

# Early Childhood Development in South Africa: Quo Vadis?

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## Abstract

In 2024, amendments regarding, inter alia, early childhood development (ECD) were promulgated in South Africa, most notably the inclusion of the Reception Grade (Grade R) into basic education, rendering its attendance compulsory. All parents are now compelled to see to it that their young children attend school from Grade R. With special reference to Grade R and the young child's best interests, this paper offers a concise analysis of the legal framework for ECD in South Africa. Considering relevant legal imperatives, some practical implications of the amendments are touched upon. All indications suggest that the school infrastructure is not adequately prepared for this new addition to basic education. The central question is whether the framework for ECD and its implementation have the potential to ensure the much-needed and proper progress of ECD in South Africa. It was found that, while the legal framework is well constructed and adequate, only a stronger political will and dedicated, focused attention to ECD by education authorities will ensure success.

Keywords: Constitution, Children's Act, Schools Act, early childhood development, Grade R, legal framework

## Introduction

The South African education scene has been dominated recently by ongoing debates regarding the Basic Education Laws Amendment Act 32 of 2024 (BELA), during which strong arguments for and against certain sections were presented. This mainly revolved around the decision-making authority of school governing bodies regarding their powers to decide on admission policies for schools, as well as the language policy. Many school communities, especially from minority groups, thought that it was a calculated and orchestrated attack on the Afrikaans language in schools. While this debate dominated the discussions on education, other sections in the same amendment act did not receive adequate attention, most notably the amendments regarding early childhood development (ECD). This paper will focus on the legal framework for ECD in South Africa and the practical implications of the new developments in the South African basic education context. The question to be answered is whether the framework for ECD and

its implementation have the potential to ensure the much-needed and proper progress of ECD in South Africa.

While a wide variety of statutes directly or indirectly regulate and influence ECD, such as the Employment of Educators Act 76 of 1998 and the Health Act 61 of 2003, a selection of the most salient statutes for ECD was decided upon for this paper.

## South African Constitution

A wide variety of clauses in the SA Constitution have a direct or indirect bearing upon the well-being of the young child, such as the right to privacy, freedom and security of the person, the right to food and nutrition, and applications of the right to equality and absence of unfair discrimination. Of specific importance for this paper is the matter of the best interests of the child, which is always of paramount importance in every matter concerning the child (S. 28(2) of the Constitution).

Expanding upon the principle of the best interests of the child, Section 7 of the Children's Act 38 of 2005 describes which factors must be considered when the best interests of the child standard in this act must be applied to ensure their security. Insecurities that are well-documented in early childhood are those related to poverty, malnutrition, and violence. While these threats, however real, lie outside the scope of this paper, one specific threat needs attention, namely, inadequate teaching and substandard care and education.

National and international research has irrefutably proven that early childhood care and education (ECCE) potentially has a positive effect on children. However, unqualified or underqualified ECCE teachers hamper children's development, closely linked to inappropriate pedagogy (e.g., curriculum, activities) in ECCE institutions. Regarding the phase just before they enter Grade R, the Thrive by Five Index report (Giese et al., 2022) researched more than 5000 children aged 50-59 months old attending early learning programmes in South Africa and found that only 45% of children are *On Track*, meaning that they performed according to what is expected of children their age. "The remaining 55% of children are not able to do the learning tasks expected of children their age, with 28% of children *Falling Far Behind* the expected standard. These children will need intensive intervention" (Giese et al., 2022) and are at risk of not reaching their full potential. One conclusion from the report could be that the care and education offered from birth to four did not meet requirements for effective and quality ECCE. One element of that could be traced back to teachers who are not suitably qualified or lack appropriate pedagogical skills. Teachers might have interpreted and implemented the curriculum incorrectly, e.g., by using it as a "one-size-fits-all" without adapting the curriculum for their specific group of children, not being culturally sensitive, or age and developmentally appropriate. These often happen in cases where teachers do not fully understand what they are doing, why they are doing it, and do not seem to continually reflect on how they can improve their practices. ECCE is thus heavily dependent on suitably qualified practitioners (Ebrahim et al., 2019).

An unacceptable high percentage of the children from 0 to 4 years will therefore enter the recently expanded Foundation Phase, already demonstrating a backlog in their development. New developments regarding entry and access into the Foundation Phase will be discussed next.

## South African Schools Act

The promulgation of the Basic Education Laws Amendment Act 32 of 2024, towards the end of 2024, brought a notable amendment to and development regarding the position of early childhood education in South Africa. The Department of Education gives priority to ECD by applying the provisions of Education White Paper 5 on Early Childhood Education (SA, 2001) (hereafter White Paper 5). Although White Paper 5 focuses on the needs of children aged 0-6 years, the priority is the establishment of Grade R as part of the public school system (Rossouw, 2014, p. 110). One of the implications of this policy for the Grade R educator is that “it joins the core objectives of ECD internationally and incorporates the educator’s subject discipline into government policies” (Rossouw, 2014, p. 110). This gives prominence to the task she performs. Rossouw (2011, p. 46) depicts early childhood development as an important life stage within which the educator delivers services to children. Grade R is part of a greater whole and is not merely an isolated preparation year for Grade 1.

Of specific interest in the above is the fact that the movement towards the inclusion of Grade R into formal education started in the year 2001, already with White Paper 5. While basic education previously commenced with Grade 1, the Foundation Phase now, as envisaged for more than two decades, includes Grade R, the Reception grade. Section 1, as amended, now reads as follows: “basic education includes grade R to grade 12, as evidenced in the National Curriculum Statement”.

The SA Schools Act specifies in Section 5(4)(a):

*The admission age of a learner to a public school to grade R is age four turning five by 30 June in the year of admission: Provided that, if a school has limited capacity for admission in grade R, preference must be given to learners who are subject to compulsory attendance.*

In light of the importance of the best education possible for the young child, the inclusion of Grade R in the Foundation Phase is laudable. The practical and legal implications of this amendment are, however, significant. Section 3, as amended, now points out that attendance at Grade R is compulsory, and the Act issues the following warnings to parents and caregivers:

- (1) *Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend school starting from grade R on the first school day of the year in which such learner reaches the age of six years ...*
- (6) *Subject to this Act and any other applicable law—*
  - (a) *any parent who, without just cause and after a written notice from the Head of Department, fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment ...*
  - (b) *any other person who, without just cause, prevents a learner who is subject to compulsory attendance from attending school is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.*

In light of the above, parents can now (albeit theoretically) be criminally charged if they do not succeed in ensuring the school attendance of their young children. Whether this will be enacted in practice is still to be seen.

## Children's Act

While the SA Schools Act, as discussed, is limited to regulating basic education, the Children's Act 38 of 2005 deals with matters much wider than schooling, and includes stipulations with implications for children from birth. This discussion of the Act focuses only on those aspects relevant to early childhood.

Anyone who works with children from birth to 18 years should be well-informed about the Children's Act 38 of 2005 and be prepared to apply the provisions wherever relevant to the setting or school where they are employed. The Act recognises the significance of the early years in citizens' lives by defining, amongst others, early childhood development and early childhood education programmes, and also requiring compliance with norms and standards to regulate these aspects.

The Children's Act 38 of 2005 resonates with the South African Constitution, the United Nations Convention on the Rights of the Child, and other relevant international conventions. As stipulated in the long title, the Children's Act gives "effect to certain rights of children contained in the Constitution" such as the guiding principle of the best interest of the child being of paramount importance, as entrenched in S. 28(2) of the Constitution. The preamble of the Act refers to the obligations of the State to "respect, protect, promote and fulfil" the rights of the child.

### *Defining early childhood development*

Section 91 of the Act defines:

- (1) *Early childhood development means the process of emotional, cognitive, sensory, spiritual, moral, physical, social, and communication development of children from birth to school-going age.*
- (2) *Early childhood development services mean services—*
  - (a) *intended to promote early childhood development; and*
  - (b) *provided by a person, other than a child's parent or caregiver, on a regular basis to children up to school-going age.*
- (3) *An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child's developmental age and stage.*

## Child abuse and neglect

In the early years, children are prone to abuse because they are in a vulnerable stage of life when they may suffer from colic during the first months of life, they are in the process of learning to walk, they may have anger tantrums, or bad sleeping habits. Any of these might frustrate the parent or teacher and lead to abuse. Shaken baby syndrome (SBS) is one example of serious child abuse, usually amongst children younger than one year. The syndrome is caused by "the violent and repetitive shaking of an infant/toddler

... that can lead to severe disabilities or even the death of the child” (Le Roux-Kemp & Burger, 2014, p. 1287).

Research showed that many older children of pre-school age in South Africa suffer from abuse, with four-year-olds being the age group that receives the most harmful beatings by parents (Richter et al., 2018). There is a fine line between discipline and abuse. Disciplinary measures are acceptable actions, provided they are appropriate considering the age of the child, but abuse implicates harm and is illegal.

Teachers will recognise signs of neglect such as lack of proper hygiene, unattended physical problems, or lack of proper dental care (physical neglect). Neglect occurs in all socio-economic groups, and parents may do this out of ignorance. Abuse, on the other hand, is intentional harm, and indicators could include unexplained bruises (physical abuse) or parental withholding of bonding and warmth (emotional abuse). Unfortunately, there are reported instances of ECCE teachers themselves guilty of neglecting and abusing children in partial care, as attested by a variety of court cases, e.g., *C.B. and Another v Moore and Another* 3 All SA 799 (WCC) (30 June 2017) (hereafter referred to as Moore). The owner of Aunty Dawn’s, an ECD centre, Ms. D. Moore, laid a sleeping five-month-old baby on her own double bed, closed the room door, and went to make the baby’s bottle. When she later came into the room, she found that the baby must have rolled off the bed and was trapped between the solid bedside table and the bed. Baby A was lying face down on the floor and not breathing. Baby A was pronounced dead at the scene due to suffocation.

In *Moore*, Baby A’s parents accused the owner of the ECD centre (first defender) and the Department of Social Development (DSD) (second defender) of negligence. The applicants, C.B. and R.B., argued that the owner of the centre had a legal duty to ensure the baby’s safety and was negligent by placing the baby unattended on her bed instead of in a cot.

The Department of Social Development was similarly charged with negligence because the Department did not comply with the obligation to process the application for registration of the owner of the ECD centre in a timely manner, and failed to inspect the facility. Judge Dlodlo stated in the judgement that “the Department’s failure to comply with its statutory duties seriously compromised the care and safety of the children at the facility”. The death of A. would probably have been prevented had the second defendant intervened.

The Supreme Court of Appeal case *Government of the Western Cape: Department of Social Development v C.B. & Others* (1220/2017) [2018] ZASCA 166 (30 November 2018) nevertheless ruled that the Department could not be held liable, because there is no causal link to be found between their absence of annual inspections and the death of Baby A. The damages to be paid were therefore for the sole account of the owner of the centre, Ms. Moore.

### *General principles*

Section 6 of the Children’s Act stipulates general principles against the background of which the entire Act must be read. These principles reflect constitutional rights as specifically applicable to children.

Section 2 determines that all proceedings, actions, or decisions in a matter concerning a child must—

- (a) *respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests of the child standard set out in section 7 and the rights and principles set out in this Act, subject to any lawful limitation;*
- (b) *respect the child's inherent dignity;*
- (c) *treat the child fairly and equitably;*
- (d) *protect the child from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or a family member of the child;*
- (e) *recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age; and*
- (f) *recognise a child's disability and create an enabling environment to respond to the special needs that the child has.*

Section 3 stipulates that:

*If it is in the best interests of the child, the child's family must be given the opportunity to express their views in any matter concerning the child.*

## National Child Protection Register

The National Child Protection Register is another instrument of critical importance to protect young children from being in contact with adults who might harm them. Amongst others, this register provides in Part A a record of abuse or deliberate neglect inflicted on specific children; the circumstances surrounding the abuse or deliberate neglect. Part B lists the names of persons who are unfit to work with children.

All persons employed at partial care facilities (including cooks and cleaners) should have a police clearance and their names should not appear on the National Child Protection Register or the National Register for Sex Offenders (SA Government, n.d.) which is a record of names of those found guilty of sexual offences against children and mentally disabled people. The register authorises employers in the public or private sectors, such as schools, crèches, and hospitals, to check that the person being hired is fit to work with children or mentally disabled people. The Register is not open to the public and is kept confidential.

## Conclusion

Any education development, to succeed, depends on the availability of suitably qualified teachers. Currently, in South Africa, there are not close to enough qualified pre-primary teachers to fill the void created by the law amendment (Le Cordeur, 2025). Official data of the Department of Basic Education, according to Le Cordeur (2025), indicate that there are more than 792,000 Grade R learners, which improves school readiness and academic performance:

*On the negative side, there are 21,207 Grade R teachers... Of these, 16,520 (i.e., 78%) are not qualified to teach Grade R. Thus, there is a huge shortage of Grade R teachers, especially now that it is compulsory.*

To aggravate matters, the expensive nature of providing facilities suitable for Grade R teaching means that not all primary schools in the country currently offer Grade R, and pre-primary schools do not exist in all communities to the extent that they can accommodate the vast number of children eligible for Grade R. Early childhood education is a specialised field and requires knowledgeable practitioners.

The question this paper attempted to answer is whether the legal framework for ECD and its implementation have the potential to ensure the much-needed and proper progress of ECD in South Africa. The South African statutory structure is well-known for providing excellent regulation of all spheres of community life, and the brief analysis of the most salient statutes offered here is indicative of suitable measures already in place for ECD to eventually succeed. No new amendments to legislation are needed.

Unfortunately, as with various other statutes, the implementation thereof often proves to be poor, and the ANC-led SA government has been regularly accused of not demonstrating the political will to make a notable difference. The Government of National Unity that now rules is a promising development, and so is the appointment of Ms. Garube as Minister of Basic Education. It can nevertheless be expected that the backlog the previous government created is of such a nature that it will take more than a decade of intensive, focused attention by both politicians and education authorities to fulfil the high expectations.

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