



Joint submission to the Department of Transport and Department of Basic Education on the Draft National Scholar Transport Policy Review

**Equal Education
and
Equal Education Law Centre**

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This written submission is a sequel to a meeting held with the Department of Transport and Department of Basic Education on 27 November 2025

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Overview

Equal Education (“EE”) is a movement of learners, post-school youth, parents, and community members advocating for quality and equality in the South African education system. The work of EE draws from the experiences of its members to guide policy analysis and research. The movement organises its activities in the Western Cape, Eastern Cape, KwaZulu-Natal, Gauteng, and Limpopo.

The Equal Education Law Centre (“EELC”) is a public interest law centre specialising in education law. The EELC works closely with EE in pursuit of their mutual goals of an equal education system and quality education for all. Both EE and EELC welcome the long-awaited review of the National Scholar Transport Policy.

EE and EELC note that the National Scholar Transport Policy review is a long-awaited process seeking to provide clarity on the monitoring and provisioning of scholar transport. It addresses the fragmented and inadequate provision of safe, reliable transport for school learners across South Africa, particularly in rural and underserved areas where learners walk long distances to access education. The policy under review begins by acknowledging the persistent spatial injustice caused by apartheid across South Africa and aims to bridge the gap in access to education. Furthermore, the policy provides a uniform framework and an enabling environment for government and other stakeholders to address learner transport challenges. It aims to improve the national learner transport programme and the planning and coordination between transport and education departments. It sets up the structure for learner transport, decides where learner transport will be held at the national and provincial levels, ensures a safe and secure working environment, prioritises access for vulnerable learners, maintains the programme and its funding, and creates effective monitoring systems.

Although the policy under review does close some gaps in the 2015 policy, it still has shortcomings and requires strengthening in the following key areas: **criteria for qualifying for scholar transport, funding clarity, learner safety, including private learner transport, integrated departmental planning, and the persisting call for transparency in the scholar transport structures**. Some of our recommendations and comments are summed below, clause by clause.



Current word of the Draft National Scholar Transport	Recommendation and comments
<u>Definitions</u> “Accessible transport” means a type of transport that can easily be used by a person who has some form of physical and / or mental disability or temporary movement disabilities thereby requiring transport facilities that are equipped to cater for their special needs.	The current definition of accessible transport is limited to the extent that it refers to physical mobility or learner disability. While we appreciate this perspective, we propose that the definition be expanded to include the standards for scholar transport. Accessibility should not be limited to learners only, instead, it should encompass transport that is accessible for all learners. This additional layer would help establish the criteria for transport service providers, ensuring that their services are accessible to all learners who qualify for transportation.
“Learner” any person receiving education or obliged to receive education in terms of South African Schools Act (Act 84 of 1996);	To include Grade R in accordance with the Basic Education Laws Amendment Act (“BELA”) 32 of 2024. Every reference to the South African Schools Act 84 of 1996 must be followed by BELA as an Act amending the South African School Act 84 of 1996.
	Furthermore, the definition section should include the definitions of "learner transport" and "scholar transport". This definition may be essential for clarifying the policy's scope, especially regarding private transport that is used to transport learners for purposes of their safety and protection.

<u>Executive summary</u> The target group of the Policy are learners who attend school between from R to grade 12 and live more than 5km and more single trip. The Policy also applies to learners with private arranged transport in relation to issues of road safety and law enforcement. The approach of learner transport Policy recognises that learner transport is not a long-term intervention strategy for the attainment of access to schools.	The target group of the Policy are learners who attend school between from R to grade 12 and live more than 5km and more single trip, <u>including learners attending in special schools.</u> The Policy also applies to learners with private arranged transport in relation to issues of road safety and law enforcement, <u>amongst other things.</u> The approach of the learner transport policy recognises that learner transport is not a long-term intervention strategy for the attainment of access to schools. <u>If [not] is not removed, perhaps remove the sentence. The inclusion of the sentences may have consequences where there is no compliance for the provisioning of scholar transport in the “long term” when interpreting the intention of the policy especially for funding priorities.</u> All-inclusive and integrated interventions may be welcomed but need not

	be blind to the reality of the existence of scholar transport, particularly borne out of systemic spatial injustice.
<u>Policy statement 1: Institutionalization for learner transport including the location of learner transport:</u> At a provincial level, the location of the function will be undertaken in accordance with section 132 of the Constitution in relation to the assignment of functions by the Premier or as directed by Cabinet. The assignment of the function will be based on the capacity of the department to execute the mandate for learner transport. Memorandum of Understanding (MoU) detailing the roles and responsibilities must be developed and signed by both parties in order to address intergovernmental relations between the two departments.	Section 132(1) & (2) of the Constitution is read as follows: The Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature. The Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them. Firstly, section 132(1) outlines what constitutes the Executive Council in a province. Therefore, it does no more than just outline the Executive Council. Furthermore, section 132(2) does give a bit of meaning to the function as provided in the policy. In this case, in terms of section 132(2), only the Premier can assign the responsibility for the provisioning of scholar transport to the education MEC or transport MEC. From this part of the policy, it is not clear who this function would be delegated to. It leaves this duty to the Premier of a province to make such a determination. It could be the provincial education department or the department of transport role, as to be

	determined by the Premier. This may cause further confusion on the function. Even worse, the policy promotes the possibility of non-compliance, subjecting the delegation of the function to the "capacity of such a department." This section of the policy limits the scope of section 132 of the Constitution to subject to availability of capacity. This limitation is concerning, particularly because the policy in question relates to an immediately realisable right to education. Our recommendation: The policy should not confine the scope of section 132. Removal of the following sentence: The assignment of the function will be based on the capacity of the department to execute the mandate for learner transport. Lastly, provide clarity on who enters into the Memorandum of Understanding, whether the MEC for education or transport, to avoid ambiguity.
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National Inter-Departmental Committee (NIDC). The NIDC is established consisting of DOT, DBE, provincial Department of Transport and Education to oversee the implementation of National Learner Transport Policy.	We recommend the inclusion of the Road Traffic Management Corporation as part of the NIDC as they sit closely to monitoring land transport and safety. The policy under review parts of its key areas of focus is learner safety in land transport. As such, it may be important to include the <u>Road Traffic Management Corporation</u> as part of the National Inter-Departmental Committee to strengthen safety monitoring of scholar transport.
<u>Policy Statement 2: Requirements for Access to National Learner Transport Programme</u> Beneficiaries for subsidised learner transport must be learners from Grade R to Grade 12 in all public ordinary and special schools. The minimum distance travelled by learner to qualify for subsidised learner transport must be 5km and more for a single trip to school. The criteria with regard to the distance threshold shall not apply to learners with special needs.	We recommend that the exception for deviation from the 5km threshold should remain a non-exhaustive list, as there may be many circumstances that may require scholar transport, e.g., emergency circumstances such as fire resulting in displacements and relocations and maintaining the right to family life, amongst other things.

	Although safety risks and disability are provided for, there is no national criteria provided for: • How risk will be assessed; • Who decides and what evidence is required; • Appeal or dispute mechanisms; • Transparency and fairness safeguards The risk is inconsistent decisions — the very problem the review aimed to resolve. A worry is also that, based on many provincial policies, the principal of the school must identify the need and start the application process through the district. This may present challenges, as some principals may exclude learners from the school and would therefore not assist in getting transport. Furthermore, there are no complaints or appeal mechanisms or timelines for parents and caregivers provided in the policy. Parents should be afforded an opportunity to appeal if their children are denied access to scholar transport. The policy ought to provide for complaint escalation route, turnaround times and be protected against unfair exclusion. Lastly, the policy applies 5 km across all grades R -
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	12, primary and secondary school. Both Departments should consider the possibility of a differentiated approach between primary and secondary school learners. The draft policy defines the meaning of the school of choice in a linear way. Many circumstances cause learners to enrol in schools far from their homes. Consequently, the current definition of 'school of choice' excludes learners who attend schools that are not close to their homes without considering various circumstances. Although this may mostly be considered an admission issue, it has a consequence for qualifying for scholar transport. Outside of the school of choice definition, there is a "school of need" and "a-school-by-circumstances". However, this policy consolidates such schools as schools of choice. For example, when schools near learners' residences are oversubscribed, learners are compelled to attend alternative schools that are far from their homes, where places are available. Secondly, schools with sporting facilities necessary for a specific learner's needs should be defined as
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	a need, not a school of choice, when such facilities are unavailable in schools closer to their residence. Furthermore, the “appropriate school” must not be confined to school curriculum subjects. Seeking a school place where there is certain quality resources should not be defined as a school of choice. Importantly, the policy acknowledges the past injustices of apartheid that it seeks to eradicate. Therefore, seeking a place in such schools should be understood as a need that is also in line with section 21 of the Constitution, which promotes the freedom of movement. Also, learners who opt for alternative school places far from where they reside as a result of fleeing for their safety, such as from gang-related issues, should not be understood as a school of choice. Lastly, emergency circumstances such as displacements must be provided for and not be understood as a school of choice.
Learner transport will be provided to the nearest appropriate/suitable school. Parental choice of schools must not be subsidised. Parental choice refers to when parents prefer to enrol their children at schools other than the nearest appropriate/suitable school. Appropriate refers to matters that relate to focused schools (agriculture, science etc.)	An expanded meaning of school of choice must also be provided for in the guidelines on the process for the application of learner transport to consider other possibilities of school attendance.

<u>Policy statement 3: A safe and secure operational environment</u> Learner transport vehicles used to transport learners have to meet the safety requirements of the National Road Traffic Act (Act No. 93 of 1996) applicable to the transportation of passengers. Regulation 250 of the NRTA as it related to school children and persons not to be conveyed in goods compartment of a motor vehicle for a reward state that “no person shall on a public road convey school children in the goods compartment of a motor vehicle for a reward”.	There should be an inclusion of a monitoring mechanism for the safety of learners. The reporting system must be accessible to parents and learners to log queries when and as they come up. The draft policy acknowledges that 80% of learners use private transport, but there is still no clear national framework for registration, compliance monitoring, operator accountability, or reporting unsafe operators. It appears to mostly rely on existing traffic laws, which have already proven inadequate. There are many safety risks that have led to the deaths of learners over the years. In cooperation with all spheres of government, we are calling for the strengthening of safety measures for all learners using transport to school.
<u>Policy statement 4: Effective planning and design of the learner transport operations</u> The implementing departments in consultation with other relevant stakeholders must design a well-defined learner transport service which includes roads infrastructure, pick-up/drop off points/stops and	Our recommendation: Define the following terms: - Implementing department;

signage for the safe transportation of learners. These service designs should contain detailed route descriptions, vehicle types, timetables, trip cost, trip length, travel time, stops and ranking information in a Geographic Information System (GIS) format and aligned with the Integrated Transport Plans (ITPs) and Integrated Public Transport Plans (IPTNs).	- Learner transport services (as a package)
<u>Policy statement 8: Effective monitoring system</u> In line with emerging technologies and innovation, a web-based system at the national and provincial level for monitoring of learner transport shall be developed and implemented Nationally. The system would be utilised for programme record-keeping, data storage/retrieval and reporting which integrates all levels from schools to districts to provinces and to National Departments.	While this inclusion may be acceptable, it is important to delegate the function specifically to the Department of Basic Education ("DBE"), as the DBE has ready access to the schools' data. The Department of Transport must support the DBE in its monitoring activities. Also, the policy should provide clarity with timelines for the development and implementation of the web-based system.
<u>Section 1: Introduction and historical context</u> Learner transport safety norms/standards and operational guidelines are being developed and would provide a safe learner transportation environment.	Here are some of the guiding questions for the development of the norms/standards and operational guidelines:

This National Learner Transport Policy is guided by the White Paper on National Transport Policy (1996), the National Land Transport Act, Act 05 of 2009, South African Schools Act, National Policy for the Provision of an Equitable Schools and Physical Teaching and Learning Environment (2010), the National Development Plan (NDP) and other legislation such as the National Road Traffic Act, Act 93 of 1996. South African Schools Act 1996 (SASA), (Act 84 of 1996): Section 3 of the 1996 South Africa Schools Act 1996 (SASA) provides for a compulsory general education phase for ages 7 to 15 or grade 1 to 9. Provincial MECs are responsible for providing school places for every child of eligible age for the compulsory GET. Other than legal instruments, South Africa's overall development imperative suggest	Is this an ongoing process, led by which department? Such norms and standards and operational guidelines are made in terms of the policy or empowering legal provision. The inclusion of the Basic Education Laws Amendment Act [SASA as amended] is an important inclusion to be made as part of the guiding legislative piece. Such inclusion is important to the extent that the Basic Education Laws Amendment Act makes Grade R compulsory and to the extent it relates to school admission, which is a key element of accessing school for learners. While the reflection of section 3 of the South Africa Schools Act is accurate in terms of the MEC's obligation to provide for enough school places for compulsory school-going-age learners, it is also important to make note of the Constitutional Court judgment on <i>Moko v Acting Principal of Malusi Secondary School and Others</i> [2020]. <i>In casu</i>, the Constitutional Court extended the scope of the meaning of access to basic education to Grade 12. The inclusion of such precedent in this
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that quality senior secondary education should be accessible to all eligible learners. <u>Mission:</u> The mobility needs of learners, including learners with special needs shall be met through the provision of a safe, secure, reliable and affordable learner transport service to support social development and enhance future economic growth.	policy is important to safeguard learners outside the compulsory school-going age in accordance with section 29(1) of the Constitution. Also, such inclusion would be consistent with the scope of the policy as applicable to grades R-12. Remove “and affordable” to read as follow: The mobility needs of learners, including learners with special needs shall be met through the provision of a safe, secure, reliable and affordable learner transport service to support social development and enhance future economic growth. The draft requires accessible transport but does not specify vehicle standards, funding support for specialised vehicles, provincial readiness, contractor obligations, or training requirements. This uncertainty may mean that learners with disabilities may still struggle to access transport equitably.
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<u>Rationale for policy</u> Learners, especially in rural communities' experience transportation challenges in accessing educational centres.	Rural communities should be understood to include areas on the outskirts of cities. Also, every reference to an education centre should be removed and replaced with a school. Reference to this term may present some challenges of application and scope of the policy. Firstly, nowhere in the policy is the term defined. Also, education centres extend outside schools to include early childhood development and youth care facilities, among other things. The scope of the policy is understood to be applicable to schools only. As such, consistency might be important for reference. This is unless the policy makers intend to extend the scope of the policy beyond schools.
<u>Section 2: Institutional framework for learner transport implementation</u> The NIDC shall comprise of the representatives from the National Department of Transport, National Department of Basic Education and provinces. The NIDC shall report to the Ministers of Transport and Basic Education on the overall implementation of learner transport programmes.	For composition of the NIDC, to consider the inclusion of the Road Traffic Management Corporation as suggested above. If that recommendation passes above, to be included here as well. Also, in order to improve interdepartmental coordination this section must account for a reporting cycle of the NIDC. It must set out timelines for the window of reporting. This approach would unlock direct responsibility for when such reporting must be done. Failure to include such timelines may create ambiguity and possibility of non-compliance.

The function of the learner transport programme at the National level will be placed at the National Department of Transport or Department of Education as directed by Cabinet. A memorandum of understanding must be signed between the DOT and DOE to give effect to principles of cooperative governance and to strengthen oversight of the function. This is to strengthen the oversight of the learner transport programme and place the function in one department. Roles and responsibilities, Department of Transport, Department of Basic Education, Provincial Education Department, Local government	Our recommendation: <u>At the date of the promulgation of National Scholar Transport, the Cabinet must, within [specify timeline], determine where the function of the learner transport programme is located, between the Department of Transport and the Department of Basic Education.</u> While the roles and responsibilities of each of the departments and spheres of government are outlined clearly, there is no mention of which department is directly responsible for providing scholar transport. The role and responsibilities as outlined are focused on monitoring and implementation but silent on the direct provision. This ambiguity may cause confusion and should be clarified.
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Section 3: Policy area 1: Institutional Framework for Learner Transport Including the Finalisation of the Location of Learner Transport

The location of the function of learner transport at the National level will be finalized as directed by Cabinet considering the best legally placed Department to undertake the function.

Policy area 02: Requirements for Access to National Learner Transport Programme:

Policy area 6: Programme sustainability and funding

Learner Transport will be funded through fiscals through provincial Treasury allocations and/or National Learner Transport Grant once approved by the National Treasury.

Our recommendation:

Similarly, as recommended above, the decision by the Cabinet must be time bound. This review process opens an opportunity to offer guidance to the Cabinet and the lack of inclusion of timelines may be a missed opportunity.

Refer to Policy Statement 2: Requirements for Access to National Learner Transport Programme above to consider our submission.

Funding is once again left to the provinces, with no further detail about how the budgeting process will work. What will the financial responsibilities of each department be? How will budgets be calculated? These kinds of basic questions are left unanswered.

Recommendation: That the Department of Transport, the Department of Basic Education and National Treasury must work to secure

	dedicated funding for the programme by considering the feasibility of a national conditional grant and provide key timeframes for implementation, to ensure equal and expanded coverage and ensure quality, across all nine provinces. Recommendation: Scholar service providers must face contract termination or blacklisting not just for repeated safety/compliance related issues (poor performance) but for instances of financial misconduct (inflation of distances travelled and claiming excess public monies) as well.
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