

**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION 1696.**

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**1696. Ms N M Gasa (MK) to ask the Minister of Basic Education: to ask the Minister of Basic Education:**

Whether the placement of foreign learners has disproportionately impacted schools in high-pressure areas, leaving South African learners unplaced and/or in overcrowded schools; if not, what is the position in this regard; if so, what are the relevant details?

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#### Response

The Department of Basic Education (DBE) has not received any report suggesting or confirming that South African learners are not accommodated in schools or are accommodated in overcrowded schools because of non-citizens. However, this does not imply that there are no schools that are overcrowded. It is important to recognise that this issue is multifaceted, involving various factors beyond the enrolment of foreign learners, such as:

1. Urban migration and population growth: Many families, both South African and foreign, migrate from rural areas to urban centres in search of better opportunities. This influx has led to a surge in student numbers in city schools, outpacing the available infrastructure and resources.
2. Limited school infrastructure: The rapid increase in learner populations has not been matched by a corresponding expansion in school facilities. As a result, many schools operate beyond their intended capacity, leading to overcrowded classrooms and strained resources.
3. High-pressure schools: Certain schools, particularly those with strong academic reputations, receive an overwhelming number of applications.
4. Late applications and administrative delays: Delays in the application process, whether due to late submissions or administrative backlogs, can result in learners being unplaced at the start of the academic year.

It is important to note that, in terms of section 29(1)(a) of the Constitution of the Republic of South Africa, 1996, all children in South Africa have a constitutional right to access basic education. Furthermore, section 28 of the Constitution provides that every child has a constitutional right to have their best interests considered paramount. These constitutional rights are in addition to the constitutional right of every person in South Africa to dignity and equality.

Our courts have confirmed that each of these constitutional rights is afforded to all children in South Africa and is not limited to children who are South African citizens, children who are lawfully present in the country, or children in possession of birth certificates.

In line with, and to give expression to, these constitutional rights:

- Section 5(1) of the *South African Schools Act, 1996*, as amended, states that “[a] public school must admit learners and serve their educational requirements without unfairly discriminating in any way.”

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- Section 5(1A) of the *South African Schools Act*, as introduced by the *Basic Education Laws Amendment Act, 2024*, provides that “[a]ny learner whose parent or guardian has not provided any required documents, whether of the learner or such adult person acting on behalf of the learner, during the application for admission, shall nonetheless be allowed to attend school.”

Our courts have further confirmed that denying children access to schooling based on their migration or documentation status constitutes unfair discrimination, which is prohibited by section 5(1) of the *South African Schools Act*.

This was made clear in the case of *Centre for Child Law and Others v Minister of Basic Education and Others (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG)*, in which the Court stated the following:

*“There is not an iota of evidence to support the submission that illegal foreigners come to this country in order to ‘receive free basic education.’ All indications are that immigrants come to South Africa primarily to seek employment. Besides putting in place proper immigration controls, the responsibility remains with government to enforce compliance with labour laws, including imposing appropriate sanctions for the hiring of illegal foreigners without compliance with the law. All this could and should be achieved without the invasion of the fundamental rights of children.”*

The DBE is and remains committed to ensuring that all children in South Africa, especially learners in under-served communities, have access to quality education.

The DBE continues to work closely with Provincial Education Departments to ensure that every child of school-going age in the Republic of South Africa has access to basic education, and that the principles of equity, dignity and non-discrimination are upheld in accordance with South Africa’s constitutional and legal framework.