly authorised by the HOD, should hold the learner's parents accountable for not having the relevant documentation.¹¹ This addition goes beyond what BELA intended and should be removed for that reason alone. A further concern is that there is no restriction on who the power can be delegated to, making it likely it will be delegated to the principal which means the learner and parent will be held accountable in the education space, making the education space a hostile space for the learner.

Another concern is that there is no definition of what holding a parent accountable entails. "Holding accountable" could range from warning letters, to reporting the family to immigration authorities. Currently, some principals withhold education or support programmes or threaten the parent or learner with exclusion or limited access. Delegating a legal obligation to principals to hold parents accountable is likely to exacerbate these unlawful practices. We recommend that these provisions about holding a parent accountable be deleted. They are based on an assumption that the

¹¹ Draft regulation 13(4) and 17(4)

main reason why learners are undocumented is parental negligence or laziness. Our observation, after assisting over 500 children across the county to obtain their birth certificates, over the past 7 years, is that parents and caregivers of unregistered children face numerous service and economic barriers that are not within their control to solve. Holding them accountable in this context will serve no purpose.

In the alternative if the authority to hold parents accountable is retained, we recommend that the lowest level that it can be delegated to is the District Office and not to the Principal. This will help ensure that the learner is not excluded or threatened within the school environment for not producing a document that is not within their control to produce.

We are pleased to see the regulations placing a duty on principals to assist parents to document their children. We make suggestions for elaborating more on what this assistance could be. For example, to lodge a successful application for a late registration of birth, parents will need proof of school admission to Grade R or Grade 1. Schools can support parents by providing this document along with advice on what the other requirements are and how to go about obtaining these other documents. For relatives looking after abandoned or orphaned children, principals can assist them to make appointments to see the nearest social worker because a social worker report, and possibly also a Children's Court order, will be required before the caregiver can apply at Home Affairs. We make recommendations to amend Regulation 17 along these lines.

We also recommend that Regulation 17 be amended to accommodate late applications. Its current wording implies late applications for undocumented learners are not covered.

Our recommended additions are indicated in bold font, and our recommended deletions are indicated in strikethrough.

"Admission of undocumented learners

17.(1) The right to basic education extends to everyone within the boundaries of South Africa, regardless of their **documentation status**, nationality and immigration status.

(2) Learners without valid documentation are equally entitled to admission to public schools as documented learners: Provided that their parents submit, ~~within the time frames contemplated in regulation 13,~~ their admission applications ~~in the ordinary course,~~ together with all the required documents that are available to them or a sworn affidavit explaining why they are unable to provide such documents.

(3) The principal of a public school must, within one month of the start of every school year, ~~within seven working days of admission~~ report to the HOD or the designated education district official ~~any instance where a~~ **a list of all learners** is admitted without valid documentation **including contact details of their parents or caregivers**

(4) The HOD or a person duly authorised by him or her must, while the undocumented learner receives education

~~(a) hold the parents of such learner accountable for acquiring a birth certificate for such learner; and~~

~~(b) offer such parents~~ **or caregivers** assistance, **which may include -**

(a) providing the parents or caregivers with advice on how to obtain the missing required document;

(b) providing the parents or caregivers with any supporting documents about the child's schooling that may be required by Home Affairs for a successful application to Home Affairs;

(c) liaising with the nearest office of the Department of Social Development for assistance if the learner is orphaned or abandoned; or

(d) liaising with the nearest office of the Department of Home Affairs for assistance, to ensure that an undocumented learner admitted to a public school is documented.

(4) Conclusion

Thank-you for the opportunity to provide written comments. Please note that we have a senior staff from different disciplines (public health, law, social sciences, paediatrics) who have expertise on immunisation, zero-dose children, late registration of birth, and constitutional and administrative law. If requested, we could assist DBE to design a supportive approach aimed at ensuring all learners are vaccinated and documented.