

Public School Admission Policy: Theory and Practice 7

This chapter analyses public school admission policy and factors that influence it in practice. A discussion of admission barriers to public schools is followed by a consideration of factors that have a discriminatory effect on admissions, for example, language and language tests, school fees and school zoning. Case studies that influence such policy are examined, highlighting contradictions between policy interpretation and South African reality. Finally, it is observed that despite the constitutional imperatives of decentralisation and parent participation in school education, and the generally positive improvement of democratisation in this regard, certain public school governing bodies still use their powers to discriminate against learners and refuse them admission to school.

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This chapter analyses admission policy and practices in public schools within the context of decentralisation and the devolution of powers to various structures such as provincial departments of education, district divisions for education and school governing bodies. First, it discusses legislative frameworks within which policies are implemented, highlighting compulsory legal requirements that must be observed and restrictions

imposed in the process of governing, managing and, finally, implementing these policies. Secondly, case studies on learner admission are scrutinised, particularly discriminating factors that impact on learner admission, such as language, language tests and school zones. Finally, the chapter concludes with the challenges facing public school admission, especially those underlying the constitutional imperatives of equality and equity.

7.1 Legal and Policy Framework on Learner Admission

The Constitution of the Republic of South Africa, 1996 (hereafter Constitution) prohibits unfair discrimination in section 9 and, in this sense, provides the equality framework on which all education laws and policies, including policies on admission, must be based. The equality provision (section 9)

specifically prohibits direct and indirect unfair discrimination by the state and other persons 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.

In a similar vein it protects diversity in terms of culture, language and religious beliefs in sections 15, 30, and 31. Section 31 provides that people belonging to a cultural, religious or linguistic community are free to enjoy with other members of the community, their culture, religion and use of their language and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society. However, the rights outlined in this section must be consistent with the provisions of the Bill of Rights. Language diversity is also protected in public schools:

Everyone has the right to receive education in the official language or languages of choice in public schools where that education is reasonably practicable . . . (section 29(2)(1)).

The prohibition of all forms of unfair discrimination has a direct bearing on the governance, management and implementation of the admission policy of public schools in South Africa. Originating in the Constitution, the admission of learners in public schools in South Africa is governed and regulated by the Admission Policy for Ordinary Public Schools (hereafter Admission Policy) issued in terms of the National Education Policy Act 27 of 1996. The South African Schools Act 84 of 1996 (hereafter Schools Act) gives effect to the Admission Policy and regulates this process and spells out clearly the role, powers and functions of the structures responsible for the process of admission, but also prescribing what is legally permitted and prohibited when admitting learners to public schools (section 5). More significantly, the governance and management of admission of learners to public schools are decentralised to public schools and communities through governing bodies in terms of section 5(5) of the Schools Act. The main purpose of decentralising policy to individual public schools is to encourage community participation in education in South African schools.

Concerning the administration of admissions, the Schools Act and the Admission Policy provide the following: First, the Head of Department (hereafter, HoD) of provincial education must determine a process of registration for admission to public schools and public school governing bodies should encourage parents to apply for the admission of their children before the end of the preceding school year. Secondly, the HoD is responsible for the administration of admission of learners

to a public school, though this responsibility may be delegated to officials in the Department. Thirdly, the HoD is required to co-ordinate the provision of schools and administration of admissions to ensure that all eligible learners are suitably accommodated in public schools (items 5, 6 and 8). The Admission Policy further prescribes the requirements and places restrictions on admission of learners to public schools.

These include:

- The HoD must determine a process of registration for admission to public schools to enable the admission of learners to take place in a timely and an efficient manner (item 5);
 - The HoD is responsible for the administration of the admission of learners to a public school and may delegate the responsibility for the admission of learners to a school to officials of the department (item 6);
 - The admission policy of a public school is determined by the governing body of the school, and such a policy must be consistent with the Constitution, the Schools Act and applicable provincial law (item 7);
 - The admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate against an applicant for admission (item 9);
 - Governing bodies of public schools are prohibited from administering any tests for purposes of admitting or denying admission to public schools, or to direct or authorise the principal of the school or any other person to administer such test. Only in specialised courses and programmes (for example dance or music) may suitable tests be conducted to assist in decisions regarding placement (item 11);
 - A learner may not be refused admission to a public school on grounds that the parent (a) is unable to pay or have not paid school fees;
 - (b) does not subscribe to the school's mission statement and the code of conduct of the school; or
 - (c) has refused to enter into a contract in terms of which parents waive their claim for damages arising out of the education of the learner (item 10).
- Items 33-35 deal with school zoning. An HoD may, after consultation with representatives of governing bodies,

determine school feeder zones for ordinary public schools in order to control learner numbers of schools and co-ordinate parental preferences. Item 34 provides that if a feeder zone is created:

- (a) preference must be given to a learner who lives in the feeder zone of a school or who resides with his or her parents at an employer's home in the feeder zone;
- (b) a learner who lives outside the feeder zone is not precluded from seeking admission at whichever school he or she chooses. However, access to a chosen school cannot be guaranteed;
- (c) a learner who lives within the feeder zone of, for example, school A must be referred to the neighbouring school B if school A is oversubscribed. If school B is in a reasonable distance must be found by the HoD. If that is not possible, school A must admit the learner;
- (d) the preference order of admission is: i. learners whose parents live in the feeder zone, in their own domicile or their employer's domicile;

- ii. learners whose parent's work address is in the feeder area; or
 - iii. other learners on a first come first served basis.
- Other important issues dealt with in the Admission Policy include the following: documents required for admission (items 14-18); admission of non-citizens (items 19-21); learners with special education needs (items 22-25); age requirements for admission to an ordinary public school or different grades of a school (items 26-29); rights and obligations of parents (items 39-40); home education (items 41-42).

In dealing with the organisation and governance of public schools, the Schools Act embodies specific provisions regarding admission policy in public schools. Section 5(1)-(4) cover more or less the same topics dealt with

7.2 Case Studies on Admission to Public Schools

In this section some of the contradictions and conflict that may arise in the process of determining and administering public school admission policy are highlighted. The policy process involves various stakeholders, for example provincial education departments, district offices and governing bodies of public schools, and highlights the possible disjunc-

under the Admission Policy, but more specific information is given with regard to age requirements for admission to a public school in section 5(4), for example, a Grade R learner must be age four, turning five in the year of admission; a Grade 1 learner must be age five, turning six in the year of admission; the age requirements are subject to availability of suitable school places and other educational resources, and the HoD may admit a learner who is under age if a good cause is shown for such an admission and such a learner complies with other criteria set by the Minister, such as requirements for an under-age learner and age requirements for different grades. The Act further stipulates in section 5(5) that the admission policy of a public school is made by its governing body, subject to the Act and applicable provincial legislation. Provisions relating to the admission application, the duty of the HoD to inform parents in the case of a refusal to admit a learner, and the opportunity of appeal to the Member of the Executive Council (hereafter MEC) responsible for education in a province in the case of such a refusal, are matters dealt with in section 5(7)-(9).

It is apparent that public school admission policy reflects and illustrates the working of the decentralisation principle in education. The Admission Policy, drafted by the Minister, deals with broad national issues regarding admission to public schools generally, and provides for the determination of the admission policy at institutional level by the public school itself. The Schools Act reflects the same principles in the context of public school governance and empowers the governing body of a public school to determine the admission policy of the school, subject to the Constitution, the Schools Act and relevant provincial legislation (for example Gauteng, Northern Cape or Western Cape school education laws, where applicable for a specific province).

ture between policy interpretation and implementation in practice.

7.2.1 Language as a Discriminating Factor

The protection of language and cultural rights is an intrinsic part of the education of every person. Not only does recognition of

language and culture reflects respect for human dignity, it also undermines a specific identity as well as respect and recognition for diversity. (Currie and De Weal, 2005: 273-275, 628-628). Language and cultural freedoms (mentioned above) are protected by the Bill of Rights and must be upheld by the admission policy of public schools, as demanded by the Constitution.

The implementation of a public school admission policy, and the motivations behind such implementation, was illustrated in *Makwane v Laerskool Potgietersrus 1996 3 SA 223 (T)*. The High Court dealt with the alleged discriminatory admission policy of a public school and held that the Potgietersrus Laerskool wanted to implement a racist admission policy under the pretext of preserving cultural and language differentiation provided for in sections 8 (equality), 10, 24(a) and 32(c) of the 1993 Constitution. The Court held that the equality clause prohibits "unfair" discrimination, and although discrimination on the basis of culture and language is not per se unconstitutional, the school could not prove the fact that within the circumstances of the case, its refusal to admit black learners was not to further its racist motivated admission policy (Bray 2005: 80).

In the recent case of *Western Cape Minister of Education v Governing Body of Milro Primary School 2005 (10) BCLR 973 (SCA)* the Supreme Court of Appeal dismissed the claim by the Western Cape Department of Education that Milro Primary School, an Afrikaans-medium school, refused to convert to a parallel-medium school because it wanted to keep the school an exclusively Afrikaans-medium school. The court ruled in favour of the governing body of Milro Primary School, arguing that although section 29(2) of the Constitution grants everyone the right to receive education in an official language at public educational institutions where such education is reasonably practicable, it does not confer the right to receive such an education at each and every public educational institution. It also held that section 6(2) of the Schools Act vests the governing body of a school and not the Department of Education with powers to determine the language policy of the school. The discontent about this judgment and the contradiction between policy implementation and education realities was articulated by the spokesperson for the MEC of the Western Education Department who noted that language continues to be effectively used to

exclude learners from certain schools in South Africa, in this case in the Western Cape, where Afrikaans was forced upon black African communities and so-called coloured communities. In this regard the MEC pointed out that out of approximately 1 500 primary schools in the Western Cape, approximately 800 are Afrikaans single-medium schools. These numbers, he argued, do not reflect the demographics of the Western Cape population that comprises a majority of blacks, including the so-called coloured learners, who use English as their medium of instruction (Edwards, 2006).

In *Seodin Primary School v MEC of Education of Northern Cape 2006 (1) All SA 154 (NC)* the Northern Cape High Court asked ~~the~~ *the* Northern Cape Education Department, stating that the three Afrikaans-medium schools, the Kalahant High School, Seodin Primary School in Kuruman and the Noord-Kaapland Agricultural High School in Jan Kempdorp could not remain exclusively Afrikaans-medium schools, as this would exclude learners who use English as the medium of instruction. Thus, the three Afrikaans-medium schools were forced to become dual-medium schools in order to accommodate learners in the area who use English as the medium of instruction.

Contrary to the Milro Primary School case, the court in the Seodin Primary School case dismissed the application by the governing bodies to keep their schools exclusively Afrikaans-medium schools (South Africa: News, 2005).

The two recent contrasting judgments (above) illustrate the disharmony between policy interpretation and education reality. Although it is acknowledged that the determination and implementation of the admission policy by the public school governing body underlines the principle of decentralisation and promotes community participation in a democratic education system, it may potentially undermine the policy intentions of a government.

7.2.2 The Use of a Language Test as a Discriminating Factor

As determined in the Admission Policy above, admission tests may be used only in cases where educational needs demand such a test, and where such a test would be serving the educational interests of the learner (Item 11). An admission policy cannot unfairly discriminate (directly or indirectly) against any learner

on any ground listed in the equality clause section 9) of the Bill of Rights. In an investigation regarding the relationship between language and race in learner admission to public schools, De Klerk reserves that school principals were careful to deny outright flouting of the regulations against using language tests as the basis for admission decisions (2002: 3-6). Nevertheless, it was acknowledged that various forms of informational screening have been used in combination with school records from previous schools to gauge a learner's proficiency in English and to discourage applications from learners whose English was inadequate (Fiske and Ladd, 2004: 94).

7.2.3 School Zoning as a Discriminating Factor

As mentioned in the discussion of the Admission Policy above (Items 33-35), school leader zones are instituted to control learner numbers at school and to co-ordinate parental preferences, but need not be geographically adjacent to the school, for example. Against this background, school zones should contribute to the removal of discriminatory practices that previously restricted the movement of learners, especially from the so-called "township" schools to the former "Model C" schools. School zones are therefore instituted to enhance the democratisation of education in general and the governance policy of expanding access to school education, particularly. In practice, school zoning seems to have been introduced to control overcrowding in public schools situated in city centres and urban suburbs that are performing better than other public schools, and to remedy the anomalies that were inherent in admission policies that discriminated on the basis of race.

However, school zoning in post-1994 South African schools cannot be removed totally from the previous context where learners could not be admitted to a school designated for a different race (ethnic) group even if they lived close to that particular school. Since 1994 the number of learners in education in South Africa has doubled, especially in urban areas, and this has necessitated some form of control and management of admissions to public schools. The school zoning system should therefore be understood against the backdrop of changes in the school population that have become unpredictable as a result of the movement of people from

rural areas and from neighbouring countries to settle in informal settlements situated close to cities. Thus, the rapidly growing school population, is causing overcrowding in public schools that are performing well, more specifically those public schools that were previously classified as "Model C" schools. This situation has necessitated some form of control of enrolments and admissions. Comparative research in New Zealand indicates that school zoning was seemingly reintroduced to utilise the existing network of schools more effectively and efficiently (Morris 2006: 1) and thus structured to achieve certain objectives, including the following:

- a school's enrolment scheme must contain a home zone with clearly delineated boundaries;
- students who live in that zone have an absolute right to enrol at the school;
- students from outside the zone can enrol at the school, but only when there is space for them;
- schools have no discretion to admit learners coming from a particular zone in order to fill-in spaces in their own zones. Admissions of learners outside prescribed zones is only permissible in the case of students who wish to pursue a special programme and such students are the siblings of current students, siblings of former students, or children of board employees (LaRoque, 2005).

In response to a claim that school zoning promotes equality, LaRoque pointed out that the zoning system rested on the dubious assumption that schools across New Zealand were homogeneous to the extent that they were providing equal quality of education and equal opportunities for children to succeed (LaRoque 2005). Morris however questions the homogeneity hypothesis arguing that New Zealand has changed and therefore has become generally diverse in terms of philosophy, expectations, resources and ethnicity (Morris 2006: 4). Drawing from Morris' argument, it seems increasingly problematic to justify a school zoning system because such a system would probably work in egalitarian societies which no longer exist in practice (Morris 2006: 4)

In countries such as South Africa where segregation of residential areas along racial lines had been government policy, and where these legacies are still being reflected in practice today, school zoning has the danger of

perpetuating and reinforcing societal inequities, especially where residential areas are still being segregated along racial lines.

A key issue in considering the school feeder zone system should therefore be the extent to which it promotes or retards equality and equity in school education.

7.2.4 School Fees as Discriminating Factor

In addition to race and language, the payment of school fees is another variable that is often subtly and covertly used to prevent the admission of certain learners to certain public schools. Although provision has been made for "no-fee" schools, in most public schools school fees are determined by the parents' community of a school, and certain exemptions that cannot pay school fees. However, once schools fees have been determined and parents become responsible for the payment of such fees, the governing body may enforce such payment by legal means (Schools Act, sections 39-41). School fees are charged in the main to augment school funds and to enable governing bodies to spend more money on additional resources. School fees are therefore crucial in promoting and maintaining quality education at the school.

De Klerk's research suggests that, although learners were careful not to unlawfully exclude learners from poor family backgrounds on the basis of race, many schools do consider the ability of a family to pay fees when imple-

menting admission policies (De Klerk, cited by Fiske and Ladd, 2004: 143). Rothmayr investigated school fees in public schools, arguing that the "practice of charging school fees to attend public schools is the story of a racial monopoly that has become locked into the institutional structures and relationships of South African education" (2004: 1). In earlier research Rothmayr developed the "lock-in" model of racial inequality to describe the way in which institutional processes, like school financing, subtly perpetuate the power of racial monopoly (2000: 728). In terms of this theory, learners from previously disadvantaged communities and townships have become locked-in to the former segregated residential areas and can therefore only find admission in the so-called "township" schools (now public schools) that still exist in the post-1994 period. In terms of Rothmayr's conceptual frame, learners from disadvantaged communities are, firstly, locked-out of zones in which well-performing public schools (previously "Model C" schools) are located and, secondly, locked-in in zones comprising public schools that lack resources, a culture of learning and teaching or are simply still dysfunctional (previously so-called "township schools"). The results illustrate how racial disparities have become permanently attached to race and to separate residential areas that were specifically designated by the apartheid government for people according to race.

7.3 Closing Remarks on Public School Admission Policy

One of the key structures involved in the determination and implementation of learner admission policy is the public school governing body. The fact that public schools are self-governing (or autonomous) schools is also consistent with the negotiated settlement designed to protect the interests of various class-based and ethnic (minority) communities in post-apartheid South Africa (Fiske and Ladd, 2004: 84).

Karttson, McPherson and Pampallis (2002: 177) however observe the subtle and indirect ways used by certain public schools to refuse learners admission on various grounds. These incidences often occur in the so-called former "Model C" schools (Pampallis 2003: 148-149). In this light various authors argue that it is ironical that the very decentralisation

that has led to greater democratisation of schooling, has also contributed to the perpetuation of inequities among schools. But they also argue that inequities are now drawn increasingly along class rather than racial lines, and that although racism continues to be an important factor limiting the opportunities of blacks seeking admission to formerly white schools, their opportunities of making progress after they have been admitted are often frustrated by social and cultural issues (Karttson et al, 2002: 177).

Together with factors regarding language and school fees, the school zoning system has, as a result of its "neutrality", become a most effective strategy in the hands of certain public school governing bodies to discriminate against learners coming from the so-

called outside zones. The school feeder zone has therefore become a gatekeeper in the admission of learners because it appears to be politically and racially "neutral" and is therefore seldom questioned as a criterion for the determination of an admission policy. Reality in South Africa shows that, firstly, far from being "neutral", school zoning at best reflects the past policy of segregated residential areas with so-called "township" and former "Model C" schools continuing to operate separately; secondly, the criteria determining such zones are unclear, arbitrary and seemingly determined by the former "Model C" schools.

Assuming that heterogeneity and diversity of communities and of schools are universal phenomena, a school zoning system has the potential of reinforcing inequities as it is by definition linked to differentiated residential areas for different groups. This is so because residential areas in many contexts reflect socio-economic status, religious beliefs, language, castes and race. School zoning therefore often trap learners into their own particular communities and schools, thereby compromising parents' choice and preferences. Plank and Syles (2003: viii) point out that geographical school zoning is a controlling mechanism assigning learners to attend a particular school on the basis of "objective criteria". However, they are similarly conscious that assignment of learners to a parti-

cular zone may also be based on gender, race, or measured aptitude which implies that school feeder zones promote neither equality nor equity in communities characterised by diversities. This argument supports reservations expressed by LaRoque (2005: 6-10) and Morris (2006: 2) about the assertion that school zoning could ever promote equality.

Mahonisi argues that giving public school governing bodies the power to determine the school admission policy was perhaps too ambitious, resting on the notion of an ideal society but ignoring the fact that South Africa is still, in practice, a racially divided society (Mahonisi, 2001: 1-3). He attributed the continuing discriminatory practices in admission of learners to public schools to the governing bodies of certain public schools (former "Model C" schools) who, in exercising the power to determine school policy, and as a structure created to encourage parent participation in the education of the learners, exclude learners of other groups. Consequently, despite the good intentions of involving parents in education through public school governing bodies, and despite restrictions that have been placed on what governing bodies can and cannot do, the perception is that some governing bodies generally abuse their powers to determine admission policy. They thus delay transformation by barring learners access to public schools on the basis of race (Mahonisi, 2001: 4).

The discussion therefore suggests that, despite unambiguous policies prescribing requirements and restrictions for admission, the decentralisation of the governance and management of learner admission policy to public school governing bodies, though legally sound, have inherent contradictions and challenges that are still prevalent in South African public schools ten years into democracy. Consequently, although public schools are in terms of the Constitution and the Schools Act not allowed to unfairly discriminate against a learner in terms of their admission policy, some governing bodies subtly and covertly continue to refuse certain learners admission on the basis of grounds such as race, language, inability to pay school fees, school zoning, to mention just a few

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