

GAUTENG DEPARTMENT OF EDUCATION



GUIDELINES FOR DEVELOPING POLICY FOR PUBLIC SCHOOLS

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1. INTRODUCTION

Policy development at any level is a dynamic process. This is no exception at the school level where school policy – makers, implementers and stakeholders come face to face with each other. The process of policy development can be a daunting if not approached in a planned and co –ordinated manner.

This document is intended to provide guidelines to school governing bodies in order to assist them in making policies for their schools. It sets the context for policy development by explaining what law in education means and how the responsibility devolves to the School Governing Body (SGB) at school level. Although schools or SGB do not write up legislation or circulars a useful discussion on these important terms, including the term policy, are provided as these shape the context of policy development at school level. As an extension to this, the guiding principles as set out by the Constitution are also given.

2. RESPONSIBILITY FOR THE DEVELOPMENT OF POLICY AND/OR LEGISLATION

At National Level the Minister of Education is responsible for the determination of policy and legislation and at Provincial Level the MEC for Education is responsible for determining policy and legislation. The policy and legislation determined by the MEC must be aligned to the Constitution of the country and the National Policy and Legislation.

At school level the School Governing Body (SGB) is responsible for developing school policy. In determining school policy, the SGB, must ensure that its provisions are aligned to the Constitution of the country, National and Provincial policy and Regulations.

3. LAW IN EDUCATION

Education Law is the area of law relating to schools that deals mainly with schools, school systems, including school governing bodies at schools. Education is one of the key imperatives of the South African Government. The Minister of Education, through National Department of Education ensures that a single system of education is implemented at South African public schools and supports the implementation through the provisioning of funds, determining of priorities, policies and legislation and ensures that the implementation is monitored and evaluated.

The actual implementation of the Education mandates takes place through the Provinces. Section 43 of the Constitution of Republic of South Africa confers on PROVINCIAL LEGISLATURES of the various provinces of South Africa the authority (competence) to promulgate provincial legislation. This includes the authority to promulgate legislation on education matters in the specific province. Education is a concurrent competence of the National and the Provincial Department of Education. This means that besides the implementation of National Policy and Legislation at Provincial level, provinces can also develop policy and legislation.

4. THE LEGAL CONTEXT OF POLICY MAKING

4.1 LEGISLATION

- a) Simply put, legislation is a law made through the democratic process at **NATIONAL** or **PROVINCIAL** level and deals with issues in broad principle. It is published in either the **NATIONAL** or **PROVINCIAL** gazette and becomes binding from the date stipulated in that gazette.
- b) Parliamentary education legislation refers to those parliamentary laws which are promulgated for education e.g. The National Education Policy Act, The South African Schools Act, The Employment of Educators' Act, etc

- c) General parliamentary legislation: There is a substantial body of general legislation (non-education legislation) of which the school governors and educators (and especially the educational manager) must take note e.g. The Public Finance Management Act, The Promotion of Access to Information Act, The Children's Act, etc
- d) To make a clear distinction between the different forms of legislation, various writers distinguish between ORIGINAL and SUBORDINATE legislation (Botha, 1996:7; Van Heerden et al 1996:3).
- e) The Constitution is the supreme law of the country and all forms of legislation are subordinate to it.
- f) It is common practice to classify legislation in relation to the authority of the legislation. Original legislation or primary legislation refers to legislation which is promulgated by the original authority of a legislative body (e.g. PARLIAMENT or a PROVINCIAL LEGISLATURE), while subordinate legislation or secondary education is issued in terms of (on authority of) original legislation Figure 1 below is a useful illustration of the source of education law.

FIG 1: Legislation as a source of educational law

1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
2. ORIGINAL LEGISLATION
 - 2.1 Ordinary parliamentary legislation (Education specific legislation or General legislation)
 - 2.2 Provincial legislation
3. SUBORDINATE LEGISLATION
 - 3.1 Regulations
 - 3.2 Proclamations

4.2 REGULATIONS

- a) Regulations are described as official rules to control those to whom it applies and therefore have to be followed.
- b) Regulations are a form of subordinate legislation made either by the NATIONAL MINISTER (in regard to National matters) or PROVINCIAL MEC (in regard to areas of Provincial competency), and are also published in the National or Provincial Gazettes and their date of effect is stipulated in the gazettes..
- c) Regulations normally deal with the detail necessary for the implementation of legislation. Even though regulations are subordinate to legislation but are as binding as legislation on the public at large.
- d) Regulations are rules which are issued by senior functionary (of the state, for example) to regulate administrative affairs within the ambit of its authority. The authority to regulate by means of national and provincial regulations is derived from specific parliamentary or provincial legislation.

4.3 PROCLAMATIONS

- a) Proclamations are governmental act by a functionary of the government, for example, the State President. Proclamations must be published in the correct manner and usually set out how certain tasks should be done, confer authority for the exercise of a particular act or prohibit such an act

4.4 POLICY

- a) Policy may be made at either **NATIONAL** or **PROVINCIAL** level and consists of a **GUIDELINE** to parties affected by the policy.
- b) Policy is **NOT CONSIDERED** to be **LAW** in terms of the **CONSTITUTION** and accordingly is not binding on the public at large.

- c) Policy is however binding on DEPARTMENTAL OFFICIALS (including principals) as it effectively constitutes a managerial instruction to such officials.
- d) Policy is therefore binding in public schools.

4.5 SCHOOL POLICY

- a) School policies are policies made by the School Governing Bodies where authorized to do so by National or Provincial legislation e.g. a School Governing Body is authorised to make a language policy at a school, subject to National and Provincial legislation, Regulations and Policy. It usually deals with the detailed implementation at school level of the broader laws.

4.6 A CIRCULAR

- a) A circular is a directive from the Provincial Head of Department; it is a statement of departmental policy containing guidance on policy implementation through legislative or procedural change.
- b) A circular is not legislation, but it is binding to all stakeholders it is addressed to, mainly the state employees.

5. GUIDING PRINCIPLES

The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) is the highest law of South Africa, and provides the basis for all policy development. This means that all educational policy must be firmly rooted in the precepts and imperatives of the Constitution. This also holds true for policies made by School Governing Bodies.

Several references to the text of the Constitution have been made in these Guidelines in order to emphasise the importance of adherence to these precepts and imperatives in the making of policy and in the obligations they place on all citizens of the land. The relevant sections of the Constitution follow.

5.1 FOUNDING PRINCIPLES

Section 2 of the Act 108 (1996) determines that the Constitution is the supreme law of South Africa and any law (any other legislation, for example) or conduct of any person or body which is inconsistent with it, is invalid and obligations imposed by it must be fulfilled.

5.2. EQUALITY

- a) "Equality includes the full and equal enjoyment of all rights and freedoms'
- b) "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age disability, religion, conscience, belief, culture language and birth." Although not contained in the Constitution, discrimination on the basis of HIV/AIDS status should also be prohibited because of the current prevalence of the illness.

5.3. CHILDREN

A child's best interests are of paramount importance in every matter concerning the child"

5.4 EDUCATION

- a) Everyone has the right to
 - (i) A basic education, including adult basic education: and
 - (ii) Further education, which the state, through reasonable measures, must make progressively available and accessible
- b) Everyone has the right to ... education ... taking into account-
 - (i) equity;
 - (ii) practicability; and
 - (iii) the need to redress the results of past racially discriminatory laws and practices.

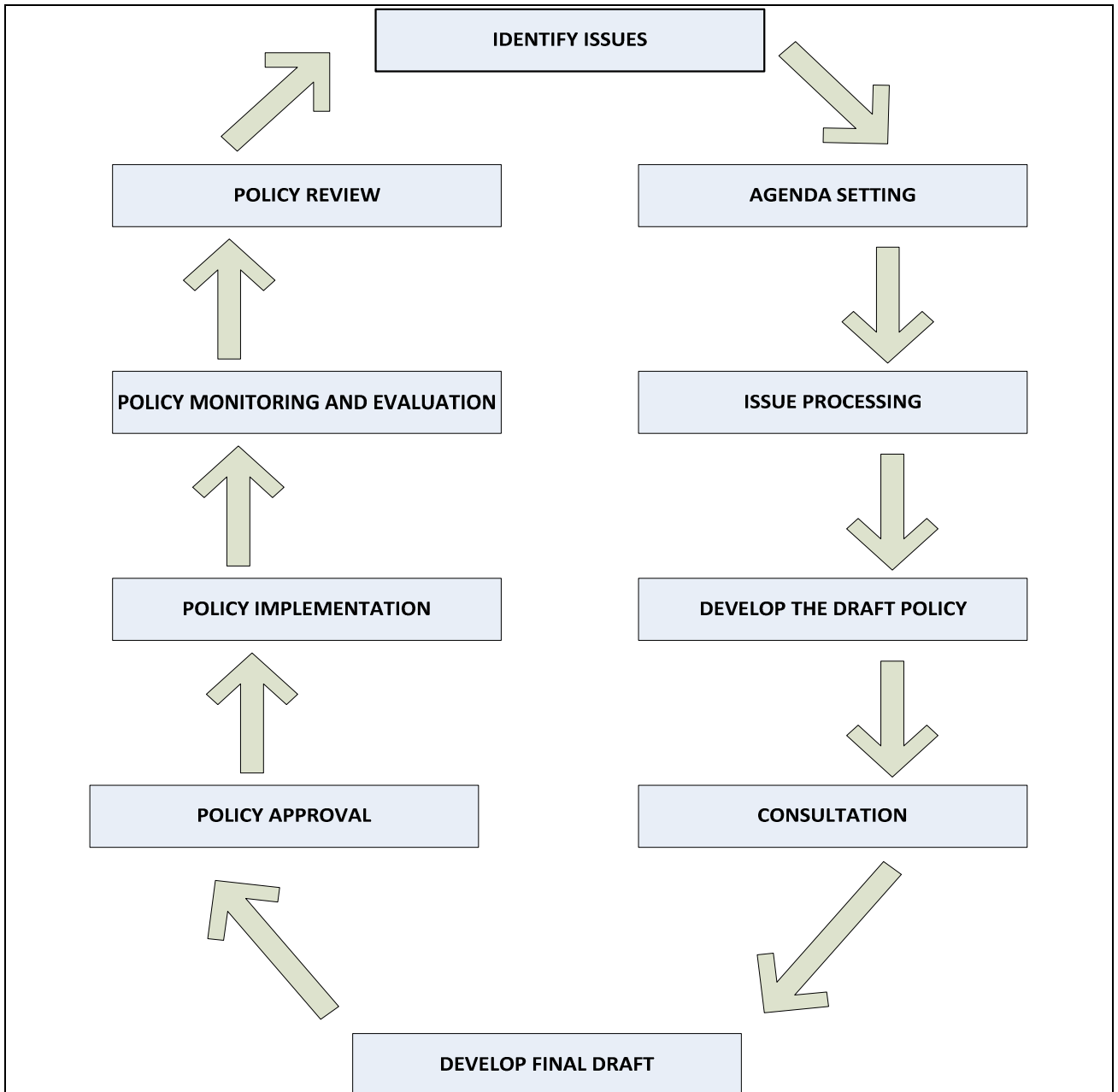
The guiding principles above emphasises

- that conduct by any person which is inconsistent with the Constitution is invalid and the obligations imposed by it must be fulfilled:
- the right to enjoy all rights and freedoms.
- the right to be protected against unfair discrimination of any kind;
- that the best interests of the child is paramount;
- the constitutional imperatives governing education as access, equity, practicability and redress.

6. THE PROCESS OF MAKING POLICY

After considering various policy formulation models, the following policy formulation model known as The GDE Ten Step Policy Formulation Model will guide the actual policy making process.

Fig. 2 GDE Ten Step Policy Formulation Model



6.1 Explanation of the GDE Ten Step Policy Formulation Model

STEP 1: IDENTIFY POLICY ISSUES

- a) All policy-making begins with the identification of a need.
- b) Some needs are identified by the South African School Act (Act 84 of 1996), for example:
 - (i) Admission policy, made in terms of Section 5;
 - (ii) Language policy of public schools, made in terms of section 6.2;
 - (iii) Freedom of conscience and religion at public schools, made in terms of Section 7;
 - (iv) Code of conduct, made in terms of Section 20(2);
- c) While the Act allows for governing bodies to make policies in these areas, there are restrictions placed on governing bodies. These are the result of national or provincial policy already developed and which cannot be over-ruled.
- d) It is possible that further needs will be identified by the national or provincial departments of education
- e) Other needs can be identified from within the school itself, and will usually be the result of problems which the school is experiencing and which are not being addressed by existing national or provincial policy.
- f) Identify the issues through an environmental scan internally/externally (SWOT) that should be addressed and make the stakeholders aware of the problem.
- g) Ensure consistency and coherence with related policies in the public sector.
- h) Identify the risk associated with the problem during all the stages of the policy and the related strategies to mitigate risks identified.
- i) Remember the manner in which the issue/problem is defined affects the policy solutions put forward to address the issue/s. A proper diagnosis of the problem is imperative.

STEP 2: AGENDA SETTING

- a) Although the governing body is responsible for making policy for schools, it is perfectly acceptable for the governing body to delegate the function of drafting the policy to a person or persons, who are not members of the governing body. The function can be delegated to an educator, like the principal, or to any other person with the necessary skills and knowledge, or even to a suitably qualified person who is not associated with the school at all.
- b) Agenda setting entails defining the internal priorities issues related to the policy development.
- c) The committee responsible for the drafting of the policy will conduct the necessary Research to set the agenda for the policy.
- d) This will entail the development of a concept document to facilitate discussion, sharpen the issues identified and carefully consider the policy options.
- e) This process may involve a literature review, analysis of reports, collection and review of existing legislation, site visits and stakeholder interviews.

STEP 3: ISSUE PROCESSING

There are six key areas for consideration during this phase, these are discussed below:

a.	Clarification of issues/Problem statement	refers to the issues being clarified and problem statements being developed.
b.	A project team	may be appointed for the task.
c.	Stakeholder analysis	looks at the various stakeholders that the policy is going to impact on and allocate clear roles and responsibilities and a participation model.
d.	Option consideration (including risk analysis) and choice	is an important part of this phase as this is where alternatives are selected from potential viable options, areas for further policy research are identified, potential risks are identified and ways to mitigate the risks are considered, cost benefit analysis is conducted and a motivation for choice is put forward.
e.	Determine budget	and other resources needed for the options
f.	Management/Project plan	May be developed

STEP 4: DEVELOP THE DRAFT POLICY

- a) The committee will undertake any further research, data collection from various sources (e.g. Internet / intranet/ databases etc.) to support decision making process
- b) Develop a draft of the policy.
- c) It is important that any draft of a policy should be scrutinised and approved by the governing body before proceeding with the consultation.

STEP 5: CONSULTATION

- a) Once the draft has been approved by the governing body, there should be wide consultation with all persons likely to be affected by the policy. Thus if a policy is likely to affect learners, the learner body or the Representative Council of Learners in the case of Secondary school, should be consulted. Likewise, policies which will affect educators, non-educator staff or parents should involve consultation with the affected groups. Governing bodies may, of course, consult with all sectors of the school community about a proposed policy, even if it is unlikely to affect all of them.
- b) This process may involve the preparation of a series of documents for distribution to stakeholders (for their inputs).
- c) Comments on any draft made by the persons consulted should contain motivations for any proposed changes. This will enable the governing body to assess the quality of the comments made and will assist the governing body to amend the draft if it is felt to be necessary.
- d) Wide consultation and careful consideration of all comments on any proposed policy is highly recommended as, if it is widely agreed to, the likelihood of a policy being rejected later will be reduced.
- e) Once all comments have been considered and the draft amended if necessary, it is suggested that the process of consultation be repeated to ensure that the amended draft has captured all the reasonable objections. Once this has been completed, the draft can be finalised.

STEP 6: DEVELOP THE FINAL DRAFT

- a) After evaluating the input made by various stakeholders on the working document a final draft is prepared.
- b) The SGB must scrutinize the final draft before presentation to the stakeholders.
- c) In scrutinizing the draft, the school governing body should ensure that the policy does not conflict with any of the constitutional principles already discussed here or with any existing national or provincial legislation or policy.

It should also be consistent with current educational thinking and with the ethos of the school.

STEP 7: POLICY APPROVAL PROCESS.

- a) The draft policy shall be presented to the School Governing Body for comment prior to a full parents meeting.
- b) Once the substance of the draft policy has been agreed to by all person who will be affected by it, it is advisable to have the draft proof-read and edited by a person or persons with the necessary skills and knowledge to do so.
The Object of this is to ensure that
 - o There are no spelling or grammatical errors in the draft,
 - o That it is written in the format recommended later in these guidelines; and
 - o That it does not conflict with the Constitution or any other national or provincial legislation or policy
- c) Once this process has been completed and all corrections made the policy together with the minutes of the consultative meeting shall be submitted to the District Director for certification.
- d) Once approved by the District Director, the policy should be entered into the school policy register, similar to the one published by Gauteng Department of Education.
- e) The approved policy is published on the school website; hard copies are then distributed to all the relevant stakeholders.

STEP 8: POLICY IMPLEMENTATION.

- a) The SGB must ensure that within 30 days after approval by the District Director the policy is brought to the attention of all stakeholders.
- b) It is often at the implementation phase that good policies fail. To mitigate this risk the following key steps must be followed:
 - o Involve implementers during the policy formulation phase to assist the implementation.
 - o Clear communication of the policies to all stakeholders.

- The policy should be mediated through meetings to ensure that stakeholders have a common understanding to facilitate smooth implementation.
- Development of an implementation plan. The plan outlines objectives and important dates. This makes monitoring the policy implementation easier and assessing the impact, easier.

STEP 9: POLICY MONITORING AND EVALUATION.

- a) Once a policy has been implemented, the governing body should ensure that it is constantly and regularly monitored in order to assess whether there is compliance in the school with the policy.
- b) The SGB in consultation with the SMT shall devise a mechanism for monitoring and evaluating the implementation of the policy, in consultation with the Monitoring and Evaluation unit (SPDM&E).
- c) The policy should also be evaluated regularly (e.g. Quarterly/yearly). Here the objective is to assess whether the policy is achieving its objectives. Assess regularly what impact the policy had on improving the services, what effect did the policy have on cost, quality aspects, value for money, etc.
- d) Monitoring will take place throughout the policy development and implementation processes to facilitate a review as may be necessary.

STEP 10: POLICY REVIEW

- a) Where it is concluded that a policy or aspects of is not achieving the desired results, it may need to be reviewed, or amended
- b) It should be remembered that policy is never static, and may need to be changed in the light of changing circumstances in the school or community or because of new legislation, regulations or policies emanating from the national or provincial department of education.
- c) Ideally, a policy should be reviewed annually.

7. THE POLICY FORMAT

The format provided below is useful, besides ensuring that that all policies are uniform in format, it ensures that policy needs identified, are met.

SCHOOL POLICY TEMPLATE



SCHOOL EMBLEM

[TITLE OF POLICY]

Table of Contents

1. **TITLE OF THE POLICY:**
2. **EFFECTIVE DATE:**
3. **DATE OF NEXT REVIEW:**
4. **REVISION HISTORY:**

As amended on: (Specify dates)
•
•

5. **PREAMBLE**

- A preliminary statement, introduction or background; or
- In cases where the legislation has been amended or reviewed, it could lead to mentioning of relevant statute.
- Underpinning principles (If applicable)
- You may use one or all of the above-mentioned statements

6. **PURPOSE OF THE POLICY**

This is an overall statement outlining why the organization is issuing the policy, and what the desired effect or outcome of the policy should be. In addition to this a sub-heading of Objectives may be used.

6.1 Objectives

These statements indicates what the organisation intends to achieve through the policy.

7. **DEFINITIONS AND ACRONYMS**

7.1 Definitions

- 7.1.1 Definitions provide clear and unambiguous definitions for terms and concepts found in the policy document.

- 7.1.2 If the policy has more than ten (10) definitions, it is suggested that these should be attached as an annexure.

No.	Term	Explanation

7.2 Acronyms

- 7.2.1 Acronyms are words made from initial letters of other words.
- 7.2.2 If the policy has more than ten (10) Acronyms, it is suggested that these should be attached as an annexure

No.	Acronyms	Explanation

8. APPLICATION AND SCOPE OF THE POLICY

- 8.1 Describing who the policy affects and which actions are impacted by the policy.
- 8.2 It may expressly exclude certain people, organisations, or actions from the policy requirements.
- 8.3 It is used to focus the policy on only the desired targets, and avoid unintended consequences where possible

9. LEGISLATIVE FRAMEWORK

- 9.1 Policy is shaped by legislation.
- 9.2 Legislation always arises within a context, because it sets out to regulate or control undesirable behaviours or decree certain behaviours or practices that are deemed to be desirable, necessary or possible.
- 9.3 Directorates are expected to list the relevant legislation as follows :

- a) List the Acts first (National then Provincial)
- b) List the REGULATIONS (National then Provincial)

For Example

- (1) National Education Policy Act, Act No.27 of 1996, as amended.
- (2) Education Policy Act, Act No. 12 of 1998, as amended
- (3) Admissions of Learners to Public Schools (General Notice 4138 of 2001)

10. RELEVANT POLICIES AND PROVINCIAL CIRCULARS

10.1 Directorates are expected to list relevant policies and provincial circulars to this policy.

11. POLICY STATEMENTS

11.1 Indicates the specific regulations, requirements or modifications to organizational behaviour that the policy is creating.

11.2 Policy statements are extremely diverse depending on the organization and intent, and may take almost any form.

12. SHORT TITLE

Directorates are expected to complete the following statement:

This policy shall be called (**NAME OF THE POLICY**)

13. DATE OF APPROVAL: Indicates when the policy comes into force.

Designation	Name of Principal/SGB Chairperson/District official	Signature	Date
Principal			
SGB Chairperson			
District official (Certifying)			

14. ANNEXURE/S (IF APPLICABLE)

14.1 Each annexure must have a reference on top e.g.

Annexure A

Page 1 of 3

Title of the policy: Admission Policy

Year: 2010