

Operational guidelines for private schools in context of RCFCE Act 2009

The Right of Children to Free and Compulsory Education Act (RTE Act) which came into force from April 2010 attempts to address the historical problem of continuing illiteracy as well as the lack of educational opportunities that persist for sections of our population even sixty years after adoption of the Indian constitution. The socio-political, legal and financial aspects of the Act have been much debated and its final form has been arrived at after. As the state has set out to implement the provisions of the Act, it is clear that this Act will change the educational landscape of the State. The specific educational steps needed to meet its wide-ranging provisions are being taken in a phased manner, keeping the prescriptions of the Act in view.

RCFCE ACT- 2009

Section 12

(1) For the purpose of the Act, a school-

(c) specified in sub-clause (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five percent, of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion;

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education specified in clause (c) of subsection (i) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such a manner as may be prescribed.

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

THE Odisha RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION
(Odisha RCFCE) RULE, 2010.

PART V (RESPONSIBILITIES OF SCHOOLS AND TEACHERS)

9. Admission of children belonging to weaker section and disadvantaged group.

- (1) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 of the Act shall ensure that children admitted in pursuance of clause (c) to sub-section (1) of Section -12 of the Act shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.
- (2) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 of the Act shall ensure that children admitted in pursuance of clause (c) to sub-section (1) of Section -12 of the Act shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as library and ICT facilities, extra-curricular and sports.
- (3) The areas or limits of neighborhood specified in sub-rule 1 of Rule 6 shall apply to admissions made in pursuance of clause (c) to section 12.

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) to sub-section (1) of Section 12 of the Act, extend these limits with the prior approval of Government.

10. Reimbursement of per-child expenditure by Government.

- (1) The total annual recurring expenditure incurred by Government whether from its own funds, or funds provided by the Central Government or by any other authority, on elementary education in respect of all schools established, owned or controlled by it or by the local authority, divided by the total number of children enrolled in all such schools, shall be the per-child expenditure incurred by Government.

Explanation - For the purpose of determining the per-child expenditure, the expenditure incurred by the State Government or local authority on schools referred to in sub-clause (ii) of clause (n) of section 2 of the Act and the children enrolled in such schools shall not be included.

- (2) Every school referred to in clauses (iii) and (iv) of clause (n) of section 2 of the Act shall maintain a separate bank account in respect of the amount received by it as reimbursement under subsection (2) of section 12 of the Act.

IMPLICATIONS:

All private/unaided schools have to admit at least 25% children from disadvantaged groups and weaker sections from their neighbourhood within one km distance, for free education every year in the incoming class in which they induct new children. Further, if the induction class is pre-primary then 25% children will be admitted therein every year.

11. Documents as age proof.

Wherever a birth certificate under the Births, Deaths and Marriages Certification Act, 1886 is not available, any one of the following documents shall be deemed to be proof of age of the child for the purposes of admission in schools –

- (a) Hospital / Auxiliary Nurse and Midwife (ANM) register record
- (b) *Anganwadi* record
- (c) Declaration of the age of the child by the parent or guardian

12. Extended period for admission -

- (1) Extended period for admission shall be *three* months from the date of commencement of the academic year of a school.
- (2) Where a child is admitted in a school after the extended period, he or she shall be eligible to complete studies with the help of special training, as determined by the Headmaster of the school.

13. Recognition to school. - (1) Every school, other than a school established, owned or controlled by the Government or Local Authority, established before the commencement of this Act, shall make a self declaration within a period of six months from the commencement of these rules or within such extended period as the Government may fix, in Form-I to the concerned *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* regarding its compliance or otherwise with the norms and standards *specified* in the schedule to the Act and fulfillment of the following conditions namely :

- (a) that the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force;
- (b) that the school is not run for profit to any individual, group or association of individuals or any other person;
- (c) that the school confirms the values enshrined in the constitutions;
- (d) that the school buildings and other structures or the grounds are used only for the purposes of education and skill development.

- (e) that the school is open to inspection by any officer authorized by the Government/ Local Authority;
 - (f) that the school furnishes such reports and information as may be required by the *Director of Elementary Education/District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* from time to time and complies with such instructions of the Government/ Local Authority as may be issued to secure the continued fulfillment of the conditions of recognition or the removal of deficiencies in working of the school.
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- (2) Every self declaration received in Form I shall be placed by *the District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* in public domain (*Notice Board of G.P.*) within fifteen days of its receipt.
 - (3) The District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be shall within three months of self declaration cause on-site inspection of such schools which claims for recognition certificate.
 - (4) After the inspection referred to in sub-rule (3) is carried out, the inspection report containing schools found to be conforming to the norms, standards and the conditions shall be placed by *the District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* to the Government for grant of recognition within a period of 30 days from the date of inspection. The order of recognition shall be issued by the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* in form No.II.
 - (5) Schools that do not conform to the norms, standards and conditions mentioned in sub rule (I) shall be listed by the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* to this effect ; such schools may request the District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be for an on-site inspection for grant of recognition *at any time which shall not exceed beyond the maximum period of next two and half years.*
 - (6) Schools which do not conform to the norms, standards and conditions mentioned in sub rule (I) after three years from the commencement of the Act, shall cease to function.
 - (7) Every school, other than a school established, owned or controlled by the Government or local authority, established after the commencement of these rules shall conform to the norms and standards and conditions mentioned in sub-rule(i)in order to qualify for recognition under these rules

14. Withdrawal of recognition to schools. (1) Where the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* on his own motion, or on any representation received from any person, has reason to believe, that a school recognised under rule 13, has violated one or more of the conditions for grant of recognition or has failed to fulfill the standards prescribed in the Schedule, he shall act in the following manner:

- (a) Issue a notice to the school specifying the violations of the condition of grant of recognition and seek its explanation within one month.
- (b) In case the explanation is not found to be satisfactory or no explanation is received within the stipulated time period, the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* may cause an inspection of the school, to be conducted by a Committee of three to five members comprising educationists, civil society representatives, media and government representatives, which shall make due inquiry and submit its report, along with its recommendations for continuation of recognition or its withdrawal, to the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be*.
- (c) On receipt of the report and recommendations of the Committee, the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* may pass order for withdrawal of recognition.

Provided that no such order for withdrawal of recognition shall be passed by the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* without giving the school an opportunity of being heard.

Provided further that no such order shall be passed by the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* without prior approval of the Government.

- (2) The order of withdrawal of recognition passed by the *District Education Officer/ Inspector of Schools / District Inspector of Schools as the case may be* shall be operative from immediately succeeding academic year and shall specify the neighborhood schools to which the children of that school shall be admitted.

25% reservation for children belonging to weaker section and disadvantaged groups – Clause (c) to Section 12 – 1 and 2

The purpose behind this provision is to redress the imbalance in the access to private schools by the children from disadvantaged section on the count

of cost implications. This makes such schools exclusive and less diverse in the representation of children that study in them which is against the basic premise of the Act. This provision intend to ensure inclusion of such children in the neighborhood schools who can not "afford" to go to such school and to the extent possible maintain the diversity that exist among children.

- All private schools have to admit 25% children from disadvantaged groups from their neighborhood (customary 1 km) for free education every year in the class in which they induct new children.
- If the induction class is class 1, then 25% children will be admitted therein each year, but if the induction is done in pre-school, then the quota will be filled there. These admissions each year shall be in the induction class only, and not for each class of the elementary stage.
- The selection of the candidates will be Random that implies that if the number of children applying to a school exceeds the available seats, an open lottery system will be used to fill the seats.
- The distance limit can be extended if the requisite number is not filled up within the customary 1km radius
- Child belonging to disadvantaged group means a child belonging to the Scheduled Caste; Scheduled Tribe, the socially and educationally backward class or such other groups having disadvantage owing to social, cultural, economical, linguistic, gender or such other factor specified by the state government by **notification** (Differently able children not specified)
- Child belonging to weaker section means a child belonging to such parents or guardians whose annual income is lower than the limits specified by the State government by **notification**
- The Act says 'at least 25%' instead of 'at least and no more', which implies that a school could offer to take more than 25% children
- Children admitted in pursuance of this clause shall not be segregated from other children nor their classes shall be held in different place or timings

- Children admitted in pursuance of this clause shall not be discriminated from rest of the children pertaining to entitlements and facilities such as text books, uniforms, library, ICT facilities, extra curricular activities and sports

- As for payments to the Private Schools, the appropriate government will work out its per-learner cost by adding up all the recurring costs it incurs in one year, from its own and central funds including mid-day meals, and divide it by all the children enrolled in its schools. It will reimburse the unaided school admitting 25% children at this rate, or the fee of the school, which ever is less.
- Private aided schools shall have to admit children from similar backgrounds in the proportion of aid they receive from the government, in the induction class each year, and will not receive any extra reimbursement for these children. For example, if the total annual contribution from the government to an aided

school is 70% of its total recurring expenditure for a particular year, it will have to admit 70% children in the induction class that year.

- If the school is already obliged to admit a certain number of children by a separate MoU, for subsidized land or other benefits it obtained from the state, then it will not receive reimbursement for the percentage of children covered by the MoU.
- Every school shall maintain a separate in respect to the amount received by it as reimbursement

Selection of Students – Section 13

- Any test or interview/ interaction of the child or interview/interaction of parents are not allowed.
- Only random procedures to be used for admitting a child to school.
- Random procedure implies that if the number of children applying to a school exceeds the available seats, an open lottery system will be used to fill the seats. This applies to all categories of schools.
- Any contravention of the provision will attract Rs. 25000/- penalty for first time and Rs. 50,000/- for each subsequent contravention

Admission Fee and other procedures for admission – Section 13, 14, 15,

- Any kind of contribution, donations or payments except “fee” notified by the school at the beginning of the term, can not be charged. Deviation from this may attract fine up to 10 times of the amount charged from the student
- Children who are sent by their parents to a school that charges fees (private aided/unaided) will surrender their right, as per Section 8(a) of the Act, to free entitlements; they can not claim reimbursement from the government for their educational expenditure
- A child can be admitted at any time of the year when he/she attains six years of age, or is an older out of school child
- Though the Certificate of birth will form the basis of age proof; no child shall be denied admission for lack of age proof. In absence of Birth Certificate shall be considered as proof of age:
 - Register record of Hospitals, Auxiliary Nurse Midwife
 - Aanganwadi records
 - Declaration through affidavit of the age by the parent or guardian
- State rule provisions for an extended period of 3 months from the commencement of academic year of a school to take a child admission
- However even after the extended period, admission can not be denied and child shall be eligible to complete studies with the help of special training as determined by the head of the school

Student evaluation and certification – Section 16, 17, 29 and 30

- No child will be held back in any class or expelled from the school till completion of the elementary education
- No child shall be subjected to physical punishment or mental harassment; whoever contriving shall be liable to disciplinary action under the service rules applicable
- No Board examination till completion of the elementary education
- There will be comprehensive and continuous evaluations for the period of elementary education.
- The certificate of completion of elementary education shall be issued at the school level within one month of the completion of the elementary education
- The certificate will include the Pupil Cumulative Record of a child which will contain the talents and abilities of the child beyond school subjects such as music, arts, sports etc.

Norms and Standards – Schedule

The Act lays down minimum norms and standards for all schools, government and private, through a mandatory schedule. Governments and private managements have three years to upgrade their existing schools to these norms, i.e. by March 31, 2013, barring which they will not be allowed to operate.

This includes number of teaching days per year, number of teaching hours per day, number of rooms, building related, availability of teaching learning materials, library, toilets, safe drinking water, playground, kitchen for mid-day meals, Pupil Teacher Ratio, subject teachers in classes 6 to 8, part time art, work and physical instructors and so on. The schools shall take steps to fulfill these norms and standards at its own expenses within the given time frame of 3 years

The central govt. may, by notification, amend the schedule by adding or omitting any norms and standards.

Recognition – Section 18 and 19

The Act specifies that all schools have to get recognition for functioning within the three year period; if they don't have recognition after three years, they can not function, and heavy fines will be imposed on them if they do so. No recognition shall be granted unless the school fulfills norms and standards specified in the schedule.

Establishment of new schools after the commencement of Act will also require recognition and they should be fulfilling the standards from day one.

- As per the Orissa State Rules; every school established before the commencement of this Act need to make self declaration to the District Education Officer/ Inspector of Schools/ District Inspector of Schools regarding the compliance or otherwise with the norms and standards prescribed in the schedule within 3 months of the commencement of Act.

- The declaration form will be placed by the concerned authority in public domain such as District Websites, Notice board etc. within fifteen days of receipt
- District Education Officer/ Inspector of Schools/ District Inspector of Schools shall conduct on site inspection for verification within 3 months of receipt of self declaration and put the inspection report in public domain
- Schools confirming to the norms of standards shall be granted recognition by District Education Officer/ Inspector of Schools/ District Inspector of Schools within a period of 30 days from the date of inspection
- Schools that do not conform the norms and standards shall be listed by District Education Officer/ Inspector of Schools/ District Inspector of Schools through a public order. These schools at any time within the next two and a half years may request for on site inspection for the grant of recognition
- Schools not confirming the norms and standards and conditions mentioned in sub rule 1 of rule 11 of State Rules after 3 years of commencement of the Act shall cease to function
- In case of de-recognition; the order should specify as to which of the neighborhood school the children studying in the de-recognized school will be admitted

Going forward: Responsibilities of the department:

1. Now that the state rule has been notified, the step to be taken next is to sensitise all the stakeholders (private schools) about the relevant provisions laid down in the Act
2. 5 zonal workshops at Bhubaneswar, Balasore, Berhampur, Rourkela and Sambalpur to identify action points on the following issues;
 - a. Process of admitting the 25% seats in class-I for students from disadvantaged groups
 - b. Modalities of random selection process to ensure fair and just opportunity all the eligible children
 - c. Per child expenditure
 - d. Provision of mid-day meals
 - e. Special provisions for admission to age-appropriate classes.
3. The Department should also have monitoring mechanism to ensure that all the private schools comply with the provisions as per the Act.
4. The process of granting and withdrawal of recognition (in the context of RTE) need to be notified with all the modalities and be put in public domain.