



**Date:** 2 September 2025

**To:** The Director: Legal Services

Department of Basic Education

222 Struben Street

Pretoria

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**By Email:** [AdmissionRegz@dbe.gov.za](mailto:AdmissionRegz@dbe.gov.za)

## **Comments on Draft Regulations Relating to the Admission of Learners to Public Schools**

*(Government Gazette No. 53119, 6 August 2025)*

### **Executive Summary**

The Pestalozzi Trust submits these comments on the Draft Regulations Relating to the Admission of Learners to Public Schools (Government Gazette No. 53119 of 6 August 2025). Guided by the constitutional imperatives of the best interests of the child (section 28(2)) and participatory democracy, accountability, and transparency (section 1(d)), we raise both procedural and substantive concerns.

Our key points are as follows:

- **Hybrid Hearings**

The current written comment process is insufficient. Given the twelve-year history of inadequate consultation since the inception of the BELA process in 2013, we call for a supplementary programme of hybrid public hearings. These must include at least one physical hearing in every province, supplemented with online participation, proper notice, documentation, and feedback.

- **Separate Regulations for Interim Homeschooling**

Interim homeschooling (families homeschooling temporarily while awaiting placement in schools) presents unique challenges and is distinct from established home education. We therefore recommend that separate regulations be developed for interim homeschooling, after proper consultation, to avoid conflating this category with long-term home education.

- **Substantive Recommendations**

The Trust highlights recurring challenges with transfer cards, admission of learners from home education into schools, and lack of clear guidelines for documentation. We recommend that schools be instructed to accept a wider range of documents—including parental reports, sworn affirmations, psychological evaluations, and standardised literacy/numeracy tests—beyond the narrow requirement of competent assessor reports at the end of grades 3, 6, and 9. These measures would give effect to the BELA Act, ensuring that learners are not unfairly excluded or delayed in their educational trajectory.

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## **1. Introduction**

The Pestalozzi Trust welcomes the opportunity to comment on the proposed *Admission of Learners to Public Schools Regulations*. As always, our perspective is guided by the best interests of the child, and by our mandate to protect the constitutional rights of parents and learners.

Our submission is framed by two constitutional imperatives:

- The best interests of the child, as entrenched in section 28(2) of the Constitution; and
- The foundational constitutional values of participatory democracy, accountability, transparency, and openness.

We emphasise that meaningful consultation has not yet occurred, despite the Department of Basic Education (DBE) having had more than twelve years since 2013 to ensure transparent processes.

The Trust acknowledges the importance of the current call for written public comment, but notes that this is inadequate, given the factors set out below.

We call for a supplementary programme of hybrid provincial and national hearings to secure genuine public participation, the drafting of specific regulations in respect of “interim homeschooling”, and make proposals for amendments to the Draft Regulations.

## **2. Background to the Pestalozzi Trust**

Home education has been legal in South Africa since 1996. Its legalisation gives meaningful content to a number of fundamental rights enshrined in the Constitution. The Pestalozzi Trust was founded in 1998 as civil rights organisation to protect the rights of families to educate their children at home according to their religious and/or philosophical persuasions, pedagogical convictions, and cultural traditions.

We advocate for reform of education law and policy, with a focus on parental rights, and the protection of learners’



interests. We are the largest homeschooling organisation in the country and work closely with associations of home educators, academics and education law and policy experts both locally and abroad.

It is a core principle of the Trust that we seek to resolve any conflict that affects our members and only resort to legal action as a last resort. In this we adhere to a core principle of the Children's Act i.e. "In any matter concerning a child- a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided ....."<sup>1</sup>

We trust that the changes to the draft Admission of Learners to Public Schools Regulations (2025) suggested in this document will serve to eliminate much of the conflict experienced by home learners when entering or leaving the public schooling system. The Trust has had to regularly assist home schoolers who are in this situation and has extensive experience of the practical problems encountered and how this can be traumatic both for children and parents. We are, therefore, in a unique position to make recommendations in this regard.

Over the past 25 years, we have advocated for the rights of parents and learners to be truly heard in contexts where the state fails to uphold the constitutional principles of transparency, fairness, and accountability.

The Trust has consistently engaged with the Ministry, Department, Parliament, and provincial legislatures on the BELA Bill and related policy instruments. We are, therefore, uniquely positioned to assess both the historical trajectory of this regulatory process and the deficiencies in public participation that now confront the public.

### 3. Procedural Considerations

#### 3.1 Failure to Afford the Public a Meaningful Opportunity to Engage

Section 1 of the Constitution establishes South Africa as a democratic state founded on accountability, responsiveness, and openness. These foundational values demand more than mere formal notice—they require meaningful, informed, and accessible participation by the public.

The Constitutional Court has repeatedly affirmed that "public participation is not a mere formality; it is a constitutional obligation that lies at the heart of our democratic project." In *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC), the Court stressed that participation must be real and effective, not perfunctory.

Measured against this standard, the DBE's historical conduct falls woefully short:

- **Origins of the BELA process (2013–2017):** The Basic Education Laws Amendment Bill began development in 2013. When it was released for public comment in 2017, the empowering provisions authorising admissions

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<sup>1</sup> The Children's Act 38 of 2005 (hereafter "the Children's Act"), s(6)(4).

regulations were already included. Yet, the public was provided with no indication of the scope or content of such regulations. This deprived stakeholders of the ability to engage meaningfully with matters that would ultimately prove highly consequential.

- **Draft Admission Policy (2021):** In January 2021, the Department called for comment on a draft *Admission Policy for Ordinary Public Schools*. The Pestalozzi Trust and many members of the public submitted comments in good faith. Yet, no feedback was ever issued, no revised draft was published, and the process was left to stagnate. This neglect, in and of itself, undermines transparency and violates the public’s legitimate expectation that their views will be considered and addressed especially as this policy has been in effect reworked and re-introduced in the current proposed regulations. These regulations lack the guidance of a thoroughly developed policy based on consultation.
- **Parliamentary Process:** During deliberations on the BELA Bill, this dormant draft policy was never presented to Parliament, nor to the public. Citizens repeatedly requested clarity on what underlying policies would be transformed into regulations. These requests were ignored, and members of the public were instructed to “stick to the text of the Bill.” This instruction deliberately obscured the policy context, leaving out matters as significant as requirements for vaccination certificates upon enrolment. Such concealment is fundamentally inconsistent with constitutional principles of openness and participatory democracy.
- **Elapsed time and squandered opportunity:** The Department has had twelve years since 2013 to conduct genuine engagement with stakeholders on the admission policy. Instead, the public is only now, in 2025, confronted with detailed regulations that were never transparently connected to the BELA Bill. This delay and obscurity cannot be reconciled with the State’s duty to foster open democratic involvement.

### 3.2 Neglect of Transparency and Responsiveness

Transparency requires that government processes be intelligible and open to scrutiny. The neglect displayed here undermines public confidence:

- No reasons were ever provided for the dormancy of the 2021 policy.
- No explanation was offered as to why Parliament was not furnished with the relevant draft when considering the BELA Bill.
- No attempt was made to proactively disclose the controversial elements of the Regulations, such as immunisation requirements, during the legislative process.

This opacity directly contravenes the constitutional commitment to “openness” (section 1(d)) and the duty of organs of state to respond reasonably to public input.

### 3.3 Participatory Democracy as a Constitutional Imperative

Participatory democracy is not ornamental; it is substantive. In *Matatiele Municipality v President of the RSA* 2006 (5) SA 47 (CC), the Constitutional Court emphasised that consultation is central to the legitimacy of law-making. Where consultation is inadequate, the democratic process is compromised.

Here, the democratic deficit is stark:

- The public was effectively excluded from engaging with the true content of the regulations during the BELA Bill process.
- Requests for clarity were rebuffed, despite repeated appeals by civil society organisations, including the Trust.

### 3.4 Request Arising from Procedural Considerations

In light of these failures, the Pestalozzi Trust respectfully calls on the Minister to:

- Convene a series of hybrid public consultation sessions, with at least one physical meeting in every province, supplemented by accessible online participation.
- Ensure proper notice, documentation, and feedback, so that stakeholders can engage on an informed basis.
- In these session correct past shortcomings by proactively disclosing and addressing all controversial elements of the Regulations, including those concealed during the BELA process.
- Affirm the principle of participatory democracy, not merely by formal compliance with notice requirements, but by fostering genuine dialogue that allows parents, learners, and communities to shape the rules that govern them.

The Trust acknowledges that such consultation entails costs. However, the Constitution does not permit cost or convenience to trump participatory democracy. Regulations of this magnitude, touching directly on access to public education, a fundamental right under section 29(1)(a) of the Constitution, cannot lawfully be promulgated without meaningful public participation.

Arguments that such a process will delay the implementation of the Bill are ill-considered. The DBE under the Ministry's guidance has developed extensive guidelines that can serve while the appropriate amount of time is taken to fully engage the public and allow them to air their concerns. This is an approach that has been noticeable absent in the twelve years of development and passing of the Bill and Act.

The Trust can without hesitation confirm that this “more haste less speed” approach has already made the implementation of the home education provisions of the BELA Act a signal failure in most provinces. Of the thousands of home schoolers who were only afforded 30 days to apply for registration, the 30 days beginning on

Christmas Day, nine months later only one province has processed the majority of applications. That this would be the case was highlighted in submission after submission by home schoolers.

## **4. Challenges faced by home learners when moving to and from public schools**

The inclusion of home education in the South African Schools Act (SASA) took place against the backdrop of fundamental changes to the schooling system as a whole and affected only a few thousand learners. Incidents where a learner left the public schooling system to start home educating, or entered the public schooling system after being home educated, were few and far between, although they did give rise to problems.

Since 1996 the number of home learners has steadily climbed. In March 2020, the on-set of the COVID-19 pandemic caused a sudden and major influx of learners from both public and private schools into the home education sector, many of whom returned to the schooling sector after the pandemic. Additionally, a growing sector of “interim home schoolers”, who homeschool while awaiting space in public schools, has made movement between home education and the schooling sector more frequent.

Interim home schoolers present a unique challenge as they do not have the intention of homeschooling nor adopting the philosophy and practices of home schooling. We recommend that separate regulations to regulate “interim homeschooling” be drafted and adopted after the hybrid consultation sessions listed above are concluded. We trust that the following proposals will contribute positively to the discussions required to make effective legislation a reality.

The Pestalozzi Trust has identified two key challenges faced by home learners entering and leaving the public school system which, if not addressed in the Admission of Learners to Public Schools Regulations (2025), will continue to negatively affect these learners.

### **4.1 Home learners experience challenges in obtaining transfer cards**

Members of the Pestalozzi Trust often report that, when they attempt to remove a learner from a public school to start home education, the school refuses to supply the parent of the learner with a transfer card. In many cases, the school will insist that the parent supply proof that the learner was successfully registered with their Provincial Education Department *before* the school will provide a transfer card.

When attempting to register for home education through the national webpage of the Department of Basic Education (DBE) all provincial application forms for registration for home education state that the parent must provide the following: [a] “*Certified copy of the transfer certificate from previous school (if Applicable)*”.

This leaves parents in a catch-22 situation where they can neither obtain a transfer card nor register for home education.



This problem was addressed in a meeting on July 7<sup>th</sup>, 2020 between officials from the Department of Basic Education and members of the home education community. In this meeting, where representatives from the Pestalozzi Trust were also present, officials from the DBE confirmed the following:

- i. Registration of a home learner is a matter between the parent and the PED, and public schools do not play any role in the registration;
- ii. Public schools should de-register the learner on the parents' request;
- iii. Public schools may not refuse to provide a transfer card to a learner leaving the school with the intention to start home education; and
- iv. Parents do not need to provide a public school with proof of registration with the Provincial Education Department when de-registering a learner.

However, public schools continue to this day to refuse to provide transfer cards to learners who leave the public school system with the intention to start home education.

### ***RECOMMENDATION***

*The Pestalozzi Trust therefore recommends that the Admission of Learners to Public Schools Regulations (2025) provides guidelines to public schools on this matter so that future challenges may be avoided.*

## **4.2 Home learners experience challenges being accepted and placed when applying for admission to an Ordinary Public School**

Members of the Pestalozzi Trust often report that, when they attempt to apply for admission and placement of a learner at a public school, the school refuses to admit and place the learner without a transfer card, formal report, and, in many cases, a portfolio of evidence.

The schools' confusion on this matter is somewhat understandable, as the current legislation does not provide guidelines for admitting and placing a learner who is being admitted from home education. Although the Pestalozzi Trust is happy to see that this issue is addressed in section 13(11)(c) of the draft regulations, the suggested provision unfortunately does not take into account the home education provisions in section 51 of the SASA, as amended by the BELA Act 32 of 2024.

In section 13(11)(c) of the draft regulations, the following is proposed:

*“If the transfer card is not available, the principal of the receiving school may admit the learner and place the learner in a grade on the basis of one of the following:*

- (a) ...

(b) ...

***(c) where the learner is registered for home education, a report issued by a competent assessor stating the last grade.”***

However, in the SASA, as amended by the BELA Act 32 of 2024, in section 51(2)(b)(iii)(aa), the parent undertakes to: “*arrange for the learner’s educational attainment to be assessed by a competent assessor **at the end of each phase**, up to the end of the year in which the learner reaches the age of 15 years or completes grade 9, whichever occurs first.*”

In section 51(8), the phases are indicated as follows: *Foundation Phase (grades R to 3), Intermediate Phase (grades 4 to 6) and Senior Phase (grades 7 to 9).*

**A competent assessors report by a registered home learner will therefore only be available at the completion of Grade 3, 6, and 9.** For example, a home learner be admitted at any other time, a competent assessors report will not be available. Most notably this may cause an issue where a home learner completes grade 7 at home but seeks to be admitted to a public school for the high school years starting in grade 8.

Although the status of the Policy on Home Education (2018) is uncertain after that passing of the BELA Act, it is also worth noting that the Policy allows parents to set their own promotion and retention requirements for grades subject to the provision in section 18.7(1) of the Policy on Home Education as quoted here:

*A parent may set his or her own promotion and retention requirements provided these are equal to or exceed the standard or requirements set in the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement (NCS) Grades R-12.*

## **RECOMMENDATIONS**

- ***In the light of the fact that parents are not required in terms of the BELA Act to have a formal report for any other grades except grades 3, 6, and 9, and that the Policy allows parents to set their own promotion and retention requirements in terms of the Policy, the Pestalozzi Trust recommends that public schools be instructed to accept a variety of other documents to facilitate acceptance in and placement of a learner in a public school.***

***Provision should be made for at least the following documents:***

- 1) A written report issued by a parent;***
- 2) A sworn affirmation by a parent stating which grade level the learner attained;***
- 3) results of a test used nationally or internationally to determine the level of numeracy and literacy; or***



*4) a signed evaluation by an education psychologist.*

- *In addition, the Head of Department should provide a transfer certificate, which is either handed to the parent or sent to the principal of the receiving school.*

## 5. Conclusion

The draft Admission of Learners to Public Schools Regulations (2025), as currently framed, do not adequately provide for the movement of learners between home education and public schooling. This has already caused confusion, unnecessary conflict, and administrative burdens for parents, schools, and officials alike.

We respectfully request that the Minister and Department:

- **Convene hybrid hearings** at provincial and national levels to secure genuine public participation;
- **Develop separate regulations** to govern the unique category of interim homeschooling; and
- **Incorporate the Trust's substantive recommendations** to remove uncertainty, provide clarity, and safeguard learners' constitutional right to education under section 29(1)(a).

If these requests are implemented, the Regulations will not only align with constitutional requirements but also ease the practical challenges faced daily by both schools and families, thereby serving the best interests of the child.

The Pestalozzi Trust hopes that the additions and changes suggested above will serve to clarify some key issues and eliminate the challenges faced by schools and home-based learners.

Kind regards

Mrs CE van Oostrum

**(CEO: Pestalozzi Trust)**

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## ANNEXURE A

### Clause-by-clause comments on the draft Admission of Learners to Public Schools Regulations (2025)

No.	Regulations section	Wording	Comment	Proposed Wording
P1	Section 13(10)	When a learner transfers from one public school to another, the principal must complete a transfer card and hand it to the parent or forward it to the principal of the receiving school.	Although this clause provides clear guidelines for the transfer between public schools this does not provide clear guidelines for learners who transfers between <b>a public school and home education.</b>	A section may be added after section 13(10): <i><b>“When a parent informs a public school that they are removing a learner from the school to home educate the learner, the principal must complete a transfer card and hand it to the parent.”</b></i>
P2	Section 13(10)	When a learner transfers from one public school to another, the principal must complete a transfer card and hand it to the parent or forward it to the principal of the receiving school.	Although this clause provides clear guidelines for the transfer between public schools, this does not provide clear guidelines for learners who transfers between <b>home education and a public school.</b>	A section may be added after section 13(10): <i><b>“When a learner transfers from home education to a public school, the Head of Department must complete a transfer card and hand it to the parent or forward it to the principal of the receiving school.”</b></i>
P3	Section 13(11)	If the transfer card is not available, the principal of the receiving school may admit the learner and place the learner in a	This clause does not provide for learners who apply for admission from home education in a grade other than grade 4, 7, or 10. A competent	Remove section 13(11). Add a separate section after section 13(11) that reads as follows:

		<p>grade on the basis of one of the following:</p> <p>(a) The last report card issued by the previous school; or</p> <p>(b) A sworn affirmation of the parent stating the reason for not having the transfer card and the grade the learner attended at the previous school, or</p> <p>(c) where the learner is registered for home education, a report issued by a competent assessor stating the last grade.</p>	<p>assessors report in terms of SASA (as amended by the BELA Act 32 of 2024) Section 51(2)(b)(iii)(aa) only requires a competent assessors report at the end of each phase, which is at the end of grades 3, 6, and 9, as seen in section 51(8).</p>	<p><b><i>“Where a learner was receiving home education the principal of the receiving school may admit the learner and place the learner in a grade on the basis of the following documentation:</i></b></p> <p><b><i>(a) A report card signed by a competent assessor.</i></b></p> <p><b><i>(b) A report card issued by a parent.</i></b></p> <p><b><i>(c) Results of a test used nationally or internationally to determine the level of numeracy and literacy; or</i></b></p> <p><b><i>(d) a signed evaluation by an education psychologist; or</i></b></p> <p><b><i>(e) A sworn affirmation by a parent stating the reason for not having any of the documents mentioned in a) to d) and the grade level the learner attained.</i></b></p>
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