

Bought, Not Built

The Market in Schoolboy Rugby Players in South Africa: the Law, the Rules, and How the Movement of Children Should Be Governed

Bertus Preller

17 September 2026

Table of Contents

A note on who this article is for, and how to read it.....	3
Executive summary.....	5
Part I. Introduction: a market in children, and a vacuum where its rules should be.....	8
Part II. The facts as published.....	9
II.1 The economics of a first XV.....	9
II.2 The signing season: unions, agents and the schoolboy.....	13
II.3 The disputes: a chronology, 2012–2026.....	15
II.4 The human cost.....	22
II.5 The counter-examples.....	26
II.6 The proposals now in circulation.....	27
II.7 What the published material does and does not establish.....	29
Part III. The governance vacuum: what governs this market today.....	29
III.1 The voluntary instruments.....	29
III.2 Education law: admission, transfer and school sport.....	31
III.3 SA Rugby’s regulations: the player who is not a “Player”.....	34
III.4 Agents and scouts: a regime for the accredited, nothing for the rest.....	36
III.5 World Rugby: a stronger rule for the contract, and a protocol for the young player.....	40
III.6 The gaps, tabulated.....	41
Part IV. The law that already applies: the child, the school, the parents and the money.....	42
IV.1 The constitutional standard.....	42

IV.2 The Children’s Act: the standard given content.....	44
IV.3 The school as caregiver: in loco parentis and section 32.....	45
IV.4 The recruited child: what he is owed.....	47
IV.5 The parents: what the law asks of the family that is offered a bursary.....	49
IV.6 The incumbent learner: the boy who was already there.....	50
IV.7 Paying for the purchase: the public school’s money.....	54
IV.8 Two boundaries: child labour and children’s data.....	56
IV.9 Development, not procurement: what the money should buy.....	57
Part V. The bursary as a contract, and the losing school’s remedies.....	59
V.1 Identify the legal relationship first.....	59
V.2 Contract: the clawback against the family.....	60
V.3 Restraint: holding the player.....	61
V.4 Delict: suing the recruiting school.....	62
V.5 Enrichment and interdict.....	64
V.6 The audit summed up.....	65
Part VI. How other systems govern the movement of minors.....	65
VI.1 New Zealand: stand-downs, and a best-interests standard applied by an independent tribunal.....	65
VI.2 Ireland: four-party consent to every youth transfer.....	67
VI.3 Football: FIFA’s protection of minors and its compensation mechanisms.....	67
VI.4 The United States: regulating the date and manner of contact, and presuming recruitment.....	69
VI.5 Australia and England: permissiveness and prohibition side by side.....	71
VI.6 What South Africa can borrow.....	72
Part VII. The proposals on the table, tested against the standard.....	72
VII.1 The “80 per cent rule”	72
VII.2 The KwaZulu-Natal “since Grade 10” rule.....	73
VII.3 The Western Province resolution.....	73
VII.4 The FIFA-style compensation model.....	74
VII.5 The Department of Basic Education.....	75
Part VIII. How the movement of players should be governed under the current dispensation.....	75

VIII.1 Five principles.....	75
VIII.2 The instrument: a National Code on the Recruitment and Transfer of School Rugby Players...76	
VIII.3 The rules.....	77
VIII.4 Why sanctions on the child are excluded, and what “fair and determinable process” adds.....81	
VIII.5 The legal vehicles: who can enact what, now.....	81
VIII.6 Sequencing, and the administrative burden.....	82
VIII.7 The objection that the Code protects the established schools.....	83
VIII.8 What the framework leaves alone.....	85
Part IX. Conclusion.....	85
Annexure A. The regulatory texts, verbatim.....	86
Annexure B. Model provisions for a National Code on the Recruitment and Transfer of School Rugby Players.....	90
Annexure C. Model bursary clauses for schools.....	93
Annexure D. Table of authorities.....	94

Bertus Preller BProc, Advanced Diploma in Labour Law. Family law attorney and consultant, Maurice Phillips Wisenberg Inc, Cape Town; accredited mediator. Following the professionalisation of rugby union in 1995 he served on the employers’ negotiating team that negotiated, with the players’ union, the South African Rugby Players’ Association (SARPA), the first professional rugby contracts in South Africa, and he drafted the constitution of the South African Rugby Employers’ Organisation (SAREO), the employers’ body through which the provincial unions, together with SARU, contract collectively with SARPA. This article states the law and the published sources as at 17 September 2026. All internet sources were last accessed on 17 September 2026, except where a later date is stated. It is written in a personal capacity and does not constitute legal advice to any person.

© Bertus Preller 2026. All rights reserved. The author asserts his moral right to be identified as the author of this work. This article may be quoted, with attribution to the author, for the purposes of comment, criticism, review, teaching and reporting on current events, as the Copyright Act 98 of 1978 permits; it may not otherwise be reproduced, in whole or in substantial part, in any form or medium, without the author’s prior written permission. The model provisions in Annexures B and C may be adopted, adapted and used by any school, association or union for the purposes of governing the recruitment and transfer of learners, with attribution, and that use is expressly permitted.

A note on who this article is for, and how to read it

This is a long article, and deliberately so. The purchase of schoolboy rugby players by South African schools (the recruitment, in Grade 10 or Grade 11, of boys already enrolled at and developed by other schools, by means of bursaries, fee discounts, boarding, stipends and the promise of a professional

pathway) has been debated in the sports pages for fifteen years without anybody assembling, in one place, the facts, the rules that do and do not govern the practice, the law that already applies to it, and a workable design for governing it. That is the task attempted here. Different readers will want different parts of it.

Lawyers will find the doctrinal analysis in Parts IV and V: the application of section 28(2) of the Constitution and the Children’s Act 38 of 2005 to recruitment, bursary and selection decisions; the position of the parents who consent; the position of the incumbent learner who is displaced; the school’s statutory and common-law duties as caregiver; the bursary as a contract with a minor; and an audit of the remedies (contract, delict, enrichment and interdict) available to a school whose bursary holder is taken. Every South African case cited is grounded in a SAFLII reference or in a reported judgment that quotes it; foreign decisions are cited to the court’s or tribunal’s published text.

School governing bodies, headmasters, directors of rugby and bursary committees will want Part II (what has actually been published, including about their own schools), Part III (what the rules of SA Rugby and the education authorities actually say, which is largely not what the schools believe), Part IV.9 (why the law points to coaching investment rather than player acquisition), and Part VIII, which sets out a governance framework and model rules that can be adopted now, without waiting for legislation.

Rugby administrators (SA Rugby, the provincial unions, the schools’ rugby associations and World Rugby) will find in Part III a clause-by-clause account of the regulations that currently govern contact with, and contracting of, players under eighteen, and in Parts VI and VIII the comparative models (New Zealand, Ireland, FIFA, the NCAA) and the specific amendments to SA Rugby’s own regulations that would close the gap.

Agents, scouts and intermediaries should read Part III.4 closely: the Players’ Agents Regulations of 2021 contain a detailed regime for dealing with players between sixteen and eighteen, and the unaccredited “talent scout” who recruits for a school’s intake operates entirely outside it, which is both his commercial advantage and, on the analysis in Part IV, his legal exposure.

Parents and the public may prefer to begin with the executive summary, Part II.4 (the human cost) and Part IV.5 (what the law asks of parents who are offered a bursary for their son), before turning to Part VII, which tests the proposals now in public circulation, including the “80 per cent rule” proposed by the former Springbok captain John Smit in September 2026, against the standard the Constitution imposes.

Two disciplines govern everything that follows. First, no school and no child is accused of anything. Where schools are named, they are named only as they appear in published reporting, every recorded denial is recorded alongside every recorded allegation, and the reader is reminded throughout that a media report of a dispute is not an adjudicated finding. No South African learner is named or made identifiable (the one schoolboy named is the applicant in a published New Zealand tribunal decision, cited by the name under which it was reported); the boys whose movements the transfer trackers record are children, and their privacy is protected by the Constitution and by the Protection of Personal Information Act 4 of 2013 whether or not the websites that list them think so. Secondly, nothing is asserted from memory. Every regulation quoted was read in the published edition cited; every statute is quoted from the consolidated text as at the date of writing; and where a source could not be opened or a quotation could not be checked, the footnote says so rather than guessing.

Executive summary

South African elite schoolboy rugby has become a professional talent market populated entirely by children. Reporting in 2026 puts the average annual spend of the leading schools on their first-team programmes at about R6 million, with some allocating as much as R10 million to bursaries that begin at under-14 level, and coaching packages at elite schools exceeding R1 million; one player agent has estimated that the top 200 rugby schools collectively spend “well over R1 billion per year”.¹ The market has its own shop window (the SuperSport Schools platform passed 1.4 million registered users in the first quarter of 2026), its own transfer trackers, its own “signing season” in which provincial unions announce the current schoolboys they have “secured” for the following year, and a professional agency sector whose head has said, on the record, that “no one goes to Craven Week any more to scout players. Once you get to Craven Week, the scouting is done.”²

The market’s most contested product is the late transfer: the boy identified at a provincial tournament, developed at one school since Grade 8, and moved (on a bursary, a fee discount or a stipend, sometimes on a coach’s verbal promise) to another school in Grade 10 or 11 to strengthen its under-16 or under-19 pipeline. The published disputes this produces run unbroken from 2012 to 2026: fixture cancellations, joint letters, memoranda of understanding, charters, an anti-poaching resolution, and, in September 2026, John Smit’s proposal that 80 per cent of a first XV must have been at its school since Grade 8, a proposal that, it turns out, the website *SchoolBoyRugby* had made in almost identical terms in December 2013.³ None of this is an objection to the bursary that brings a boy from a disadvantaged community into a strong school at the start of his high-school career; that award is an educational act which section 9(2) of the Constitution protects, and the article says so in terms in Part I. The objection is to timing, secrecy and conditionality, not to opportunity. Nor does the article name any school as a poaching factory. It names schools only as the published reports name them, with every denial beside every allegation, and it ranks no school as a buyer, because no such ranking could be defended on the evidence. The schools that have built their first XVs in the transfer market do not need to be named here. They know who they are, and so does every headmaster who has lost a boy to them.

The pattern is an old one, and two older writers described its mechanism better than any governance document has. Machiavelli’s warning about mercenaries was addressed not to the soldiers but to the prince who hires them: a state that rests on hired arms “will stand neither firm nor safe”, because men

¹ Thomaidis “Intense level of school rugby reveals the high-performance reality needed to compete” *Daily Maverick* (17 April 2026) <https://www.dailymaverick.co.za/article/2026-04-17-intense-level-of-school-rugby-reveals-the-high-performance-reality-needed-to-compete/> (figures attributed to *Rapport*); Borchardt “SA schools splash R6-million on 1st XVs” *SA Rugby magazine* (13 April 2026) <https://www.sarugbymag.co.za/sa-schools-splash-r6-million-on-1st-xvs/>; Cooke “The billion-rand machine powering South African rugby: schoolboy rugby’s relentless rise” *SuperSport Schools Plus* (8 April 2025) <https://superschoolsnews.co.za/the-billion-rand-machine-powering-south-african-rugby-schoolboy-rugbys-relentless-rise/>. All three sets of figures are journalists’ or industry estimates, not audited accounts; the last is published by the broadcaster’s own platform and written by the head of a player agency. See Part II.1.

² Pongweni “Hilton College and others grapple with the cost of commercialisation in school sports” *Daily Maverick* (20 May 2026) <https://www.dailymaverick.co.za/article/2026-05-20-hilton-college-and-others-grapple-with-the-cost-of-commercialisation-in-school-sports/> (“By the end of the first quarter of 2026, the SuperSport Schools app surged past 1.4 million registered users”); Thomaidis “Craven Week’s role in South African rugby has changed with the times” *Daily Maverick* (5 July 2026) <https://www.dailymaverick.co.za/article/2026-07-05-craven-weeks-role-in-south-african-rugby-has-changed-with-the-times/> (Ronnie Cooke, head of The Team sports agency).

³ Wetdewich “World Cup winner suggests 80% rule for school rugby” *NovaNews* (10 September 2026) <https://novanews.co.za/school-rugby/john-smit-80-percent-rule-schoolboy-rugby-bursaries/>; “School rugby quotas” *SchoolBoyRugby* (5 December 2013) <https://schoolboyrugby.co.za/?p=5970> (proposing “a quota system that forces schools to make use of a minimum of 12 boys that have been at the school since Grade 8”). See Part II.6 and Part VII.

kept in the field by “a trifle of stipend” have been given nothing that would make them “willing to die for you”.⁴ The Afrikaans press called bought first-team players “huursoldate” in 2014, and a participant in the September 2026 debate spoke of “the mercenary approach”; the reader will find both in Parts I and II, but this article does not use either word of a boy. A child moved between schools by adults, for money, is not a mercenary; he is the object of a transaction he did not design, and the reproach belongs to the adults. Machiavelli’s point is for the school: it has hired a loyalty it did not earn, and that is a poor bargain for the hirer before it is anything else. George Orwell described the other side of the bargain from inside it. He was taken into his preparatory school at reduced fees because he was likely to win the scholarships on which its reputation depended, and he was made to feel it: “Our brains were a gold-mine in which he had sunk money, and the dividends must be squeezed out of us.” The school expected gratitude and got none: “But I was not grateful, as I very well knew. On the contrary, I hated both of them.”⁵ That is what a school buys when it buys a boy, and any school that has purchased a Grade 11 player and is counting on his loyalty should read the essay first. The point must be stated with care, because it is made about children. The vast majority of boys are loyal to their schools, and some who arrive in Grade 11 come to love the place as fiercely as any boy who arrived in Grade 8; a boy’s capacity for attachment is not the issue, and nothing in this article doubts it. The issue is what the transaction can deliver. Loyalty to a school is grown over years, out of belonging, and it is grown at Grade 8; a boy recruited in Grade 11, for two seasons, by adults who wanted his rugby, has been given no time to grow it and every reason to understand that the school wanted something else. If it comes, it comes despite the transaction and not because of it, and at that level, in the ordinary case, it is not there to be counted on: the school has bought a player, and it has not bought, because it cannot, the thing it will need from him at forty. The loyalty a school can rely on is the one it did not buy: the boy who arrived in Grade 8, has worn the jersey for four seasons and is told in Grade 11 that a better player has been bought to take his place. He is the one participant in the transaction whom nobody paid, nobody asked and nobody protected; Part IV.6 makes his case, and the school that displaces him should not be surprised when he, too, declines to be grateful. Orwell also wrote that “serious sport has nothing to do with fair play” and that “as soon as strong feelings of rivalry are aroused, the notion of playing the game according to the rules always vanishes”;⁶ the touchline at a modern derby, described in Part II.4, would not have surprised him.

What governs this market? The article’s central finding is that, in law, almost nothing does. The chairman of SA Schools rugby said so in 2019: “It’s very difficult to prevent a child from registering for another school. The Department of Education plays no role there and never has ... There is no legislation in place that, from a legal perspective, could allow something to be done.”⁷ That statement remains correct. The national school-sport policy instrument is silent on recruitment; the National Sport and Recreation Act contains no provision on school sport; SA Rugby’s Player Status Regulations define a “Player” as a person aged eighteen or older and bar only a *written agreement* with anyone younger, so that a schoolboy is not within their reach at all; the Players’ Agents Regulations bind only accredited agents and leave the unaccredited “talent scout” outside their scope; and the inter-school charters and headmasters’ agreements

⁴ Niccolò Machiavelli *The Prince* (1532) ch XII, in the translation of W K Marriott (1908), Project Gutenberg ebook 1232, <https://www.gutenberg.org/ebooks/1232>.

⁵ George Orwell “Such, Such Were the Joys” (first published *Partisan Review*, September–October 1952), https://www.orwell.ru/library/essays/joys/english/e_joys. The “he” of the first quotation is the headmaster.

⁶ George Orwell “The Sporting Spirit” *Tribune* (14 December 1945), <https://www.orwellfoundation.com/the-orwell-foundation/orwell/essays-and-other-works/the-sporting-spirit/>.

⁷ Noel Ingle, SA Schools chairperson, quoted in Jack “Schools poaching: Breaking the code” *SA Rugby magazine* (6 March 2019) <https://www.sarugbymag.co.za/schools-player-poaching-breaking-the-code/>.

are gentlemen's agreements without sanction. The only instruments with any sanction, the KwaZulu-Natal eligibility rule of 2013 and the Western Province resolution of 2024, impose it on the child.

The article's second finding is that the law which *does* apply is child law, and that it has been ignored. A late transfer is a "matter concerning the child" under section 28(2) of the Constitution. The Constitutional Court has held that the best-interests standard binds independent schools horizontally, has a procedural component requiring "a fair and determinable process", and gives children "a self-standing right to have their views heard".⁸ The Children's Act obliges every person caring for a child (which includes the school that boards, feeds, trains and disciplines a recruited fifteen-year-old) to "safeguard the child's health, wellbeing and development" and to protect him from "exploitation, and any other physical, emotional or mental harm";⁹ obliges a parent, before any decision "likely to significantly change ... the child's ... education", to give due consideration to the child's views;¹⁰ and guarantees the child's own right to participate.¹¹ None of the recruitment practices described in Part II has been designed with any of this in mind.

The third finding concerns the losing school's remedies. When a bursary holder is taken, the school that funded him will find that contract law, the Conventional Penalties Act, the law of delict, the law of unjustified enrichment and the law of interdicts leave it substantially without recourse, principally because the very rules that protect children stand between the school and its "investment". That is not a defect in the law; it is the law declining to treat a child as an asset.

The final part of the article sets out how the movement of players should be governed under the current dispensation, without new legislation, by using powers that already exist. The design rests on five principles: the child is never the object of a sanction; recruitment is regulated by *timing* and *transparency* rather than by prohibition; the rules bind the adults and institutions that transact (schools, coaches, alumni bodies, agents, scouts and unions) through the levers that already exist over each of them; every transfer is subjected to the "fair and determinable process" that *Pridwin* requires; and a school's rugby money is spent on coaching the boys it has before it is spent on acquiring anyone else's. Concretely, the article proposes a National Code on the Recruitment and Transfer of School Rugby Players adopted jointly by SA Rugby, the Department of Basic Education, the public and independent schools' associations and the schools' rugby associations; a prohibition on the recruitment of any learner after Grade 8 entry, absolute in Grades 10 to 12 where the market operates, with an exemption process for genuine relocation, exceptional circumstances and the opportunity bursary that brings a boy from a disadvantaged community into a school that can educate him; a mandatory four-party transfer record (both principals, the parents and the child's recorded views); a home-grown squad-composition rule, framed as an eligibility rule for schools rather than a penalty on boys; a "no approach" rule for enrolled learners, extended to unions, agents and alumni bodies and modelled on World Rugby's own anti-inducement provision; a date-certain rule prohibiting union and agent contact with school players before a fixed point in their Grade 12 year; minimum standards for bursary contracts; an independent transfer panel and ombud; an anonymised annual transfer register; sanctions on institutions and accredited individuals only; and a development-first rule requiring every school that competes to spend more on coaching its own boys, accredited coaches for

⁸ *AB and Another v Pridwin Preparatory School and Others* [2020] ZACC 12; 2020 (5) SA 327 (CC) paras 126, 131, 148 and 151 <https://www.saflii.org/za/cases/ZACC/2020/12.html>.

⁹ Section 32(1) of the Children's Act 38 of 2005.

¹⁰ Section 31(1)(a) read with s 31(1)(b)(iv) of the Children's Act.

¹¹ Section 10 of the Children's Act; s 28(2) of the Constitution.

every team from under-14 upwards, than on sport-linked benefits to learners recruited after Grade 8, certified annually. Each element is mapped to the legal power that can enact it today.

Part I. Introduction: a market in children, and a vacuum where its rules should be

On 23 January 2026 the headmaster of Michaelhouse wrote to the school's parents. Glenwood High School, he explained, had withdrawn from the fixtures scheduled between the two schools for the weekend of 31 January: "The reason for the withdrawal is related to the movement of a boy from Glenwood to Michaelhouse, which occurred at the insistence of his parent. We are committed to resolving the matter, with ongoing high-level discussions."¹² Nothing about the letter was unusual. Both schools had signed the KwaZulu-Natal Headmasters' Agreement of 2012, the oldest anti-recruitment instrument in South African school sport;¹³ the boy was a junior player; the sanction was the only one the system has ever produced, namely the cancellation of a Saturday's sport for several hundred boys who had nothing to do with the transaction; and the explanation offered was the one the law itself supplies, namely that a parent had decided where his child would go to school.

Seven months later the former Springbok captain John Smit, on a podcast with George Gregan and Jim Hamilton, proposed what *NovaNews* promptly christened the "80% rule". His words were that "the criteria should be 80% of that team, when they're in their last year, needs to have started at school when they were 13 years old", which *NovaNews* rendered as "since Grade 8". The mischief, as the write-up of the discussion put it, is "the mercenary approach: shopping for Grade 10s and 11s who are essentially finished products being imported for two seasons to win Saturday fixtures".¹⁴ That July the head of a professional player agency had been quoted to the effect that scouting is finished before Craven Week begins, and a provincial union had already announced, in June, that it had "secured" thirteen named current schoolboys for 2027.¹⁵

Between those two events lies the subject of this article: the movement of children between schools, and from schools to unions, for rugby. The article calls the phenomenon what its participants call it, the

¹² Letter from Michaelhouse to parents dated 23 January 2026, reproduced in "Glenwood cancels fixtures against Michaelhouse" *SchoolBoyRugby* (24 January 2026) <https://schoolboyrugby.co.za/?p=48142>. The blog is a long-standing specialist site; the letter is the school's own contemporaneous statement. See also "Glenwood cancelled sports fixtures against Michaelhouse following 'poaching' accusations" *Ruggas* (undated, c January 2026) <https://ruggas.co.za/glenwood-cancelled-sports-fixtures-against-michaelhouse-following-poaching-accusations/>.

¹³ "KZN Headmaster's Agreement 2012" *SchoolBoyRugby* (20 August 2012) <https://schoolboyrugby.co.za/?p=1039> (agreement concluded on 14 March 2012, effective from 2013; Michaelhouse and Glenwood both recorded as signatories). See Part III.1.

¹⁴ Wetdewich "World Cup winner suggests 80% rule for school rugby" *NovaNews* (10 September 2026) <https://novanews.co.za/school-rugby/john-smit-80-percent-rule-schoolboy-rugby-bursaries/>, reporting the "I Love Rugby" podcast episode of 8 September 2026 (George Gregan and John Smit with Jim Hamilton) <https://open.spotify.com/episode/7Jx8DI9RXsz2VhUM8H2RNP>. The *NovaNews* article paraphrases Smit. His words are quoted in this article from the episode itself, published on YouTube as "Jim Hamilton - Boks Break All Blacks" <https://www.youtube.com/watch?v=eaPVLm7SPd4> (the discussion of school rugby runs from approximately 6:46 to 12:20); a transcript is on file with the author, and quotations from it omit repetitions and false starts. Smit's formulation is by age ("started at school when they were 13 years old"); the write-up's "since Grade 8" is the ordinary age of Grade 8 entry, and this article uses the two interchangeably except where the difference matters (Part VII.1). See Part II.6.

¹⁵ Thomaidis "Craven Week's role in South African rugby has changed with the times" *Daily Maverick* (5 July 2026) <https://www.dailymaverick.co.za/article/2026-07-05-craven-weeks-role-in-south-african-rugby-has-changed-with-the-times/>; De Vries "Top schoolboy talent secured for Stormers Rugby Institute in 2027" *Stormers* (25 June 2026) <https://stormers.co.za/top-schoolboy-talent-secured-for-stormers-rugby-institute-in-2027/>.

“buying” of players, while insisting on what the law says about that vocabulary: a child cannot be bought, sold, owned or transferred, and any rule, contract or practice that treats him as though he could is measured against section 28(2) of the Constitution and found wanting. The subject is not new. It has been debated in the sports pages since at least 2012. What has not been done is the assembly, in one place and for every audience with a stake in it, of the verified facts, the rules that govern the practice, the law that already applies to it, and a design for governing it that would survive constitutional scrutiny. That is what follows.

Nothing in this article is an argument against the sport bursary as such, and least of all against the bursary that opens a strong school to a boy whose family could not otherwise afford it. In a country where the quality of a child’s schooling still tracks the geography of apartheid, a funded place at a well-resourced school is one of the few instruments that moves a boy from one side of that line to the other, and section 9(2) of the Constitution expressly permits measures designed to advance persons disadvantaged by unfair discrimination. A bursary awarded on entry, disclosed to the family in writing, unconditional on playing services and held for the duration of the boy’s schooling is an educational act, and this article has no quarrel with it. Its subject is a different transaction: the removal, in Grade 10 or 11, of a boy already developed by one school, for the competitive benefit of another, on terms that make his education contingent on his form. The test that separates the two is not the colour or the means of the recipient but the timing, the transparency and the conditionality of the award, and it is that test that the Code in Part VIII applies.

The structure is this. Part II sets out the facts as they have been published: the money, the signing season, the fifteen-year chronology of disputes, the human cost, the counter-examples and the reform proposals presently in circulation. Part III audits the rules (education law, sport law and SA Rugby’s own regulations) and shows where the vacuum lies. Part IV turns to the law that does apply, which is the law of children: the Constitution, the Children’s Act and the school’s duties as caregiver, applied to the recruit, the incumbent, the parents and the public school’s money. Part V treats the bursary as a contract and audits the losing school’s remedies. Part VI surveys how other sporting systems govern the movement of minors. Part VII tests the proposals now on the table (the 80 per cent rule, the KwaZulu-Natal eligibility rule, the Western Province resolution, the FIFA-style compensation model) against the best-interests standard. Part VIII sets out the governance framework this article proposes and identifies, element by element, the legal power under the current dispensation that can enact it. Part IX concludes.

Part II. The facts as published

II.1 The economics of a first XV

The scale of the elite schoolboy rugby economy is now a matter of published, if not audited, figures. In April 2026 *Daily Maverick*, drawing on reporting in *Rapport*, put the annual expenditure of the top rugby schools at “an average of around R6-million annually on their first team programmes, with some allocating as much as R10-million towards bursaries to attract top talent, starting as early as under-14 level”, and reported that “coaching salaries at elite institutions can exceed R1-million”.¹⁶ *SA Rugby*

¹⁶ Thomaidis “Intense level of school rugby reveals the high-performance reality needed to compete” *Daily Maverick* (17 April 2026) <https://www.dailymaverick.co.za/article/2026-04-17-intense-level-of-school-rugby-reveals-the-high-performance-reality-needed-to-compete/>. The same report records that Bishops employs eleven coaching staff for one rugby team and that SuperSport

magazine reported the same figures the same week, adding a range of R600 000 to R800 000 for first-XV coaches' salaries at leading schools, coaching packages exceeding R1 million at some, and an estimate of R1.4 million to R1.8 million as the cost of assembling a competitive under-14 squad.¹⁷ A year earlier the head of a player agency, writing on the broadcaster's own schools platform, had estimated that "collectively, South Africa's top 200 rugby schools spend well over R1 billion per year on their rugby programs", and added the sentence that explains why: "A successful rugby program is a school's best marketing campaign."¹⁸ None of these figures rests on published accounts. They are journalists' and industry estimates, and the last is the estimate of an interested party published by another interested party. They are nonetheless the only figures there are, they have not been contradicted by any school, and their order of magnitude is corroborated by everything else that has been published.

The coach's function has changed with the money. The Affies first-team coach described the emerging model without embarrassment: "More and more schools are looking at a model where a professional coach like MJ Mentz comes to a school's team. That type of coach has already built up the necessary network to acquire players for his school's team. That's why school rugby has grown so much and is so strong."¹⁹ The capacity to acquire players is, on that description, a hiring criterion. The Jeppe first-team coach described the support structure: "There are psychologists and nutritionists, physios and biokineticists. It's next level."²⁰ The South African Sports Medicine Association had warned in 2018 that "directors of rugby are appointed by governing bodies and paid salaries way in excess of their academic peers", that "some schools entice talented players from all around the country with significant financial reward offered in the form of bursaries, accommodation, kit and even cash", and that "poaching of players is more prevalent than is recognised or acknowledged, often to the detriment of 'smaller' schools".²¹

The shop window is televised. The SuperSport Schools platform, which streams school fixtures, "surged past 1.4 million registered users" by the end of the first quarter of 2026, with "19 million total views and 317.7 million consumption minutes" across app and channel;²² in February 2025 the SABC had recorded the platform's "more than one million registered users" and "over 60,000 matches in 2024".²³ Weekly

Schools generated more than 1.7 billion minutes of consumption in 2024.

¹⁷ Borchardt "SA schools splash R6-million on 1st XV's" *SA Rugby magazine* (13 April 2026) <https://www.sarugbymag.co.za/sa-schools-splash-r6-million-on-1st-xvs/>.

¹⁸ Cooke "The billion-rand machine powering South African rugby: schoolboy rugby's relentless rise" *SuperSport Schools Plus* (8 April 2025) <https://superschoolsnews.co.za/the-billion-rand-machine-powering-south-african-rugby-schoolboy-rugbys-relentless-rise/>. The author heads a player agency; the platform is the broadcaster's. No methodology is disclosed.

¹⁹ Ruan Jacobs, quoted in Thomaidis (n 16) and Borchardt (n 17).

²⁰ Drickus Venter, quoted in Ray "SA schoolboy rugby is the base on which world domination should continue indefinitely" *Daily Maverick* (3 April 2025) <https://www.dailymaverick.co.za/article/2025-04-03-sa-schoolboy-rugby-is-the-base-on-which-world-domination-should-continue-indefinitely/> (top first-team coaches earn "north of R1-million a year"). The article does not discuss recruitment.

²¹ Hagemann "Schoolboy rugby – Are we losing the plot?" South African Sports Medicine Association (22 June 2018) <https://www.sasma.org.za/articles/schoolboy-rugby-are-we-losing-the-plot/>. The piece is professional commentary published by the Association, not empirical research; it also records that "over age players deliberately 'fudge' their ID books to make the U19 cut off for school rugby" and that "many boys resort to the use of illegal and dangerous anabolic steroids to bulk up for the game".

²² Pongweni "Hilton College and others grapple with the cost of commercialisation in school sports" *Daily Maverick* (20 May 2026) <https://www.dailymaverick.co.za/article/2026-05-20-hilton-college-and-others-grapple-with-the-cost-of-commercialisation-in-school-sports/>.

²³ SABC "Media statement: SuperSport Schools and SABC Sport agree partnership to expand school sports coverage in South Africa" (6 February 2025) <https://www.sabc.co.za/sabc/media-statement-supersport-schools-and-sabc-sport-agree-partnership-to-expand-school-sports-coverage-in-south-africa/>.

national rankings of first XV's are published by several outlets, and one of them ranks 200 schools at first XV, under-16, under-15 and under-14 level and combines the four into a single "pipeline" index, weighted 40, 25, 20 and 15 per cent, on the stated premise that "a dominant sports program requires continuity, coaching depth, and a thriving junior pipeline", so that a thirteen-year-old's A-team results now count towards his school's national standing; and a conference on "School Sports Commercialisation", "dedicated to 'unlocking the business' of youth sport", was held at a Pretoria school in 2026 with tickets at R9 500.²⁴ The Affies coach again supplied the commercial logic: "The arrival of SuperSport Schools has also improved the commercial product. You can now do marketing and get exposure for your sponsors through SuperSport Schools. It means a lot financially for a school."²⁵ The audience and the participation base are of the same order. *Daily Maverick* reported in August 2026 that SA Rugby's 2024 annual report records more than half a million registered players, that "big schoolboy rugby matches attract far more fans than Currie Cup games", and that the annual derby between Paarl Gimnasium and Paarl Boys' High alone draws 20 000 spectators; Ronnie Cooke, who heads a player agency, told the paper: "I don't think anywhere in the world you'll get a school game where there's more than 20,000 spectators."²⁶

The sponsor. There is one more participant, and the reporting treats him as background when he is closer to the engine. A first XV is now a commercial property. The agent's own account is that a successful programme "attracts students, alumni investment, corporate partners, and national attention", and that "sponsorship, merchandising, streaming rights" have arrived with the broadcast;²⁷ the Affies coach's is that the streaming platform lets a school "get exposure for your sponsors";²⁸ and the child-rights researcher quoted by *Daily Maverick* lists, among the conditions under which children become "unpaid child entertainers", that "corporate sponsorships are integrated into the event" and that "children are individually marketed", and says South African school sports broadcasting "has already crossed many of these thresholds".²⁹ What none of the reports says, because it does not need saying, is the rule every headmaster knows: sponsors sponsor winning teams. A brand attaches itself to the side that is on the screen on Saturday and in the rankings on Monday, and does not renew with the side that is not. The consequence is a pressure that runs the wrong way. The money a school needs for its programme arrives on condition of results; results are most cheaply secured in the transfer market; and the transfer market is where the pressure is discharged, on the boys the school buys and on the boys it displaces. A sponsor never approaches a child, and no instrument in Part III mentions him. But he sets the terms on which the adults who do approach children are judged, and that is why the Code in Part VIII counts him among the persons for whom a school answers (Rule 7) and requires every benefit he funds to be recorded and disclosed (Rule 6).

²⁴ Pongweni (n 22). For the four-age-group ranking, "FAIRTREE Combined School Rugby Rankings 2026" *SA School Sports* (24 August 2026) <https://saschoolsports.co.za/fairtree-combined-rugby-rankings-2026/>, with separate weekly tables for the first XV, under-16, under-15 and under-14 at <https://saschoolsports.co.za/category/rankings/rankings-rugby/>; Rugby365 publishes a first XV Top 50 and the SchoolBoyRugby blog its own first XV rankings.

²⁵ Ruan Jacobs, quoted in Thomaidis (n 16).

²⁶ Thomaidis "SA schoolboy rugby's winning formula comes with concerns" *Daily Maverick* (21 August 2026), print edition as reproduced on PressReader <https://www.pressreader.com/south-africa/daily-maverick/20260821/282437060962833>. The registered-player figure is attributed by the report to SA Rugby's 2024 annual report; the R1 billion estimate (n 18) is repeated there as Cooke's.

²⁷ Cooke (n 18): "A successful rugby program is a school's best marketing campaign. It attracts students, alumni investment, corporate partners, and national attention"; "Sponsorship, merchandising, streaming rights".

²⁸ Jacobs (n 25).

²⁹ Belinda Matore, quoted in Pongweni (n 2).

The bursaries themselves are substantial and, on the only peer-reviewed evidence, structurally tied to the first XV. A 2025 study in *Frontiers in Sports and Active Living*, based on interviews with eight senior staff at four elite boys' schools in the Western Cape, found that "the process of students and their parents seeking information, along with scouting, generally begins in Grade 6 (at 12 years old)"; that "rugby was a consistent scholarship offered at all the schools and was frequently referred to as the school's core sport"; that awards may extend to "a 120% or 130% scholarship", covering laptops, clothing, medical aid and tour fees beyond full fees; and that no transparent selection system exists across schools.³⁰ One participant described recruitment in a sentence that would be unremarkable in professional sport and is remarkable only because the subjects are twelve: "our head of rugby goes to the school provincial tournament and sees a big player there and talks to the parents and says, would you consider coming to (school), we offer a scholarship".³¹ The same study records the industry's own admission of the fragility of the enterprise ("It's always incredibly difficult to assess a 12-year-old child and to try and assess potential as opposed to ability") and the statistic that governs the whole subject: "only 24% of U13 rugby provincial players progress to play provincial under-18 rugby."³² That figure comes from a 2011 longitudinal study in the *South African Journal of Sports Medicine*, which tracked the 349 players at the 2005 under-13 Craven Week and found that 31.5 per cent were selected for the under-16 Grant Khomo Week and 24.1 per cent for the under-18 Craven Week: "Seventy-six per cent of the players selected for the U13 tournament do not play at the U18 national Craven week tournament."³³ Three of every four children around whose rugby potential a school reorganises its bursary budget will not realise it at the level the school is buying.

Why the gamble fails. The reason is not mysterious, and the science of it is part of World Rugby's own coaching curriculum. Boys of the same age-grade are not at the same stage of growth: the one born just after the cut-off date, or who matured early, carries a size and strength advantage that has nothing to do with rugby ability and everything to do with timing, and selectors reward it. A 2026 systematic review and meta-analysis of the relative age effect in rugby found players born in the first quarter of the selection year overrepresented against those born in the last (34.8 per cent against 16.9 per cent), with the effect markedly stronger in youth categories than in senior ones.³⁴ A study of an English Premiership academy's under-15 selection found that the boys selected were heavier and stronger than those not selected, that 65 per cent of them were born in the first half of the year, that no difference appeared on the cognitive test, and concluded that selection "may be due to enhanced physical attributes rather than cognitive abilities".³⁵

³⁰ Ekron, Knott, Persson and Taliep "The goals and selection criteria of sports scholarships: mutual benefits perceived by South African schools" (2025) 7 *Frontiers in Sports and Active Living* art 1574442, <https://doi.org/10.3389/fspor.2025.1574442> (also PMC12415062). Sample: "Purposive sampling was used to select four elite boys' schools in the Western Cape province ... The sample consisted of eight participants, with two respondents from each of the four schools". The study is peer-reviewed but small and purposive; it cannot sustain national prevalence claims.

³¹ Ekron et al (n 30) (participant quotation, reproduced as published).

³² Ekron et al (n 30).

³³ Durandt, Parker, Masimla and Lambert "Rugby-playing history at the national U13 level and subsequent participation at the national U16 and U18 rugby tournaments" (2011) 23(4) *South African Journal of Sports Medicine* 103–105, <https://journals.assaf.org.za/index.php/sajsm/en/article/view/321> (abstract quoted). The abstract records the authors' concern "that bigger players who mature early are selected at this age, and that the majority of these players do not play rugby at a high level after puberty" as the motivation for the study, not as a finding.

³⁴ Brustio, Cobley, Ungureanu, McAuley, Lupo, Boccia, Till and Kelly "Relative age effects in Rugby union and Rugby league: a systematic review and meta-analysis" (2026) 8 *Frontiers in Sports and Active Living* art 1809947, <https://doi.org/10.3389/fspor.2026.1809947> (abstract: "Male players showed a significant overrepresentation in Q1 vs. Q4 (34.8% vs. 16.9%; OR = 1.99)"; "In males, RAEs were stronger in youth than senior categories (OR = 2.42 vs. 1.41)").

³⁵ Dimundo, Cole, Blagrove, McAuley and Kelly "Talent identification in an English Premiership rugby union academy: multidisciplinary characteristics of selected and non-selected male under-15 players" (2021) 3 *Frontiers in Sports and Active Living* art 685442, <https://doi.org/10.3389/fspor.2021.685442> (abstract).

World Rugby’s coaching resource says the same thing in plainer words: “coaches could miss selecting very technically gifted players as they are not as physically developed”, so “early talent identification should focus more on technical and tactical skill abilities”, because “physical maturation and development can eventually level out as the players get older”.³⁶ Anyone who has watched a Grade 8 team and the same boys in Grade 12 knows what that means. The boy who was the biggest on the field at thirteen is often nowhere near it at seventeen, and the boy nobody looked at has grown into the frame the scout was measuring for. A school that buys physique at fifteen is buying the one quality most likely to be overtaken, and two seasons later it discovers that the shape it paid for has been outgrown by boys it did not buy and that it now lacks, in Grade 10 or 11, the very size it thought it had secured. That, on my observation, is where many late transfers come from: not from a plan, but from a scouting error made two years earlier and corrected in the market rather than on the practice field. It is also why coaching matters more than anything else in this article. The boys are all going to change; the only question is who is there to develop them while they do, and nothing in South African school rugby requires the scout who selects a twelve-year-old, or the coach who receives him, to have been taught how adolescents grow.

SA Rugby’s own foundation supplies the benchmark for what a bursary in this market costs. The Rugby Education Foundation, established in 2015, describes its purpose as “to support talented rugby players with Education Bursaries, to enable them to balance formal education and high performance training”; its bursaries run from “R60,000 to R130,000 per year” and cover academic fees, accommodation, meals, medical services and medical aid, mentorship, conditioning, coaching, transport, kit, stipends and life skills; recipients are “predominantly from disadvantaged communities”; and “parents do not need to submit applications, as all candidates are chosen directly through these established programs”.³⁷ The last sentence will matter in Part IV: it describes a pipeline of substantial money to identified minors in which the child and family have no application step at all.

II.2 The signing season: unions, agents and the schoolboy

The second tier of the market sits above the schools. Provincial unions and their professional franchises now sign current learners, and say so. On 25 June 2026 the Stormers announced that “top schoolboy talent” had been “secured for Stormers Rugby Institute in 2027”: thirteen players from seven schools: four from Paarl Gimnasium, three from Oakdale, two from Stellenberg and one each from Grey College, Paul Roos, Wynberg and Northwood. The director of rugby was quoted: “we have been able to attract the cream of the crop for 2027”; “This is a crucial building block in Project 2029”; the intake “fits well within the Stormers Rugby contracting model”; and “we have full faith in these players who have decided to start their professional journey with us.”³⁸ A month later *Rugby365* listed “the top 10 South African schoolboy signings of 2026” (three to the Bulls, two each to the Stormers, Lions and Sharks, one to the Cheetahs, drawn from Grey College, Westville, Affies, Garsfontein, Graeme College, Paul Roos and Stellenberg) under the sentence: “With the Craven Week done and dusted, and the schoolboy season

Living art 688143, <https://doi.org/10.3389/fspor.2021.688143> (abstract).

³⁶ World Rugby Passport, “Relative age effect”, in *Conditioning for Rugby: Introduction to Conditioning (Youth), Long Term Athlete Development*, <https://passport.world.rugby/conditioning-for-rugby/introduction-to-conditioning-youth/long-term-athlete-development/relative-age-effect/> (quoted as published; the page reads “as they players get older”).

³⁷ SA Rugby “Rugby Education Foundation” <https://springboks.rugby/general/rugby-education-foundation>.

³⁸ De Vries “Top schoolboy talent secured for Stormers Rugby Institute in 2027” *Stormers* (25 June 2026) <https://stormers.co.za/top-schoolboy-talent-secured-for-stormers-rugby-institute-in-2027/>. This is the union’s own publication. The thirteen players are named in the source; they are not named here.

nearing its conclusion, unions are finalising their recruitment drives for 2027.”³⁹ *NovaNews* described the Bulls as having executed “the shrewdest business this year, luring talented players not merely from Pretoria’s rich talent pipeline but from across South Africa with the kind of nationwide recruiting that establishes dynasties”.⁴⁰ None of these reports discloses the ages of the boys, the dates of signature or the terms, and one qualification must be made before anything is built on that. The boys announced in June and July 2026 were announced as secured for 2027, which on the face of the announcements places them in their final school year, and a matric learner ordinarily turns eighteen during the course of that year. Some of them, perhaps most, would therefore have been majors under section 17 of the Children’s Act by the time any contract was signed, and regulation 3.7 of SA Rugby’s Player Status Regulations, discussed in Part III, prohibits a union from contracting in writing only with a player who has not yet turned eighteen. There is no suggestion in any of the reports that a union signed a written contract with a minor, and none is made here. The concern lies elsewhere. The recruiting (the scouting, the approach, the negotiation and the boy’s decision) was done while he was still a learner and, on the agents’ own account, well before his eighteenth birthday. That he reached majority in his last months at school does not retrospectively supply the protection he should have had while the decision was being made. What the reports do establish is that the unions publicly announce, as “secured” and as having “decided to start their professional journey”, boys who are still at school.

The agent’s account confirms where the decisive transactions occur. Ronnie Cooke, who heads a sports agency, told *Daily Maverick* in July 2026: “No one goes to Craven Week any more to scout players. Once you get to Craven Week, the scouting is done”; “Players have signed their contracts; universities have offered bursaries to players already.” His agency identifies talent from age twelve, and the scouts, the unions and the universities, on his account, now attend the other televised school tournaments, which he called “almost the new flagship events”.⁴¹ SA Rugby’s own general manager for participation and development disagreed that the tournament had been sidelined: it “forms part of a broader, more connected and more inclusive talent identification landscape”, “sits at the flagship under-18 point of the pathway” and “is an important national checkpoint, but it is not the only entry point”.⁴² The anti-doping authority’s chief executive, explaining in August 2026 why the stakes at Craven Week have risen, said: “When you’re at Craven Week and walk around the sidelines, there are scouts from the local and foreign franchises”; “You can just look at how many South African players are in action for the United Rugby Championship teams, and the bulk of them were scouted through Craven Week.”⁴³ Foreign recruitment is part of the same picture: in November 2019 *RugbyPass*, relying on *Rapport*, reported that up to twenty leading South African schoolboys had been recruited by overseas clubs, most of them in the French Top 14, and linked the pattern to the impending extension of World Rugby’s residency qualification from three years to five.⁴⁴

³⁹ Sawula “The top 10 South African schoolboy signings of 2026” *Rugby365* (26 July 2026) <https://rugby365.com/schools/news-sa-schools/the-top-10-south-african-schoolboy-signings-of-2026/>. The article does not state the players’ grades or ages, nor any contract terms.

⁴⁰ Wetdewich “Bulls lead 2027 recruitment battle with nationwide talent net” *NovaNews* (27 July 2026) <https://novanews.co.za/school-rugby/schoolboy-signings-2027-bulls-recruitment-pheiffer/>.

⁴¹ Thomaidis “Craven Week’s role in South African rugby has changed with the times” *Daily Maverick* (5 July 2026) <https://www.dailymaverick.co.za/article/2026-07-05-craven-weeks-role-in-south-african-rugby-has-changed-with-the-times/>.

⁴² Ian Schwartz, quoted in Thomaidis (n 41).

⁴³ Khalid Galant, quoted in Esben “Said’s sounds alarm over schoolboy doping” *SA Rugby magazine* (5 August 2026) <https://www.sarugbymag.co.za/saids-sounds-alarm-schoolboy-doping/>.

⁴⁴ “20 top South African schoolboys raided by overseas clubs as World Rugby’s five-year residency rule drives younger recruitment” *RugbyPass* (19 November 2019) <https://www.rugbypass.com/news/20-top-south-african-schoolboys-raided-by->

Intermediaries appear at school level too, and have for a decade. In January 2016 the headmaster of Parktown Boys' High wrote, in a letter announcing the suspension of all fixtures against King Edward VII School: "In September 2015 rumours began to surface that two boys from Parktown Boys' High School had been approached by schools in Kwa-Zulu Natal and Gauteng, through an agent"; and: "This issue is bigger than the two schools involved. We, as a school, believe that the time has come to make a stand against the continued procurement of players between the boys' schools."⁴⁵ In 2019 the Dale College director of rugby gave a first-hand account of a provincial union's coach approaching a schoolboy at a school festival with a promise of team involvement.⁴⁶ In August 2026 *SchoolBoyRugby*, which has tracked the subject longest, wrote that "just about every leading school is either actively involved in some form of player recruitment after Grade 8 or, at the very least, entertaining the idea", that "agents and scouts who stand to profit from player movements are an increasingly significant part of the equation", and that "wins may be the destination, but money is increasingly paving the road to get there".⁴⁷ A distinction drawn on the same site in 2016 will organise much of Part III: between the *accredited agent*, regulated by SA Rugby's agent regulations and barred from certain dealings with under-eighteens, and the *talent scout*, the school "agent" who, in the site's description, is "most often ... involved with sourcing players for Grade-8 intake at high schools", works on "verbal agreements with parents", and stands in a relationship to the family that is "way different from the one that exists between a pro player and his agent".⁴⁸ An Eastern Cape educator with two decades in the leading boys' schools of that province put the same point from inside the staffroom in 2025: "Talent scouts, often incentivized by under-the-table deals, push boys toward certain schools and unions"; and of the dream that drives the market, "Every schoolboy dreams of a professional contract or wearing the green and gold, but less than 2% ever make it."⁴⁹

II.3 The disputes: a chronology, 2012–2026

Against that economic backdrop, inter-school recruitment disputes recur with almost seasonal regularity. What follows is the published material, organised chronologically, confined to what named sources have said in print, with every recorded denial alongside every recorded allegation. It is a chronicle of allegations, denials, cancelled fixtures and acknowledged programmes, not of adjudicated findings, and the same school appears as accuser in one season and accused in the next.

overseas-clubs-as-world-rugbys-five-year-residency-rule-drives-recruitment-younger/. The report named Grey College, Paarl Boys' High, Paarl Gimnasium and Paul Roos as source schools and Montpellier, Toulon, Stade Français and Pau as destinations.

⁴⁵ "Parktown slam KES player poaching" *SA Rugby magazine* (22 January 2016) <https://www.sarugbymag.co.za/parktown-vs-kes-no-longer/>, reproducing the letter of the Parktown headmaster, Mr D Bradley. The KES headmaster's position, as reported at the time, was that there was nothing wrong with the boys being at his school.

⁴⁶ Grant Griffith, quoted in Jack "Schools poaching: Breaking the code" *SA Rugby magazine* (6 March 2019) <https://www.sarugbymag.co.za/schools-player-poaching-breaking-the-code/>: "[the player] says he was at the Kearsney Easter Rugby Festival when one of the Sharks Craven Week coaches approached him and promised him he would be involved in the Sharks team set-up." The learner is named in the source and not here.

⁴⁷ "Schoolboy rugby: the race to the top via recruitment" *SchoolBoyRugby* (16 August 2026) <https://schoolboyrugby.co.za/?p=49518>. The post records that there is "no universally accepted answer" to the question at what grade recruitment becomes objectionable.

⁴⁸ "Accredited agent vs talent scout" *SchoolBoyRugby* (25 January 2016) <https://schoolboyrugby.co.za/?p=13251>. The post quotes the agent rule as it then stood; the current rule is materially different and is analysed in Part III.4.

⁴⁹ Miles "The real cost of the schoolboy rugby dream" *Coach Talk* (22 April 2025) <https://coachtalk.wordpress.com/2025/04/22/the-real-cost-of-the-schoolboy-rugby-dream/>. The author describes himself as an "experienced educator and school leader" and writes from Selborne College, St Andrew's College and Grey High School; no source is given for the 2 per cent figure. It is recorded here as his estimate, and in the author's experience of the contracting side of the game it is a generous one: the proportion of schoolboy players who ever sign a professional contract is smaller still.

2012, *KwaZulu-Natal*. A Grade 11 first XV player moved from Durban High School to Glenwood; the two heads met on 6 November 2012 at DHS's request. The contemporaneous account records that "consideration has to be given to what is in the student's best interests", that there was "respect attached for the decision made by his parent/s or guardian/s", and that the affair went to "the state of the relationships between KZN schools".⁵⁰ Earlier that year eleven KwaZulu-Natal boys' schools had concluded the Headmasters' Agreement analysed in Part III.

2013, *the Sunday Times investigation*. In November 2013 the *Sunday Times* reported that 37 pupils had been recruited from five schools in the Eastern Cape and Boland by wealthier schools and provincial unions, with inducements including free tuition, boarding, clothing and pocket money. The principal of Hudson Park High School was quoted: "They are made financial offers which include free schooling and clothing. It [poaching] inculcates the wrong values in impressionable youngsters." Kingswood College's response was "We do not tout for talent"; a Blue Bulls official said "I don't see it as poaching"; and the principal of Dale College said he knew "that there must be some sort of carrot dangled".⁵¹ The following month *Rapport* reported the case of Western Cape boys recruited to a Pretoria high school on the promise of bursaries, with a union recruiter as facilitator, who were left stranded when the school could not honour its commitments.⁵² The 24-school Traditional State Boys' Schools Sports Charter followed (Part III.1).

2014, *Affies and Garsfontein*. In May 2014 Afrikaanse Hoër Seunskool withdrew from its fixture against Hoërskool Garsfontein. Its headmaster, Dr Pierre Edwards, was reported in *Beeld* as stating: "Affies het 'n beleid dat ons nie teen skole speel wat sogenaamde post-matrieks of huursoldate gebruik nie" (Affies has a policy of not playing against schools that use so-called post-matrices or mercenaries). Garsfontein answered with a full statement: "Daar is geen post-matriek in Garsfontein se span nie, soos beweer word"; the allegation that it holds learners back was "van alle waarheid ontbloot en ons rekords kan dit staaf"; its governing body "het in 2011 besluit dat ontwikkeling, transformasie en integrasie op alle vlakke van skool moet gebeur"; and of Affies' examination explanation, "Dit is vreemd dat die eksamen nou skielik voorgehou word as rede vir die onttrekking."⁵³ The word *huursoldate*, hired soldiers, has stayed in the vocabulary.

2014, *SACS and KES*. In the same week Business Day reported that the South African College School had severed all sporting ties with King Edward VII School: "Sacs' rugby, water polo, cricket and hockey teams will no longer play against KES teams. What precipitated this dramatic gesture was the fact that Sacs arrived at the St Stithians Easter Rugby Festival last month with a squad of 23 boys and left with 22." One of its Grade 10 pupils was "now a KES boy", and "it is suspected that the boy was offered a

⁵⁰ "DHS & Glenwood meet to discuss rugby player" *SchoolBoyRugby* (6 November 2012) <https://schoolboyrugby.co.za/?p=1509>.

⁵¹ Govender "How money moves rugby schoolboys" *Sunday Times* (17 November 2013) <https://www.timeslive.co.za/sunday-times/lifestyle/2013-11-17-how-money-moves-rugby-schoolboys/>. The report named, among others, Hoërskool Menlopark, Hoërskool Garsfontein, Queen's College, Southdowns College, Hoërskool Swartland, Maritzburg College, Dale College, Kingswood College, Drostyd Technical High School, Hudson Park High School, King Edward VII School and Glenwood High School. A contemporaneous digest recorded a supporters' non-profit spending R1.2 million a year on athletes at one school: "Sunday Times probes schoolboy rugby poaching" *SchoolBoyRugby* (November 2013) <https://schoolboyrugby.co.za/?p=5830>.

⁵² "Rapport: 'Rugby Boys stranded after promises (broken)'" *SchoolBoyRugby* (17 December 2013) <https://schoolboyrugby.co.za/?p=6016>, reproducing the substance of the *Rapport* report. The original should be retrieved from the Netwerk24 archive before any forensic use.

⁵³ "Affies pulls out of the Garsfontein match – why?" *SchoolBoyRugby* (1 June 2014) <https://schoolboyrugby.co.za/?p=8253>, reproducing contemporaneous *Beeld* reporting. Garsfontein's statement is quoted from its reproduction in full in Nienaber "Garsies sê oor 'huursoldate'" *SuperSport Schools Plus* (31 May 2014) <https://superschoolsnews.co.za/garsies-se-oor-huursoldate/> (the original address, superschoolsnews.co.za, redirects there); the *Netwerk24* page of 30 May 2014 on which it was first reported remains inaccessible.

scholarship to persuade him to switch schools”. The report set the break against the charter that the “top 24 state boys schools” had agreed “just a few months ago”, “born of the concern that some of the high-profile sports at our schools are increasingly being driven by noneducational imperatives and affected by questionable (unethical) practices” (Part III.1), and quoted the headmaster of Hudson Park High School, Roy Hewett, on the method: “Young men are approached in a clandestine way either at, or shortly after, the Grant Khomo Week. They are made financial offers which include free schooling, all expenses paid, clothing and a significant monthly payment, for a contractual commitment to the franchise in question. They are strongly encouraged to keep the knowledge of these negotiations from their schools and often disappear during the third-term break.” The reporter’s own observation was that “frequently the transfer happens in grade 11 because schools don’t want to be saddled with a boy who then doesn’t perform, so they snaffle him to provide the X factor for their first teams in the last two years of school”, and that “the pupil will have been separated from family, community and culture”.⁵⁴

2014, the Witness report. A week later *The Witness* published the most candid first-party account of the practice on record from a headmaster. Glenwood’s principal, Trevor Kershaw, was reported as admitting that incentives were offered to boys at rival schools: “If there is a high school boy that we think would benefit long term from coming to Glenwood, we will talk to him and see what we can do to make it happen. Sometimes it works, sometimes it does not”; there “may well be some boys joining us in the third term so that they can be integrated into the system before next year begins”; and one new boy, who had played a festival for Glenwood before returning to his school in the Western Cape, had left “because he was homesick”. The principal of Hudson Park High, which had lost four players, said Glenwood was “at least open about their transfers, and are not underhanded or devious like some other schools in KZN”, and identified the “unacceptable practice” as offering incentives to boys and their parents to switch schools in Grades 10, 11 and 12. Westville’s director of sport denied poaching (“those boys approached us”; “We are known for developing our own talent”); the managing director of the Sharks Academy said that scouts attend under-13 trials and under-16 festivals (“We identify talent. But the Sharks Academy is not involved with high school transfers at present, and no contracts are offered to boys under 18”); and the KES headmaster, accused of backtracking on an undertaking not to poach a boy, denied any approach and said the boy’s mother had decided on the move herself. The report recorded that the twenty-four state schools had agreed the previous November to “reject approaching and offering money to boys to allow or encourage them to switch schools”.⁵⁵

2015, “recruitment gone wrong”. A promising Selborne College cricketer left for Glenwood on what was reported to be a coach’s offer of a full scholarship; on arrival the principal refused enrolment, Glenwood stating that “the cricket coach does not have authority to award bursaries or scholarships” and that no application had been processed. Westville then accepted him on a scholarship its marketing official denied offering (“The Times has seen a series of e-mails discussing the scholarship, his poor academic performance and his eligibility to play for the school’s first team”) and then sent him home, citing his academic performance.⁵⁶ The episode is the clearest documented instance of concrete harm to a child from informal recruitment, and it is analysed in Part IV.

⁵⁴ McGregor “Poaching of schoolboy talent under spotlight as top schools cut ties” *Business Day* (29 May 2014) <https://www.businessday.co.za/bd/sport/rugby/2014-05-29-poaching-of-schoolboy-talent-under-spotlight-as-top-schools-cut-ties/>.

⁵⁵ “Talent poachers lurk at schools” *The Witness* (2 June 2014) <https://witness.co.za/archive/2014/06/02/talent-poachers-lurk-at-schools-20150430/> (byline as archived).

⁵⁶ “Recruitment gone wrong: Glenwood & Westville named” *SchoolBoyRugby* (20 July 2015) <https://schoolboyrugby.co.za/?p=12303>, reproducing reporting in *The Times*.

2016, *Parktown and KES; the Gauteng letter to Hilton*. In January 2016 Parktown suspended all fixtures against KES after two of its scholarship holders, provincial representatives, appeared enrolled at KES without notice, in the circumstances described in the headmaster's letter quoted above.⁵⁷ In November 2016 eleven Gauteng boys' high schools, after a meeting of the Gauteng Heads of Boys' Schools, wrote jointly to Hilton College asking it to refrain from "poaching" their athletes. When the *Mail & Guardian* reported the letter in February 2017, Hilton's headmaster, George Harris, told the paper that the issues it raised were "private matters", confirmed that the allegations of "poaching" were being investigated, and said that "any issues which arise are dealt with between headmasters in the spirit of goodwill which exists between these schools".⁵⁸

2019, *the Western Cape and the Eastern Cape*. In January 2019 SACS, Wynberg Boys' High, Framesby and Jeppe were reported to have lost provincial players to Paarl Boys' High (a Framesby boy developed from Grade 8 who had represented Eastern Province at Craven Week, a Jeppe Craven Week player, and a Grade 9 Wynberg scholarship holder) and SACS and Wynberg cancelled fixtures. Paarl Boys' High responded: "As we also often lose talent to neighbouring and competing schools, we do understand the emotion behind this. However, we prefer not to complain when this happens."⁵⁹ Wynberg's headmaster, Jan de Waal, said the issue was not the boy "but rather the way in which the transfer took place, and the lack of communication by Boishaai"; Wynberg's head of sport stated that the school awards scholarships to Grade 8 applicants once admitted and does not approach high-school learners.⁶⁰ The SA Schools chairman, Noel Ingle, gave the interview that is the doctrinal centre of this article: "Poaching is preventable, but we need to question the role parents and the schools are playing in it"; "KZN has a sophisticated system in place which, along with peer pressure, has helped reduce poaching"; "It's very difficult to prevent a child from registering for another school. The Department of Education plays no role there and never has"; "There is no legislation in place that, from a legal perspective, could allow something to be done."⁶¹ The same month a veteran schools-rugby writer explained the flow out of the Eastern Cape as driven by "the desire to win at a 1st XV level and meet race-based quotas at a provincial level", and concluded: "It's a dishonourable business and the dishonour overshadows the good that is being done in the process."⁶² The Queen's College first-team coach put the source school's position in a sentence: "our 'player recruitment policy' is just to hang on to our own players ... Any funding that we get is to hang on to our own kids."⁶³ In April 2019 *Rapport* reported an allegation by two unnamed agents that a Garsfontein player had been paid R40 000 a month by the Bulls from Grade 11; the player's agent denied that he had been contracted as a minor while confirming the salary as an adult, and

⁵⁷ "Parktown slam KES player poaching" (n 45).

⁵⁸ "11 Gauteng schools ask Hilton College to refrain from 'poaching'" *SchoolBoyRugby* (1 February 2017) <https://schoolboyrugby.co.za/?p=14925>. The eleven schools are not identified in the post. Govender "'Hilton, stop poaching our sports stars'" *Mail & Guardian* (10 February 2017) <https://mg.co.za/article/2017-02-10-00-hilton-stop-poaching-our-sports-stars/> (quoting Harris).

⁵⁹ "SA top school in player poaching debacle" *Rugby365* (8 January 2019) <https://rugby365.com/schools/news-sa-schools/sa-top-school-in-player-poaching-debacle/>; "SACS & Wynberg add to Boishaai's list of strained relationships" *SchoolBoyRugby* (7 January 2019) <https://schoolboyrugby.co.za/?p=35702> (which also records Paul Roos's reported unhappiness over a social-media photograph of a Paarl Boys' High official with a newly recruited boy still in his Paul Roos uniform).

⁶⁰ Jack "Wynberg cuts ties with Paarl Boys' High" *SA Rugby magazine* (11 January 2019) <https://www.sarugbymag.co.za/wynberg-cuts-ties-paarl-boys-high/>.

⁶¹ Jack "Schools poaching: Breaking the code" (n 46).

⁶² Garrun "Why schools are raiding Eastern Cape rugby talent" *SA Rugby magazine* (5 January 2019) <https://www.sarugbymag.co.za/schools-raiding-eastern-cape/>.

⁶³ Pierre Jacobs, quoted in "South African schools rugby rocked by player poaching allegations" *RugbyPass* (3 January 2019) <https://www.rugbypass.com/news/south-african-schools-accused-of-player-poaching-reports/>.

SchoolBoyRugby, which digested the report, noted SA Rugby’s prohibition on unions contracting players under eighteen (Part III.3).⁶⁴ The allegation was never adjudicated and is recorded here only as an allegation, with its denial.

2020, DHS and Glenwood again. In February 2020 Durban High School’s governing body cancelled its near-century-old first XV derby against Glenwood after what the report described as Glenwood’s recruitment of four DHS boys between Grades 8 and 9. The report recorded that twenty-six state boys’ schools had signed a memorandum of understanding prohibiting poaching and requiring principal-to-principal discussion of transfers, and that “time and time again certain schools blatantly break the MOU by doing the very thing they have promised not to do”.⁶⁵

2021. A veteran school coach, in terms more sweeping than this article adopts (an opportunity bursary honestly awarded is exactly what Part I defends), wrote that “schools continue to disguise their bursary programs as giving a better opportunity to the underprivileged player”, that “players are being treated like commodities and parents have begun trading their son’s to the highest bidder”, and that “too many players are ending up in two or more high schools”.⁶⁶

2024, Bishops. In May 2024 *SchoolBoyRugby* reported a voice note in which a Bishops supporter proposed that “some OD’s should group together to fund the acquisition of rugby players” so that the school could compete, and, in the same post, the in-season transfer of a player who joined the Bishops first team within weeks of arriving from another school. Of the established practices (Grant Khomo shopping and new faces in under-16A teams in the third term) it observed: “It has become part and parcel of the sport at school level now”; of the in-season transfer: “Resorting to it tells a story all on its own of the pressures that headmasters and school rugby staff are under to deliver favourable results.”⁶⁷ In October 2024 the Western Province High Schools Rugby Association adopted the anti-poaching resolution analysed in Part III.1.

2025, Kingswood. In February 2025 Graeme College, Selborne College, Hudson Park High and Cambridge High, later joined by Dale College, cut sporting and cultural ties with Kingswood College in Makhanda. Graeme’s headmaster, Kevin Watson, wrote: “Reports indicate that Kingswood offers reduced fees to Graeme College learners, matching their current school fees, to encourage them to transfer”; “a large number of our learners have [moved] to Kingswood, with many more being approached, often discreetly”; and, in the sentence on which this whole article turns: “While not unlawful, the active recruitment of Graeme learners undermines the relationship between our institutions and threatens the stability of the school.”⁶⁸ Graeme’s day fees were about R32 000 a year and Kingswood’s R160 000 to

⁶⁴ “Garsfontein schoolboy rugby player allegedly paid R1 million by the Bulls” *SchoolBoyRugby* (21 April 2019) <https://schoolboyrugby.co.za/?p=37494>, reproducing the *Rapport* report of the same date; see also “Bulls paid schoolboy R1-million – report” *SA Rugby magazine* (21 April 2019) <https://www.sarugbymag.co.za/bulls-paid-schoolboy-r1-report/>. The player, now an adult, is not named here.

⁶⁵ Jack “DHS vs Glenwood: Dark side of schools rugby rears its head again” *SA Rugby magazine* (6 February 2020) <https://www.sarugbymag.co.za/dark-side-of-schools-rugby-rears-its-head-again/>.

⁶⁶ Keohane “Schoolboy rugby capture is real in South Africa” *keo.co.za* (16 May 2021) <https://www.keo.co.za/schoolboy-rugby-capture-is-real-in-south-africa/>, quoting the coach Allan Miles.

⁶⁷ “Rugby’s say in how schools are run just got a little bit bigger” *SchoolBoyRugby* (13 May 2024) <https://schoolboyrugby.co.za/?p=44817>.

⁶⁸ Kevin Watson, quoted in “Fallout between top Makhanda schools after poaching claims” *Algoa FM* (11 February 2025) <https://www.algoafm.co.za/local/fallout-between-top-makhanda-schools-after-poaching-claims>, and in Carlisle “Schools cut ties with Kingswood over pupil ‘poaching’” *The Herald / TimesLIVE* (11 February 2025) <https://www.timeslive.co.za/sunday-times-daily/news/2025-02-11-schools-cut-ties-with-kingswood-over-pupil-poaching/>.

R171 000; the alleged discount exceeded R100 000 a year; and Graeme's letter alleged that parents were "reportedly required to sign non-disclosure agreements" about the reduced fees.⁶⁹ Selborne's headmaster, Andrew Dewar, asked: "Why pillage the top talent from other schools when that is what offers competitiveness between us?" and added: "It's not underhand and we don't poach. But with Kingswood there is no discussion or communication."⁷⁰ Dale's head said that "many have also raised concerns about the authenticity of the awarded scholarships".⁷¹ Kingswood's communications manager replied: "The narrative that Graeme, or any other school, is being targeted is untrue"; its headmaster, Leon Grove, said its scholarships and bursaries "adhere to a fair, transparent process, and are centred around the individual learner"; the school receives "more than 600 applicants from around the country and the world"; and Grove said Kingswood "will be engaging with other Eastern Cape schools in the coming weeks to look for a meaningful way to address their concerns and rebuild relationships".⁷² The *Sunday Times* editorialised that "poaching happens in the corporate and professional sporting world, but it's a double-edged sword with consequences, good and bad, for affected pupils and schools".⁷³ In April 2025 a *Rapport* sports podcast carried the episode title "Skolerugby: 'Elke top-skool koop spelers'" (every top school buys players), with a guest described as the country's leading schools-rugby expert explaining how the "buying process" works.⁷⁴

2026. January brought the Glenwood–Michaelhouse rupture with which this article began.⁷⁵ April brought the resignation of a World Cup-winning former Springbok coach and a professional director of rugby from their positions at Selborne College after friction with the headmaster; the director complained that his hands were "tied behind his back" and that the school had declined to implement bursaries to retain talent from its own primary school, and the headmaster answered: "Academics are important. Principals of schools want the institution to be a success and a centre of excellence. People need to understand; we are not a rugby institute."⁷⁶ May brought the reporting of the Hilton College headmaster's April letter on the "arena" that televised school sport has created, and August *SchoolBoyRugby*'s conclusion that "just about every leading school" is now recruiting or contemplating it, in a post whose reader comments, more than a hundred in five days, are the only extended public debate on the subject in 2026 and are described in the note because of what they contain and what they do not.⁷⁷ September brought the 80 per cent rule.

⁶⁹ Carlisle (n 68). The non-disclosure allegation is an allegation in a school's letter, reported by the newspaper; it is not a finding.

⁷⁰ Andrew Dewar, quoted in Carlisle (n 68).

⁷¹ Craig Hatches, quoted in Carlisle "Dale College becomes latest school to cut some ties with Kingswood" *Daily Dispatch* (19 February 2025) <https://www.dailydispatch.co.za/news/2025-02-19-dale-college-becomes-latest-school-to-cut-some-ties-with-kingswood/>.

⁷² Jackie Grove and Leon Grove, quoted in Carlisle (nn 68 and 71).

⁷³ Editorial "How do we deal with the 'poaching' of talented pupils by rival schools?" *Sunday Times Daily* (12 February 2025) <https://www.timeslive.co.za/sunday-times-daily/opinion-and-analysis/2025-02-12-editorial-how-do-we-deal-with-the-poaching-of-talented-pupils-by-rival-schools/>.

⁷⁴ *Rapport Praat Sport* "Skolerugby: 'Elke top-skool koop spelers'" (23 April 2025) <https://iono.fm/e/1549072> (guest Hannes Nienaber). The episode title is quoted as published. The published episode description states that the discussion covers the extent of professionalisation at school level and how the buying process in school rugby works; the recording (30 minutes) is published by the station at https://dl.iono.fm/epi/prov_1860/epi_1549072_high.mp3; it has not been transcribed for this article and its content is not relied on.

⁷⁵ See n 12.

⁷⁶ Sawula "Inside Jake White's explosive fallout with Selborne College" *Rugby365* (15 April 2026) <https://rugby365.com/schools/news-sa-schools/exclusive-inside-jake-whites-explosive-fallout-with-selborne-college/> (Derek Page: "What's the point of bringing in a director of rugby whose hands are tied behind his back?"); Thomaidis (n 16) (Andrew Dewar). Both men resigned; neither was dismissed. Subsequent reports of a reconciliation were not verified for this article.

⁷⁷ Pongweni (n 22); "Schoolboy rugby: the race to the top via recruitment" (n 47). The post had drawn 112 reader comments, in English and Afrikaans, between 16 and 21 August 2026 when it was accessed on 19 September 2026. The comments are posted

The chronology may be tabulated.

Year	Aggrieved party	School or body named	Reported substance and outcome
2012	DHS	Glenwood	Grade 11 first XV player moved; heads met; KZN Headmasters' Agreement adopted the same year
2013	Eastern Cape and Boland schools	Menlopark, Garsfontein, Southdowns, Maritzburg College, Kingswood, Glenwood, KES and others named in the report	37 pupils recruited with tuition, boarding, clothing, pocket money; denials from Kingswood and the Bulls; 24-school Charter followed
2013	(Rapport)	A Pretoria high school; a union recruiter	Western Cape boys recruited on bursary promises left stranded when the school could not honour them
2014	Affies	Garsfontein	"Post-matics or mercenaries" policy statement; fixture cancelled; denial and transformation defence
2014	SACS	KES	Grade 10 boy moved after the St Stithians Easter festival; all sporting ties severed; Hudson Park headmaster on clandestine approaches "at, or shortly after, the Grant Khomo Week"
2014	(The Witness)	Glenwood; Westville; KES	Glenwood principal: "we will talk to him and see what we can do to make it happen"; Hudson Park lost four players; denials from Westville and KES
2015	(The Times)	Glenwood; Westville	Selborne cricketer recruited on a coach's promise, refused enrolment, then admitted elsewhere and excluded after one term
2016	Parktown	KES	Two scholarship provincial players enrolled without notice, "through an agent"; fixtures suspended; KES saw nothing wrong
2016	Eleven Gauteng schools	Hilton College	Joint letter requesting restraint; Hilton: "private matters", allegations being investigated

under pseudonyms and, since this chronology is otherwise confined to named sources, the commenters are not identified here; nothing in the thread is relied on for any fact about any school or learner, and several comments make assertions and counter-assertions about the movements of identifiable boys which are not repeated. The thread is cited for its character. In 112 comments no commenter refers to any rule, agreement, regulation or statute; the debate is conducted almost entirely as an exchange between the supporters of rival schools; and whether a school recruits is argued, in earnest and in irony, from its results. Within it, however, readers proposed the same measures that Part VIII adopts. One proposed that 85 per cent of a first XV must have attended the school since Grade 8, that any move after Grade 10 require the federation's sanction and that such moves be limited to one per school in any two-year period, so as to permit "natural movement" and curb "predatory behaviour" by requiring schools to "commit to your choices made pre-entry in Grade 8". Another proposed a Grade 10 cut-off, because a move in Grade 11 cannot benefit a boy academically "going into their final year in a new school, new friends, new teachers and new pressures". A third set out a six-part classification: bursaries awarded by open application, bursaries from well-resourced schools to needy boys, moves on a family's relocation (on immediate notice to the old school) and recruitment in Grade 7 acceptable; an approach to a boy enrolled at another school, and any transfer in Grade 12, unacceptable; the whole resting on transparency, the headmaster's ultimate responsibility and the observation that the contracts concluded in private are "skokkend eensydig". A fourth, who described having recruited for a school, set out the unwritten parameters he had applied (watching the boy play before any approach, benefit beyond rugby including nutrition, a discreet first contact, and recruitment only from second- and third-tier schools, never from a peer), conceded that the horse had bolted, and concluded that those involved could now only "self-regulate, be more discreet and re-set moral compasses". A fifth asked why such moves are always accompanied by so much secrecy. The objection that the thread pressed hardest, that opposition to recruitment is the established schools' defence of their own hierarchy and that a boy who moves is given "a literal free hit at life", is answered in Part VIII.7. Quotations from the thread are reproduced as posted.

Year	Aggrieved party	School or body named	Reported substance and outcome
2019	SACS, Wynberg, Framesby, Jeppe	Paarl Boys' High	Provincial players including a Grade 9 scholarship holder; fixtures cancelled; "we prefer not to complain"
2019	Dale College	A provincial union's Craven Week coach	Approach to a schoolboy at a festival with promise of team involvement
2019	(Rapport)	Garsfontein / Bulls	Allegation of R40 000 a month from Grade 11; denied by agent and school; never adjudicated
2020	DHS	Glenwood	Recruitment of four Grade 8–9 boys reported; derby cancelled; 26-school MOU said to be breached
2021	(keo.co.za)	Schools generally	Veteran coach: bursary programmes "disguised" as opportunity; players "treated like commodities"
2024	(SchoolBoyRugby)	Bishops supporters	Voice note proposing that old boys fund the acquisition of players; in-season transfer to the first XV
2025	Graeme, Selborne, Hudson Park, Cambridge, Dale	Kingswood College	Fee discounts over R100 000 and NDAs alleged; ties cut; "untrue" narrative, transparent process asserted
2026	Glenwood	Michaelhouse	Junior player moved "at the insistence of his parent"; fixtures cancelled; discussions
2026	Selborne College	(internal)	Former Springbok coach and director of rugby resign; "hands tied behind his back"; "we are not a rugby institute"
2026	Hilton College; SchoolBoyRugby; NovaNews	(general)	Headmaster's letter on the televised "arena"; "just about every leading school" said to be recruiting; the 80 per cent rule proposed

II.4 The human cost

The same reports show the human cost, on both sides of the transaction.

The recruit. The scholarship boy's experience has been studied, in a small way. A 2021 University of KwaZulu-Natal dissertation on five black boys who moved from rural areas to a privileged ex-Model C school on rugby scholarships found that they "initially struggled with the transition but learnt to adapt and cope admirably in their new school, partly due to the role that rugby played in their lives and in the school", with "respect and hierarchy" as "key drivers". A 2024 University of Johannesburg study of five rugby scholarship boys found three things: isolation, including homesickness; academic difficulty arising from language barriers and from the change in educational level; and gratitude for the opportunity and for lasting friendships.⁷⁸ Neither study is evidence of harm on any scale, and neither should be cited as such; together they are evidence that integration is possible, that it is mediated by rugby, hierarchy and recognition, and that its first costs are paid in homesickness and in the classroom. The international literature supplies the risk mechanism. Athletic identity (the construct introduced in 1993 to describe the degree to which a person identifies with the athlete role, under the title "Hercules' muscles or Achilles

⁷⁸ Moffatt *The transition of sport scholarship boys and their experiences in a privileged high school in post-apartheid South Africa* (MEd dissertation, University of KwaZulu-Natal 2021) <https://researchspace.ukzn.ac.za/handle/10413/20972> (abstract). Odendaal *The psychosocial experiences of high school learners on rugby scholarships* (MEd (Educational Psychology) minor dissertation, University of Johannesburg 2024, supervisor Dr Jean Fourie) <https://hdl.handle.net/10210/515438> (open access; the findings are taken from the abstract, which records a qualitative study of five participants using the Students' Multiple Worlds Model).

heel?”) is a psychological asset that becomes a vulnerability when the role is threatened.⁷⁹ A systematic review found that “transitioning to a higher level of play during adolescence can correlate with stronger senses of” athletic identity, and that higher identity was protective against burnout but associated with depression risk in injured athletes.⁸⁰ The transition into elite sport is itself a risk period: it “can expose young athletes to risk factors for mental ill-health, including increased performance expectations, stressors associated with becoming increasingly public figures, and changes in lifestyle demands”.⁸¹ Deselection produces measurable distress: a study of elite adolescent academy footballers assessed around the point of release reported clinical levels of psychological distress among a sizeable proportion of those released, on a small follow-up sample.⁸² The stranded recruits of 2013 and the excluded cricketer of 2015 are the South African illustrations of what happens when the performance on which a child’s placement rests is not delivered, or the promise on which he moved is not honoured.

The incumbent. The boy displaced by the arrival is invisible in every governance instrument and appears in the reporting only as the reason for hostility. The instruments notice him only obliquely: the 2014 Charter’s signatories undertook that bursaries would operate at Grade 8 level only, and the KwaZulu-Natal agreement made late recruits ineligible for first-team sport, rules whose effect, whatever their stated purpose, is to protect the place of the boys already there.⁸³ A psychological concept developed in another field applies by analogy: research on “institutional betrayal” (which “occurs when an institution causes harm to an individual who trusts or depends upon that institution”, a concept developed in the study of interpersonal violence and named here only as an analogy) records that institutions “have the potential to either worsen posttraumatic outcomes or become sources of justice, support, and healing”.⁸⁴ I argue in Part IV that the incumbent is a child concerning whom the school’s recruitment decision is made, and that the Children’s Act does not permit his interests to be invisible.

The boys on the screen. The pressure system around the boys has been documented by the schools themselves. The Hilton College headmaster wrote to the school’s community in April 2026, as *Daily Maverick* reported the letter, that the start of winter sport could create intense pressure and celebrity around young athletes, and that televised coverage and rankings amplified this arena, turning games into stages that risked overshadowing the true educational values of sport.⁸⁵ A preparatory-school head of rugby said: “Live streaming has exposed kids to the public much sooner than would have happened in the

⁷⁹ Brewer, Van Raalte and Linder “Athletic identity: Hercules’ muscles or Achilles heel?” (1993) 24 *International Journal of Sport Psychology* 237.

⁸⁰ Edison, Christino and Rizzone “Athletic identity in youth athletes: a systematic review of the literature” (2021) 18(14) *International Journal of Environmental Research and Public Health* 7331, <https://doi.org/10.3390/ijerph18147331>.

⁸¹ Pilkington, Rice, Olive, Walton and Purcell “Athlete mental health and wellbeing during the transition into elite sport: strategies to prepare the system” (2024) 10 *Sports Medicine – Open* art 24, <https://doi.org/10.1186/s40798-024-00690-z>. The authors’ framework “is predicated on the duty of care that elite sporting organisations have in developing and maintaining safe and supportive athlete environments”.

⁸² Blakelock, Chen and Prescott “Psychological distress in elite adolescent soccer players following deselection” (2016) 10(1) *Journal of Clinical Sport Psychology* 59–77, <https://doi.org/10.1123/jcsp.2015-0010>. The study concerns professional football academies in Britain and is cited for the mechanism, not for any South African prevalence; its follow-up samples were small.

⁸³ “KZN Headmaster’s Agreement 2012” (n 13); “The Traditional State Boys’ Schools Sports Charter” *SchoolBoyRugby* (18 March 2014) <https://schoolboyrugby.co.za/?p=6905>.

⁸⁴ Smith and Freyd “Institutional betrayal” (2014) 69(6) *American Psychologist* 575–587, <https://doi.org/10.1037/a0037564>.

⁸⁵ George Harris, as reported in Pongweni (n 22). The *Daily Maverick* report dates the letter to April 2026 and paraphrases it; the words in the text are the newspaper’s, not the letter’s. A two-page copy of the letter, titled “The Arena We Are Creating for School Sport is Harmful”, has been posted publicly on Scribd <https://www.scribd.com/document/1041350157/The-Arena-We-Are-Creating-for-School-Sport-is-Harmful-1779283960> and was circulated on LinkedIn from 23 April 2026; the letter is not among those published on the school’s own website, the posted copy could not be opened and checked for this article, and its precise date is not established, so the letter is quoted only as the newspaper reported it.

past”; “kids are now under a constant spotlight”; “There is a massive emotional and psychological load placed on these teenagers that needs to be managed very carefully.”⁸⁶ A performance-wellness practitioner working inside one of the leading rugby schools said: “Our players are not mentally developed to handle these pressures coming from external sources”; and, of social media: “The social accreditation is massive. How many likes I get, the number of thumbs-ups they get to them, that is their world.”⁸⁷ A child-rights researcher told *Daily Maverick* that “mass broadcasting of school sports similarly exposes children to indiscriminate and permanent global visibility”, that this “is difficult to reconcile with the constitutional principle that a child’s best interests are ‘paramount’”, and that “what began as amateur extracurricular participation now generates substantial commercial revenue streams ... while the participating children receive neither compensation nor meaningful rights protection”.⁸⁸ Nielsen Sports SA answered that the commercialisation of youth sport “was a structural and moral necessity rather than an exploitative enterprise”, and its chairperson that “the child who is most at risk of becoming a unit of production in South African school sport is not the child whose match is being streamed. It is the child whose talent is invisible because no one outside the school fence ever sees them play.”⁸⁹ Both positions are recorded; the article does not need to choose between them to observe that the purchased-player economy operates inside a pressure system the schools themselves describe as harmful. A first-team coach at a Johannesburg school said in August 2026 that there was “huge pressure” on young athletes: “They are still children. We must create an environment that allows players to develop and improve, to never kill the passion and desire but allow them to grow safely, carefree and to enjoy our great game”; and the same report recorded the anti-doping authority’s chief executive as saying that the commercialisation of schoolboy rugby may be contributing to a more pressured environment for young athletes, with too many children receiving multi-year bans for prohibited substances.⁹⁰

The adults on the touchline. The pressure is not confined to those who run the programmes. The derby has become a spectacle in which adults, many of them the parents of current boys rather than old boys of the school, dress in the school’s colours, fill the stands and, increasingly, the comment threads: not beneath the stream itself, but on Facebook, on Instagram and under the match reports that SuperSport Schools and others post to their pages, where, as anyone who has read them can attest, adults pass judgment by name on the form of sixteen- and seventeen-year-olds. The pattern is offered as an observation and not as a finding, but it is hard to read those threads without concluding that a good deal of what is written there comes from adults who never got where they wanted in the game themselves and who have found, in a school and in other people’s children, a way to feel better about it. None of that is unlawful, and most of it is harmless enthusiasm; but it has an edge, and in the winter of 2026 the edge showed. On 1 August 2026 a Noordvaal Cup first-team match between Hoërskool Menlopark and Hoërskool Dr EG Jansen in Pretoria was abandoned with Menlopark leading 36–5 after a confrontation between a group of supporters

⁸⁶ Mo Barendse, quoted in Pongweni (n 22).

⁸⁷ Ivan Jooste, quoted in Sawula “Behind rankings and results: the mental health battle in SA’s schoolboy rugby” *Rugby365* (27 May 2026) <https://rugby365.com/schools/news-sa-schools/behind-rankings-and-results-the-mental-health-battle-in-sas-schoolboy-rugby/>, and in Le Roux “South Africa’s schoolboy rugby boom raises concerns over pressure on teenage players” *Eyewitness News* (18 June 2026) <https://www.ewn.co.za/2026/06/18/south-africa-s-schoolboy-rugby-boom-raises-concerns-over-pressure-on-teenage-players>.

⁸⁸ Belinda Matore, quoted in Pongweni (n 22). See also Matore “‘Early visibility should not translate into lasting vulnerability’ – UP law expert on safeguarding the image rights of child athletes” Centre for Human Rights, University of Pretoria (11 November 2025) <https://www.chr.up.ac.za/opinion-pieces/4229-early-visibility-should-not-translate-into-lasting-vulnerability-up-law-expert-on-safeguarding-the-image-rights-of-child-athletes>.

⁸⁹ Nielsen Sports SA and Kelvin Watt (chairperson), quoted in Pongweni (n 22).

⁹⁰ Drickus Venter (Jeppe High School for Boys first-team coach) and Khalid Galant (SAIDS, as reported from an interview with News24), in Thomaidis (n 26).

in a gazebo behind the posts and EG Jansen players escalated into a brawl in which players and parents were filmed exchanging blows; the footage was round the country within hours. EG Jansen was reported to have attributed the flashpoint to racist comments from the supporters. The Noordvaal association's chairman said that "we do not condone any such behaviour" and that "there will be an investigation"; the association suspended those identified as actively involved pending a disciplinary process; the Gauteng MEC for Education said that "violence has no place in our schools or on our sporting fields" and that "every learner has the right to participate in sport in an environment that is safe, respectful and free from intimidation"; and a former Springbok called for life bans.⁹¹ The same week a derby between Fairmont High School and The Settlers High School in Cape Town was abandoned after the referee reported hearing a racial slur on the field, and the Western Cape Education Department said that "racism has no place in any school environment".⁹² These incidents are recorded as reported, not as findings; the investigations they prompted were, as at the date of this article, incomplete, and SA Rugby publishes a sideline-management protocol for schools and youth rugby that exists precisely because the problem is not new.⁹³ What the incidents show is the temperature. A game between children has become an occasion at which adults fight, and the boys on the field, the only people present who had no choice about being there, have become the audience for their parents' conduct rather than the reverse. It is the same inversion the rest of this article describes, in another form: the adults have made the children's game their own, and the children carry the cost.

Doping. The South African Institute for Drug-Free Sport has recorded adverse analytical findings at the under-18 Craven Week in most years since 2014: three in 2014, five in 2015, four in 2016, three in 2017, six in 2018 (from 122 tests, all anabolic steroids), three in 2022 and two from more than 100 tests in 2026.⁹⁴ In 2016 its chief executive said of the year's rugby positives: "Those are schoolboys who have growing bodies and are engaged in serious doping – with hormonal products such as steroids"; in 2019, on the publication of the Institute's annual report, he attributed the pattern in part to "high tolerance by parents and coaches to doping practices"; and in August 2026 he said: "The stakes are extremely high, and they're getting even higher, alongside the increasing commercial component of schools' sport ... when sport gets lucrative ... there will be the ones who take shortcuts and cheat to get to the accolades."⁹⁵

⁹¹ Mashamaite "WATCH | Noordvaal Cup clash abandoned after mass brawl involving players and parents" *TimesLIVE* (2 August 2026) <https://www.timeslive.co.za/news/south-africa/2026-08-02-watch-noordvaal-cup-clash-abandoned-after-mass-brawl-involving-players-and-parents/> (Tinus Diedericks, chairman of the Noordvaal Schools Rugby Association; Kobus Wiese); "Publicity nightmare for EG Jansen as sideline fight scenes go viral on social media" *SchoolBoyRugby* (1 August 2026) <https://schoolboyrugby.co.za/?p=49461> (the confrontation "between a group of Menlo supporters in a gazebo behind the posts and EG Jansen players"); Zaal "No excuse for violence at school rugby, soccer games" *The Citizen* (6 August 2026) <https://www.citizen.co.za/sport/rugby/opinion-no-excuse-violence-school-sport-rugby-soccer/> (EG Jansen's allegation of racist comments; Noordvaal's suspensions); Borchardt "Schools rugby incidents investigated" *SA Rugby magazine* (4 August 2026) <https://www.sarugbymag.co.za/schools-rugby-incidents-investigated/> (MEC Lebogang Maile).

⁹² Borchardt (4 August 2026) (n 91) (Bronagh Hammond, Western Cape Education Department).

⁹³ SA Rugby "Side Line Management 15s Schools and Youth Rugby 2026", listed on SA Rugby's governance page, <https://springboks.rugby/general/governance-and-documents>; its content is not analysed here.

⁹⁴ "South African schoolboy rugby shocked by widespread doping scandal" *RugbyPass* (31 October 2018) <https://www.rugbypass.com/news/south-african-schoolboy-rugby-shocked-in-widespread-doping-scandal/>; "Doping scandal hits Craven week again" *Rugby365* (12 January 2023) <https://rugby365.com/schools/craven-week/doping-hits-craven-week-again/>; SAIDS "1,584 athletes tested during 2018/19 – SAIDS annual report published" <https://drugfreesport.org.za/1-584-athletes-tested-during-2018-19-saids-annual-report-published/> (six schoolboys positive at the 2018 Craven Week, all for anabolic steroids); the 122-test figure for 2018 is given in "Youth rugby doping highlighted by SAIDS annual report" *Sports Integrity Initiative* (19 September 2019) (n 95); Esben (n 43) (2026).

⁹⁵ De Koning "Schoolboy doping more rife than among pros" *Rugby365* (20 July 2016) <https://rugby365.com/countries/south-africa/74194-schoolboy-doping-more-rife-than-among-pros/>; "Youth rugby doping highlighted by SAIDS annual report" *Sports Integrity Initiative* (19 September 2019) <https://www.sportsintegrityinitiative.com/youth-rugby-doping-highlighted-by-saids->

Age falsification is reported alongside it.⁹⁶ These are the observable symptoms of a system in which a child's rugby output has been given a price.

II.5 The counter-examples

The reporting also records programmes that publicly decline to buy, and they matter because they answer the objection that development is a philosophy only for schools that cannot afford better.

Wynberg Boys' High states that it awards scholarships only to Grade 8 applicants who have already been admitted and does not approach high-school learners; it was prepared to cancel one of the Cape's oldest fixtures rather than acquiesce in the mid-stream departure of a boy it had developed.⁹⁷ Queen's College's recruitment policy "is just to hang on to our own players".⁹⁸ Selborne College's headmaster declined bursaries for talent retention at the cost of a World Cup-winning consultant: "we are not a rugby institute".⁹⁹ Paul Roos Gymnasium's governing body has published, over its chairman's name, the flattest first-party denial yet published: "Paul Roos nader geen leerder in enige ander skool, en probeer sodoende 'n leerder met 'n finansiële aanbod oorreed om hierheen te kom nie" (Paul Roos approaches no learner at any other school in an attempt to persuade him with a financial offer to come here) and "Die skool distansieer homself van die sogenaamde 'koop' van spelers of leerders".¹⁰⁰ A former head of rugby at Pretoria Boys High described that school's model in September 2026: "We only recruit boys for Grade 8. We check their report cards – academics always comes first. The boys that we help have to be financially in need. We then only make a commitment to the boys to look after them for five years."¹⁰¹ And Hoërskool Stellenberg, which beat Paarl Gimnasium 20–19 in March 2026 for the first time in twenty years, on the report's account, and Grey College 26–21 at the North–South tournament on 31 March 2026, built its programme on the express footing that it could not buy: "In terms of getting talent, we had to do things a bit differently because we can't splash out bursaries. We started keeping our primary school kids at home in the Stellenberg system and offered them the same opportunities they would get in Paarl, Stellenbosch and in the southern suburbs"; "We then developed a proper coaching structure from U14E straight to U19A. We now have a specialist forwards and backline coach for every team, and that's helped us develop our players."¹⁰² Candour requires the observation that Stellenberg's stated footing is necessity

annual-report/; Esben (n 43). The phrase "win at all costs" is sometimes attributed to the Institute's chief executive; I have not found it in his mouth and do not attribute it to him. It appears, in terms, in the *Children's Rights in Sport Principles* published by the Japan Committee for UNICEF (2018): "the 'win at all costs' mentality does not always serve the best interests of the child".

⁹⁶ Hagemann (n 21).

⁹⁷ Jack "Wynberg cuts ties with Paarl Boys' High" (n 60).

⁹⁸ Pierre Jacobs (n 63).

⁹⁹ Andrew Dewar (n 76). Dewar is also the headmaster quoted in February 2025 as saying "we don't poach" (n 70).

¹⁰⁰ Jacobs (chairman of the governing body) "'Our philosophy' – a message from the governing body of Paul Roos" *Ruggas* (undated) <https://ruggas.co.za/a-message-from-the-governing-body-of-paul-roos-about-our-philosophy/>. The page is undated; the original should be verified before any forensic use.

¹⁰¹ Paul Anthony, quoted in Wetdewich (n 14). The article identifies him as "the previous head of rugby at Pretoria Boys High".

¹⁰² Andras Molnar, head of sport, quoted in Sawula "How Stellenberg used Bok blueprint to become schoolboy giant slayers" *Rugby365* (26 March 2026) <https://rugby365.com/schools/news-sa-schools/how-stellenberg-used-bok-blueprint-to-become-schoolboy-giant-slayers/>; Vanzilla "Stellenberg breakthrough 20 years in the making" *SA Rugby magazine* (20 March 2026) <https://www.sarugbymag.co.za/stellenberg-breakthrough-20-years-making/> (head coach Divan Batt: "It's been coming for 20 years"); Cardinelli "Stellenberg, Garsfontein score stunning upsets at North-South tournament" *Rugby365* (1 April 2026) <https://rugby365.com/schools/news-sa-schools/stellenberg-garsfontein-score-stunning-upsets-at-north-south-tournament/> ("Grey College 21-26 Stellenberg"). The transfer trackers also record inward transfers to Stellenberg for 2026; a boy's movement is not, of itself, proof of purchase. On Diamantveld: "No more poaching: Diamantveld draws a line in the Kimberley dust to build SA's next schoolboy rugby powerhouse" *Ruggas* (19 September 2026) <https://ruggas.co.za/no-more-poaching-diamantveld-draws-a-line-in-the-kimberley-dust-to-build-sas-next-schoolboy-rugby-powerhouse/> (unsigned; accessed 19 September 2026). The report

rather than moral refusal; the result is the same, and it answers every governing body that pleads competitive impossibility. The same answer has now been given from the other end of the market, by a school in one of the provinces the market draws from. In September 2026 Hoërskool Diamantveld in Kimberley, after “winning the Wesgrow title three years in a row”, announced a 2027 programme that sends its under-14, under-15 and under-16 A teams to the Outeniqua, Paarl Boys’ High and Paarl Gimnasium festivals and its first XV to the Noord-Suid festival and Wildeklawer against “six of the top 30 rugby schools in South Africa”, on the stated footing that “local schoolboys no longer need to look to other provinces to play top-tier rugby; the ultimate proving ground is now right on their doorstep”, and that the change “is solidifying Kimberley and Griquas Rugby as a premier elite pathway” (n 102). The report is unsigned, promotional in register and quotes no named person, and its headline word, “poaching”, is the writer’s rather than the school’s: nothing in it states a recruitment or bursary policy. Its significance is narrower and, for this article, exact. It is a source school’s own account of the only remedy for the drain that does not depend on anyone else’s restraint: raising the standard of what the boy can get at home until leaving is no longer the price of a top-tier season. That is the development principle of Part IV.9 applied from the losing side, and it is the answer to the objection, considered in Part VIII.7, that any restriction on late transfers would trap the provincial boy where he was born.

These are reported stances, not audited records, and a school’s practice can outrun its principles in either direction. They nonetheless demonstrate that the developmental model is a choice available to elite rugby schools, which is precisely what makes the purchasing model a decision, and a decision for which the law may fairly hold governing bodies to account.

II.6 The proposals now in circulation

Four proposals for governing the market are presently in public circulation, and Part VII tests each against the constitutional standard. They are introduced here.

The 80 per cent rule. Smit’s proposal, in his own words, is that “the criteria should be 80% of that team, when they’re in their last year, needs to have started at school when they were 13 years old”, which the write-up rendered as “80% of a first XV squad in schoolboy rugby must be comprised of players who have been at the school since Grade 8”. The context in which he made it matters, because it draws the same distinction this article draws in Part I. Asked about the schoolboy game, Smit said that it had “become everything for a schoolboy in South Africa to get into the right school, to maybe get poached”, that the top twenty schools were “probably more college NFL systems than anything else because these boys have got S and C, they’ve got dieticians”, and that while the boys “aren’t getting paid, they’re getting paid to go to these schools”. He then said that he had no problem with a twelve-year-old finishing primary school being offered free schooling by a big school that sees talent: “I’m quite happy for that to happen at the age of 12 and you get into a school and you live the traditions and you become a part of Paul Roos or whatever the school is. But a lot of these schools don’t get it quite right with the 12-year-olds and they start buying them at 15, 16, 17.” The proposal followed as the remedy for the second practice, not the first. Its prescription, as the write-up put it, is to “recruit early, commit long-term, prioritise the child’s education over Saturday’s scoreboard, and build a programme rooted in genuine development rather than short-term results”; and its moral, in the article’s closing words, that “the moment you stop honouring that commitment, you’re not running a rugby programme anymore. You’re

gives no results, coaching or bursary details, and none are relied on.

running a meat market. And no amount of silverware justifies that.”¹⁰³ Two things should be recorded about it. First, as at the date of this article, I have found no other outlet reporting, endorsing or contesting it, and no statement from SA Rugby, any schools’ association or the Department of Basic Education in response; the proposal has not yet generated a documented public debate. Secondly, it is not new. In December 2013 *SchoolBoyRugby* proposed “a quota system that forces schools to make use of a minimum of 12 boys that have been at the school since Grade 8” (twelve of fifteen is 80 per cent), expressly to disarm an “arms race” in which “schools try to get ahead of rivals by aggressively recruiting the best possible rugby players they can find from under-15 to open age-group”, and drew the analogy to the Varsity Cup, whose organisers “stepped in to stamp out pros using competition rule amendments”. The same post recorded a genuine regulatory precedent: “Once under-19’s were banished from Craven Week, the incentive to stay in school a year longer disappeared and so did just about every school’s willingness to continue offering post-matric.”¹⁰⁴ An eligibility rule, in other words, has already once changed the schools’ behaviour.

The KwaZulu-Natal eligibility rule. Since 2013 the KwaZulu-Natal Headmasters’ Agreement has defined a bona fide school sportsman as one who, if in the under-19 age group, “must have been a bona fide pupil of the school since Grade 10”, with an exception for family relocation, a rule designed to remove the incentive to purchase a Grade 11 recruit for a matric first XV.¹⁰⁵

The Western Province resolution. In October 2024 the Western Province High Schools Rugby Association defined poaching, created a complaint and judicial-committee procedure, and provided that a player who moves schools in Grades 8 to 10 becomes ineligible for under-16 provincial trials and selection, and one who moves after the Grant Khomo Week but before Craven Week becomes ineligible for Craven Week trials and selection.¹⁰⁶

The FIFA-style compensation model. In May 2026 Dave Wessels, described in the report as SA Rugby’s high-performance general manager, proposed that rugby adopt “the FIFA model, which forces professional clubs to pay compensation to all of the schools and academies that played a role in the development of a player from the age of 13”: “At the moment, the system rewards the buyer and punishes the developer. That’s the wrong way round.”¹⁰⁷ A related proposal, aired by commentators, is a “letter of release” from the source school as a condition of transfer, coupled with compensation for development.¹⁰⁸

The readers’ proposals. Beside these four, the readers of *SchoolBoyRugby* produced, in the comment thread on its August 2026 post, three proposals of their own that are recorded because they show where informed supporters, as distinct from administrators and former players, draw the line: an 85 per cent home-grown rule, with sanctioned post-Grade 10 moves limited to one per school in two years; a Grade 10 cut-off on academic grounds; and a classification of acceptable and unacceptable moves resting on open application, transparency and the headmaster’s responsibility (n 77). They are considered with the 80 per cent rule in Part VII.1 and in Part VIII.

¹⁰³ Smit’s words are from the podcast episode (n 14); the prescription and the closing words are those of the NovaNews write-up, Wetdewich (n 14).

¹⁰⁴ “School rugby quotas” *SchoolBoyRugby* (5 December 2013) <https://schoolboyrugby.co.za/?p=5970>.

¹⁰⁵ “KZN Headmaster’s Agreement 2012” (n 13).

¹⁰⁶ “Western Province High Schools Rugby Association addresses poaching of affiliated schools players” *SchoolBoyRugby* (29 October 2024) <https://schoolboyrugby.co.za/?p=45807>. See Part III.1 for the text.

¹⁰⁷ Dave Wessels, quoted in “Buyer rewarded and developer punished as SA stars head north” *NovaNews* (Novus Media, 25 May 2026) <https://novanews.co.za/school-rugby/dave-wessels-fifa-compensation-sa-rugby-schools-player-exodus/>.

¹⁰⁸ The “letter of release” proposal appears in commentary rather than in any adopted instrument; it is discussed in Part VII.4.

II.7 What the published material does and does not establish

Two things must be said about this material. First, it consists of allegations, denials, acknowledged programmes and cancelled fixtures, not of adjudicated findings. No federation sanction, disciplinary finding or court judgment against any school over any transfer described above has been found. Secondly, no public register was located of learner transfers, bursary values, recruitment dates or intermediaries. The enthusiast sites that track movements do so on their own account, with express disclaimers (one states that its purpose is “to determine how big the problem of poaching really is, not suggesting that the listed players were poached”, and that “we might miss the ball once in a while”¹⁰⁹) and they list children by name. It is accordingly impossible to compile a defensible ranking of the schools that “buy the most players”; any such table would be methodologically unsound and very possibly defamatory, and this article contains none. What has been published does establish, abundantly, the existence, scale and persistence of the market itself, the professional character of the transactions in it, the participation of unions, agents and scouts alongside schools, and the failure of every voluntary instrument devised to govern it. That is enough to ground the analysis that follows.

Part III. The governance vacuum: what governs this market today

The schools believe they are governed by their own agreements; the unions believe they are governed by SA Rugby; the public assumes that somebody (the Department of Basic Education, SA Rugby, World Rugby) has rules about children being moved for sport. This Part audits each layer of the supposed regulation in its current published form. The result is a map of a vacuum: the one thing every instrument in the field has in common is that none of them reaches the transaction at the centre of the market (the recruitment of an enrolled learner by another school, or by a union or agent acting through a school) with any legal consequence for the adults who transact.

III.1 The voluntary instruments

The KwaZulu-Natal Headmasters’ Agreement (2012). Concluded on 14 March 2012 and effective from the 2013 season, the agreement between eleven KwaZulu-Natal boys’ schools (the published list records Michaelhouse, Westville, George Campbell, Glenwood, Kearsney, Hilton College, Maritzburg College, Northwood, St Charles, Clifton and DHS) defines a “bona fide school sportsman” by four criteria: a full-time learner in Grade 12 or lower registered for at least seven subjects from Grade 10; not a Grade 12 repeat; in the under-19 age group or younger; and, if under-19, one who “must have been a bona fide pupil of the school since Grade 10”, with an exception for family relocation. It applies to all sports.¹¹⁰ Its design is intelligent: it does not prohibit the transfer, it removes the incentive, by making a Grade 11 recruit ineligible for first-team sport in his matric year. Its enforcement, however, is voluntary, and its own signatories have been on both sides of the disputes recorded in Part II: DHS and Glenwood in 2012 and 2020, Glenwood and Michaelhouse in 2026. The SA Schools chairman’s 2019 verdict, that the

¹⁰⁹ *Ruggas* “Schoolboy rugby: who is moving where?” <https://ruggas.co.za/schoolboy-rugby-who-is-moving-where/> (disclaimer quoted). The trackers’ publication dates and coverage periods could not be established; their counts are not relied on here.

¹¹⁰ “KZN Headmaster’s Agreement 2012” *SchoolBoyRugby* (20 August 2012) <https://schoolboyrugby.co.za/?p=1039>.

KwaZulu-Natal system “along with peer pressure, has helped reduce poaching”,¹¹¹ is probably right, and probably the most that can be said for any voluntary instrument.

The Traditional State Boys’ Schools Sports Charter (2013–2014). Agreed in November 2013 by twenty-four state boys’ schools and launched in March 2014, the Charter declared that “sport is an important aspect of our educational programme that is designed to develop all our boys”, rejected “gamesmanship in any form” and “approaching and offering money to boys to allow or encourage them to switch schools”, and stated that scholarships and bursaries should “operate at Grade 8 level only”, with admissions after Grade 8 only “as a result of compelling circumstances”.¹¹² It anticipated Smit’s 2026 proposal by twelve years. Its comment thread, on the day of publication, already contained allegations of breach by signatories. By 2020 the memorandum of understanding among state boys’ schools was reported to have twenty-six signatories, to prohibit poaching and approaches to learners or parents, and to require principal-to-principal discussion of transfers; and to be broken “time and time again”.¹¹³

The Gauteng letter (2016) asked Hilton College for restraint. Hilton’s public answer, given to the *Mail & Guardian*, was that the allegations were being investigated and that such matters “are dealt with between headmasters in the spirit of goodwill which exists between these schools”. That is the model of the field: a private letter, a private investigation and no published outcome. Whether anything was agreed between the headmasters is not known to me, and the point is not that nothing was done but that nothing was done in a form anyone could rely on.¹¹⁴

The Western Province High Schools Rugby Association resolution (October 2024). This is the most sophisticated instrument in the field and the only one with a complaint procedure and an adjudicated sanction. It defines poaching as “a pupil/player being enticed by any person or entity affiliated to the new school (affiliated to WPHSRA), including coaches, sport organizers and alumni to move from his registered school (affiliate of WPHSRA) to a new school (affiliate of WPHSRA) based on such player’s sporting talent”. The principal of the original school may lodge a written complaint with the Association’s secretary; the chairman investigates whether a prima facie case exists; a judicial committee is appointed if warranted. Genuine parental relocation and academically motivated changes, on proof, are recognised as legitimate. All affiliated schools were required to accept the conditions before registration in February 2025. The sanctions are these: a player who moves between schools in Grades 8 to 10 becomes ineligible for under-16 Western Province Grant Khomo trials and selection; one who moves after the Grant Khomo Week but before the under-18 Craven Week becomes ineligible for Craven Week trials and selection.¹¹⁵ I have found no report of any complaint adjudicated or any player declared ineligible under it in its first two seasons.

¹¹¹ Noel Ingle, quoted in Jack “Schools poaching: Breaking the code” *SA Rugby magazine* (6 March 2019) <https://www.sarugbymag.co.za/schools-player-poaching-breaking-the-code/>.

¹¹² “The Traditional State Boys’ Schools Sports Charter” *SchoolBoyRugby* (18 March 2014) <https://schoolboyrugby.co.za/?p=6905>. The list of the twenty-four signatory schools was published separately in November 2013 and has not been retrieved for this article. The charter’s terms were reported contemporaneously in McGregor (n 54).

¹¹³ Jack “DHS vs Glenwood: Dark side of schools rugby rears its head again” *SA Rugby magazine* (6 February 2020) <https://www.sarugbymag.co.za/dark-side-of-schools-rugby-rears-its-head-again/>.

¹¹⁴ “11 Gauteng schools ask Hilton College to refrain from ‘poaching’” *SchoolBoyRugby* (1 February 2017) <https://schoolboyrugby.co.za/?p=14925>; Govender “‘Hilton, stop poaching our sports stars’” *Mail & Guardian* (10 February 2017) <https://mg.co.za/article/2017-02-10-00-hilton-stop-poaching-our-sports-stars/> (quoting Harris).

¹¹⁵ “Western Province High Schools Rugby Association addresses poaching of affiliated schools players” *SchoolBoyRugby* (29 October 2024) <https://schoolboyrugby.co.za/?p=45807>, reproducing the Association’s statement. A subsequent commentary confirms the definition in near-identical terms: “Opinion: Plato explains WPHSRA anti-poaching decisions” *Ruggas* (undated) <https://ruggas.co.za/opinion-plato-explains-wphsra-anti-poaching-decisions/>.

Three features of these instruments determine their legal character. First, none binds anyone but its signatories, and none binds the child or his parents, who are strangers to it. Secondly, none contains a sanction that operates on the adult or the institution responsible for the recruitment; the only consequences observed in fifteen years are fixture cancellations, which punish every boy at both schools, the KwaZulu-Natal eligibility bar, which falls on the transferring boy, and, under the 2024 resolution, the loss of his provincial pathway. Thirdly, whether any of them is a contract at all is doubtful: an agreement among headmasters “to refrain from poaching” lacks the certainty and the intention to create legal relations that would make it enforceable inter partes, and no report of any school attempting to enforce one was found. They are, in the strict sense, gentlemen’s agreements. That does not make them worthless (Part V shows that they are evidence of the *boni mores* of the relevant community, and Part VIII builds on them) but it means that the market has been governed for fourteen years by instruments that no court would enforce and that the parties themselves do not honour.

The 2024 resolution deserves separate comment, because its design is precisely wrong in the one respect that matters constitutionally. Its sanction falls on the child. A boy who moves schools in Grade 9 (perhaps at his parents’ insistence, perhaps because an adult at another school offered his family something) loses his provincial pathway for the transaction the adults concluded over him. The instrument deters the recruiting school by making the recruit less valuable, which is intelligent economics; but it does so by imposing a detriment on a person who, on the analysis in Part IV, is statutorily blameless, contractually voiceless, and entitled to have his best interests treated as paramount in every matter concerning him. It also has an obvious leak: a boy who cannot gain Western Province eligibility by moving within the province can simply move to a school in another one. Part VII returns to it.

III.2 Education law: admission, transfer and school sport

The Department of Education, the SA Schools chairman said in 2019, “plays no role there and never has”.¹¹⁶ The statement is accurate as a description of practice, and it is nearly accurate as a description of the law. But the education statutes are not as empty as the schools assume, and two of their provisions bear directly on the market.

Admission and admission tests. Section 5(1) of the South African Schools Act 84 of 1996, as substituted by the Basic Education Laws Amendment Act 32 of 2024 with effect from 24 December 2024, provides that “a public school must admit, and provide education to, learners and must serve their educational requirements for the duration of their school attendance without unfairly discriminating in any way”.¹¹⁷ Section 5(2) has not changed: “The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorise the principal of the school or any other person to administer such test.” A rugby trial, a scouting assessment at a provincial tournament or an invitation to attend “assessment practices” that functions as the gateway to a bursary-funded place at a public school is, in substance if not in form, a test related to admission, and no reported decision was found in which the question whether the practice offends section 5(2) was put to a court. Section 5(5), as amended by BELA, now provides that a public school’s admission policy is determined by the governing body but that the governing body “must take into account factors including, but not limited to — (i) the

¹¹⁶ Ingle (n 111).

¹¹⁷ Section 5(1) of the South African Schools Act 84 of 1996, as substituted by s 4(a) of the Basic Education Laws Amendment Act 32 of 2024; commencement: Proclamation 237 in *Government Gazette* 51836 of 24 December 2024. Consolidated text: https://www.saflii.org/za/legis/consol_act/sasa1996228/.

best interests of the child, with emphasis on equality as provided for in section 9 of the Constitution, and equity”, and that “the Head of Department, after consultation with the governing body of the school, has the final authority, subject to subsection (9), to admit a learner to a public school”.¹¹⁸ That amendment codifies what the Constitutional Court had held in *Rivonia*: that “the scheme of the Schools Act in relation to admissions indicates that the Department maintains ultimate control over the implementation of admission decisions”.¹¹⁹ It means that a provincial Head of Department now holds, in terms, the final authority over every mid-stream admission of a recruited learner to a public school. Whether that authority has ever been exercised with sport-driven transfers in mind is a different question. Nothing published suggests that it has.

The National Admission Policy (1998). The Admission Policy for Ordinary Public Schools, made under the National Education Policy Act 27 of 1996, regulates transfers in two paragraphs: when a learner transfers between public schools “the principal must complete a transfer card and hand it to the parent, or forward it to the principal of the receiving school”, and if the card is unavailable the receiving principal may admit on a report card, equivalent documentation or a parental affidavit.¹²⁰ The policy mentions sport once, in paragraph 10, and in a way that helps the argument of Part IV rather than the schools: a learner “may not be suspended from classes, denied access to cultural, sporting or social activities of the school, denied a school report or transfer certificates, or otherwise victimised on the grounds that his or her parent ... is unable to pay or has not paid the required school fees”.¹²¹ Nothing in the policy speaks to sporting ability as a consideration in admission or to inducements attached to a transfer. The Minister’s power to determine national policy on “the admission of students to education institutions” under section 3(4)(i) of the National Education Policy Act (national policy for “the admission of students to education institutions, which shall include the determination of the age of admission to schools”) is, however, the legal vehicle by which that silence could be ended (Part VIII).

School sport policy. The Department of Basic Education’s Draft School Sport Policy, published for comment on 9 December 2011, contains no provision on learner transfers for sporting reasons, recruitment, bursaries or scholarships; its only relevant language is that “all participants in school sport shall abide by the principles underlying the school sport policy”.¹²² The department told Parliament in May 2012 that the comment period had closed on 31 March 2012 and that the policy process was expected to be completed by the end of that year; no final version has been located in the *Gazette* or among the policies the department publishes, and the draft is cited here because it is the only text there is.¹²³ The School Sport Regular Participation Guidelines, a joint draft of the Departments of Sport, Arts and Culture and of Basic Education of which the available copy is dated October 2024, define “age

¹¹⁸ Section 5(5)(a)(i) and (b) of the Schools Act, as substituted by s 4(d) of Act 32 of 2024.

¹¹⁹ *MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others* [2013] ZACC 34; 2013 (6) SA 582 (CC) para 52 <https://www.saflii.org/za/cases/ZACC/2013/34.html>.

¹²⁰ Admission Policy for Ordinary Public Schools, GN 2432 in *Government Gazette* 19377 of 19 October 1998, paras 17–18, [https://www.education.gov.za/Portals/0/Admission%20Policy%20for%20ordinary%20public%20schools%20\(Notice%202432%20of%201998\).pdf](https://www.education.gov.za/Portals/0/Admission%20Policy%20for%20ordinary%20public%20schools%20(Notice%202432%20of%201998).pdf).

¹²¹ Admission Policy (n 120) para 10.

¹²² Draft School Sport Policy, GN 1025 in *Government Gazette* 34830 of 9 December 2011, https://www.gov.za/sites/default/files/gcis_document/201409/34830gon1025.pdf.

¹²³ Portfolio Committee on Basic Education, “School Sports Leagues: briefing by Departments of Basic Education and Sport and Recreation” (28 May 2012), Parliamentary Monitoring Group summary, <https://pmg.org.za/committee-meeting/14458/> (“The school sport policy was released for public comments from 9 December 2011 until 31 March 2012”; “It was envisaged that the policy process would be completed by 31 December 2012”). The Department of Basic Education’s published list of policies, <https://www.education.gov.za/resources/policies.aspx>, contains no school sport policy as at the date of writing.

cheating” (“distorting one’s age through the use of deceitful documentation and any other dishonest means”), require a vetted “safeguarding officer” who “ensures that children participating in school sport are free from maltreatment, abuse, non-accidental harm, discrimination, bullying, harassment, neglect, and violence”, and require vetting against the National Register of Sex Offenders; and they contain nothing on recruitment, poaching, transfers or bursaries.¹²⁴ The regulatory apparatus of school sport, in other words, protects the child’s age, his body and his safety from sexual offenders, and is silent on his purchase.

The National Sport and Recreation Act. The Act of 1998 contains no provision on school sport; the word “school” appears only in the identification of “the youth attending school and those who are no longer attending school” as a priority group.¹²⁵ Its ministerial intervention power is real but bounded: the Minister may intervene “in any dispute, alleged mismanagement, or any other related matter in sport or recreation that is likely to bring a sport or recreational activity into disrepute” by referring the matter for mediation or issuing a directive, but “may not ... interfere in matters relating to the selection of teams, administration of sport and appointment of, or termination of the service of, the executive members of the sport or recreation body”, and may not intervene where the matter has been referred to the Sports Confederation unless it fails to resolve it within a reasonable time; non-compliance by a national federation may be met by withdrawal of funding and recognition.¹²⁶ The Minister’s guideline-making power under section 13A is confined to guidelines “to promote equity, representivity and redress in sport and recreation”.¹²⁷ No amendment bill dealing with any of this is before Parliament: the Amendment Bill of 2018 lapsed in May 2019, a redraft was published for comment in January 2020, the department told the portfolio committee in November 2021 that the redraft was with the State Law Adviser for certification, and no bill had been introduced as at the date of writing.¹²⁸

Public-school money. The Schools Act’s provisions on the school fund (the requirement that the fund and all school assets “must be used only for ... educational purposes, at or in connection with such school”, the governing body’s mandate to supplement state resources “in order to improve the quality of education provided by the school to all learners at the school”, the parents’ approval of the budget, the prohibition on differential fees “based on curriculum or extramural curriculum within the same grade”, and parents’ inspection rights) are analysed in Part IV.7, because they are not so much a regulation of recruitment as a constraint on how a public school may pay for it.¹²⁹

¹²⁴ Department of Sport, Arts and Culture with the Department of Basic Education *School Sport Regular Participation Guidelines: Leagues, Festivals, Inter-Matches, Intra-School and Displays/Performances* (draft; the document is undated, and the only copy located is dated 3 October 2024 by its host) <https://learn.ecubed-dbe.org/wp-content/uploads/2025/06/School-Sport-Regular-Participation-Guidelines-Fourth-Draft-as-of-3-October-2024.pdf>.

¹²⁵ Section 9(2)(e)(ii) of the National Sport and Recreation Act 110 of 1998; consolidated text https://www.saflii.org/za/legis/consol_act/nsara110o1998315/.

¹²⁶ Section 13(5)(a)–(c) of the National Sport and Recreation Act. A court has held that the Sports Confederation “is an institution exercising a public power and performing a public function in terms of legislation ... and subject to review in terms of PAJA”: *Chess South Africa v South African Sports Confederation and Olympic Committee and Another* [2024] ZAGPPHC 601 para 41 <https://www.saflii.org/za/cases/ZAGPPHC/2024/601.html>.

¹²⁷ Section 13A of the National Sport and Recreation Act.

¹²⁸ National Sport and Recreation Amendment Bill B43-2018, lapsed 7 May 2019 (<https://pmg.org.za/bill/855/>); draft Bill published 8 January 2020 (<https://pmg.org.za/bill/918/>); Portfolio Committee on Sport, Arts and Culture, “Update on White Paper on Arts, Culture and Heritage & Sports and Recreation Amendment Bill; with Minister” (November 2021), <https://pmg.org.za/committee-meeting/34013/> (Bill submitted for socio-economic impact assessment on 27 July 2021 and to the Office of the Chief State Law Adviser on 23 September and again on 9 November 2021). No later bill was located on the Parliamentary Monitoring Group’s bill lists.

¹²⁹ Sections 37(6), 36(1), 38, 39(6), 42 and 43 of the Schools Act, consolidated text updated to 24 December 2024, https://www.saflii.org/za/legis/consol_act/sasa1996228/. Sections 38(3) and 42 were substituted by Act 32 of 2024 with effect

III.3 SA Rugby's regulations: the player who is not a "Player"

SA Rugby's governance page publishes more than two dozen documents, among them the 2026 Industry Collective Agreement, the General Competition Rules (March 2026), the Players' Agents Regulations (December 2021), the Standard Player Contract, the Player Status, Player Contracts and Player Movement Regulations (2017) and the SARU Code of Conduct. Its constitution is not among them, and for its Youth Week documents the page directs enquirers to an official by e-mail.¹³⁰ That last point is itself a finding: the eligibility rules for the Craven Week, the Grant Khomo Week and the other youth weeks (the tournaments that are the market's principal shop window, and the only lever a schools' association has ever reached for against a transferring boy) are not published.

The Player Status Regulations (2017). The instrument that governs the status, contracting and movement of players is the edition approved on 8 December 2017; it is the version SA Rugby publishes as current on its governance page at the date of writing, and no later edition was located. It defines a "Player" as "a player aged 18 years and older and Registered with a Club and/or Province", a "Contract Player" as "a Player who has concluded a written Player Contract with a Province and/or Club and receives a material benefit", and "Material benefit" as "money, consideration, gifts or other benefits whatsoever promised or given to a Player or any other individual ... in respect of such Player's participation in the Game".¹³¹ Regulation 3.7 then provides: "No Club or Province shall enter into a written agreement with any Player unless the Player has reached the age of 18 years."¹³² Regulation 3.7 is the only age-based restriction in the instrument. Four things should be noticed about it. It prohibits a *written agreement*, not an approach, a negotiation, a verbal undertaking, a letter of intent, a public announcement that a boy has been "secured", or a bursary. It is addressed to a "Club or Province", not to a school, an agent, a scout, an alumni body or a foreign club. Because a schoolboy is, by definition, not a "Player", the movement provisions of section 4 (clearance certificates, transfer applications and the transfer fees that "shall be agreed between" the unions¹³³) do not reach him at all; there is no junior transfer regime and no training-compensation mechanism of any kind. And the regulation contains no date-in-Grade-12 rule, no notification-to-school requirement and no parental-consent mechanism, because it is an outright bar rather than a consent regime. I searched the instrument for "school", "scholar", "learner", "matric", "Grade 12" and "minor": none appears. SA Rugby's regulation of the professional market begins, in terms, on a player's eighteenth birthday, and the market in the years before it is regulated by nothing SA Rugby publishes.

SchoolBoyRugby's digest of the 2019 *Rapport* report recorded, accurately, that "SARU prohibits Rugby Unions from entering into binding contracts with rugby players before they turn 18 years old".¹³⁴ Precision is needed about what that prohibition leaves open, because the unions' own announcements show how the space is used. A union may identify a Grade 11 boy, approach him and his parents, agree with them what he will be paid from his eighteenth birthday, announce that he has "decided to start [his]

from 24 December 2024; s 39(6) was inserted by Act 24 of 2005.

¹³⁰ SA Rugby "Governance and documents" <https://springboks.rugby/general/governance-and-documents>.

¹³¹ *Player Status, Player Contracts and Player Movement Regulations* (approved at General Meeting on 8 December 2017), definitions, <https://media-cdn.cortextech.io/1WWmqT/1BSdBWljCcz1GL/ce248da1-f1fd-482b-a959-3cd5a013e98b.pdf>. "Club" is defined by reference to clause 1.2.8 of the SARU Constitution and "Province" by reference to clause 1.2.39; the Constitution itself is not published on the site, and whether a school or a schools' rugby association falls within either definition could not be determined for this article.

¹³² *Player Status Regulations* (n 131) reg 3.7.

¹³³ *Player Status Regulations* (n 131) regs 4.1, 4.2 and 4.8.

¹³⁴ "Garsfontein schoolboy rugby player allegedly paid R1 million by the Bulls" *SchoolBoyRugby* (21 April 2019) <https://schoolboyrugby.co.za/?p=37494>.

professional journey” with the union, and sign the document on the day he turns eighteen, and none of that is prohibited by regulation 3.7. A union-linked foundation may, through the union’s own development programmes, select a schoolboy for a bursary of R60 000 to R130 000 a year without any application by the family, and regulation 3.7 is not engaged because a bursary is not a written agreement for playing services with a “Player”. Whether any of this ought to be permitted is a question for Part VIII; that it is permitted is the finding here.

The Under-Aged Rugby Regulations. SA Rugby’s regulations for under-aged rugby are detailed, current and entirely concerned with safety. The School Rugby Age-Banding addendum, updated with effect from 1 January 2026, defines each age-grade by “the maximum age, as determined on 31st December of that specific year”, sets two-year bands from under-13 to under-18 and a three-year under-19 band at school level, bars over-age players (“in the U18 division, a player may not be 19 years old or be turning 19 years old, during the year in question”; “at no given time, may any U19 level Age-grade rugby team select or field players aged 19 years old turning 20, or players older than 20 years old, during the year in question”), and regulates playing up through Schedules A, B and C with particular restrictions on the front row because “local research has identified the front row positions, especially the hooker, as having a higher risk for permanent catastrophic cervical spinal cord injury, especially in the scrum”.¹³⁵ The companion regulations for under-aged players in adult rugby provide that “players younger than 18 years old shall not be allowed to play U20 or senior rugby in any position” and that “players younger than 19 years old shall not be allowed to play in either elite U20 or senior rugby in the front row”, each prohibition being subject to a documented waiver procedure (medical, parental, coaching and provincial sign-offs) available only to “elite players having been identified within the province or national structures”.¹³⁶ The regulatory architecture, in short, protects the schoolboy’s neck in considerable detail and his contractual and educational position not at all.

The Safeguarding Policy. SA Rugby’s Safeguarding Policy and Procedures against Harassment and Abuse in Rugby (effective May 2020, revised August 2022) defines a child as “every person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”, applies to “all levels of rugby”, provides that the protection, safeguarding or welfare of vulnerable persons is the paramount consideration, and prohibits psychological abuse, physical abuse, sexual harassment and abuse, neglect and bullying; it requires vetting against the sexual offences and child protection registers and a designated safeguarding officer at every union and club.¹³⁷ It does not treat commercial exploitation, premature contracting or predatory recruitment of a child as a safeguarding harm. The World Rugby and UNICEF instruments discussed below suggest that it should.

The Rugby Education Foundation has been described in Part II.1. Analytically it is a union-linked flow of substantial money to identified minors, selected through the unions’ own development programmes

¹³⁵ SARU Regulations for Under-Aged Rugby: School Rugby Age-Banding (Addendum 1, updated January 2026, effective 1 January 2026) definitions and cll 4(b), 5(d) and 8(i), <https://media-cdn.cortextech.io/1WWmqT/1BSdBWljCe7Pia/b7ab1db9-295d-4a07-9e94-531692fdada0.pdf>, via SA Rugby “BokSmart legislation” <https://springboks.rugby/general/boksmart-legislation>.

¹³⁶ SARU Regulations for Under-Aged Rugby: Adult Rugby (approved 1 April 2011) cll 1, 2, 3, 5 and 7, <https://media-cdn.cortextech.io/1WWmqT/1BSdBWljCcz1GL/e2204c1f-0ed3-404c-a4ef-27f60ff641da.pdf>. This 2011 document remains, as at the date of writing, the version published on SA Rugby’s BokSmart legislation page (n 135), alongside the U20 club and elite clearance forms that give effect to the waiver procedure.

¹³⁷ SA Rugby Safeguarding Policy & Procedures against Harassment and Abuse in Rugby (effective May 2020; revision 1, August 2022) cll 4, 6.3, 7, 10.1, 13.4 and 18–19, <https://media-cdn.cortextech.io/1WWmqT/1BSdBWljCcz1GL/b46e0d16-cd8b-42ef-aa06-ccf775baee6e.pdf>; landing page <https://www.springboks.rugby/general/safeguarding/>. The website labels the document “Approved Dec 2022”; the internal dates are cited.

without any application by the family, that sits outside regulation 3.7 (because a bursary is not a written agreement with a “Player”), outside the Agents Regulations (because the Foundation is not an agent) and outside any published eligibility or welfare code.¹³⁸

III.4 Agents and scouts: a regime for the accredited, nothing for the rest

The one place in SA Rugby’s rulebook where dealings with under-eighteens are regulated in detail is the Players’ Agents Regulations, approved by the General Council on 10 December 2021.¹³⁹ The instrument defines an “Agent” as an accredited natural person who renders services including introducing players to a rugby body and representing them in contract negotiations, a “Player” as “a rugby player under the jurisdiction of SARU, a province, an associate member, a rugby body or a club”, and a “Rugby Body” as “a union, associate member, club or similar organization which is a member of or is affiliated, directly or indirectly, to a member or associate member of SARU”. It creates a closed shop: “only an Agent may perform the functions set out in Clause 1.2 above, and no Rugby Body, or person acting on behalf of a Rugby Body, shall negotiate with, or otherwise engage with, a person who is not an Agent”; and rugby bodies “are not allowed to negotiate a Player Agreement or other employment Agreement or provide consent for the use of a Player’s image rights in any commercial activity, with a person who is not an Agent” and “must satisfy themselves that the person they are dealing with is an Accredited Agent”.¹⁴⁰

The under-eighteen provisions are these. Clause 12 of the Code of Conduct: “The Agent will not approach a Player who has not yet reached the age of eighteen (18) years to sign an Agency Agreement, or any other agreement with the same objects, without the presence of such Player’s guardians.”¹⁴¹ Clause 13, repeated in Sub-Regulation 7.2: “An Agent shall not be allowed to enter into an agreement with a player between the age of 16 and 18 years and his parent or legal guardian in terms whereof: 13.1 he will receive any form of remuneration, including commission; 13.2 the Player will have obligations emanating from the Agreement; 13.3 he is awarded an option to enter into an Agency Agreement when the player becomes 18 years old; 13.4 the duration of the agreement exceeds two (2) years; 13.5 the termination date of the agreement extends beyond the day the Player turns 18 years of age; or 13.6 such agreement places any obligation on the Player after reaching the age of 18 years, including but not limited to an undertaking, promise, agreement, or an option to enter into a Player Agent Agreement.”¹⁴² Sub-Regulation 7.2.1 adds that “the player’s parent or legal guardian has to sign the agreement on behalf of the player”. Clause 39 supplies a presumption that is a model for Part VIII: “The Agent will not approach any Player who is under a Player Contract with the aim of persuading him to terminate his Contract prematurely or to violate any obligations stipulated in the Player Agreement. It shall be presumed, unless the contrary is proven, that any Agent involved in a contractual breach committed by a Player without just cause has induced such breach.”¹⁴³

Two corrections to the received understanding follow. First, the rule is not, as it is often described, an absolute bar on approaching under-eighteens: clause 12 prohibits the approach *without the presence of the*

¹³⁸ SA Rugby “Rugby Education Foundation” <https://springboks.rugby/general/rugby-education-foundation>.

¹³⁹ *The Players’ Agents Regulations* (approved by General Council on 10 December 2021) <https://media-cdn.cortextech.io/1WWmqT/1BSdBWljCcz1GM/f4094c62-ec1a-4cda-b659-a8d437c173df.pdf>.

¹⁴⁰ Players’ Agents Regulations (n 139) definitions; reg 13.1; sub-regs 1.1 and 1.2.

¹⁴¹ Players’ Agents Regulations (n 139) Code of Conduct cl 12.

¹⁴² Players’ Agents Regulations (n 139) Code of Conduct cl 13; sub-reg 7.2.

¹⁴³ Players’ Agents Regulations (n 139) Code of Conduct cl 39.

guardians, so that an accredited agent may lawfully approach a sixteen-year-old to sign, provided a parent is in the room. The 2016 blog reproduction of the then-current rule, “Players who have not yet reached the age of eighteen (18) shall not be approached to sign a Standard Player Agent Agreement”, was an unqualified prohibition;¹⁴⁴ the 2021 text is qualified. Secondly, the 16-to-18 regime is a genuine regulatory design: parental signature, no remuneration, no obligation on the player, a two-year cap, a hard termination at eighteen and no post-eighteen tail. It is a more developed regime than World Rugby’s, which requires only that “where a Player is under the age of 18, the Agency Contract must be countersigned by a parent or guardian”.¹⁴⁵

But the regime’s reach is exactly as wide as accreditation. It binds accredited agents and rugby bodies. It does not bind the “talent scout” who sources players for a school’s intake and works on verbal agreements with parents, the person whose relationship with the family *SchoolBoyRugby* described a decade ago as “way different from the one that exists between a pro player and his agent”.¹⁴⁶ It does not bind the school, the director of rugby with a “network to acquire players”, the old boys’ body pooling funds, or the union coach who approaches a boy at a festival. And it does not, on its face, bind a school even if a school is a “Rugby Body” (a question the definition leaves open: a school is arguably a “similar organization which is ... affiliated, directly or indirectly, to a member ... of SARU” through its provincial schools’ rugby association), because what the school negotiates with the family is a bursary, not a “Player Agreement or other employment Agreement”. The result is an inversion that ought to embarrass the system: the professional intermediary who might represent a sixteen-year-old is subject to a detailed code; the school, the scout and the union that actually move him are subject to none.

The person who actually does the buying is, at many of the leading schools and on what parents and coaches tell me, not an outside intermediary at all but an employee of the school: a recruiter, appointed at a public school to a governing-body post under section 20(4) or 20(5) of the Schools Act and paid from the school fund, and at an independent school employed by the company or trust that owns it, whose function is to find players in the open market and bring them in, and who is called the school’s “agent” by everybody except the regulations. He is to be distinguished from the director of rugby, who oversees the programme, and from the coach, though the Affies coach’s account of a professional coach hired for his “network to acquire players” shows how the functions can merge.¹⁴⁷ The money he offers is often not the school’s either: it comes from an external fund, a trust or an old boys’ foundation, which pays the hostel fees and school fees of the boys he finds. The arrangement is the product of the two gaps this Part has mapped. The recruiter is not an “Agent”: the closed shop in the Agents Regulations concerns negotiations with rugby bodies over Player Agreements, what he negotiates with a family is a bursary, and so neither clause 12 nor the sixteen-to-eighteen regime touches him, there is no register from which he can be struck, and the conduct that would cost an accredited agent his licence is, for him, a job description. The fund is outside the regulations for the same reason, and outside section 37(6) of the Schools Act because the money never passes through the school fund. What the arrangement does not do is insulate the school,

¹⁴⁴ “Accredited agent vs talent scout” *SchoolBoyRugby* (25 January 2016) <https://schoolboyrugby.co.za/?p=13251>.

¹⁴⁵ World Rugby Regulation 5 (Agents) reg 5.4.3 <https://www.world.rugby/organisation/governance/regulations/reg-5>.

¹⁴⁶ “Accredited agent vs talent scout” (n 144).

¹⁴⁷ Ruan Jacobs, quoted in Thomaidis (n 16) and Borchardt (n 17); and see Part II.1 and, on the “talent scout” who sources players for a school’s intake, n 140. Section 20(4) of the Schools Act: “Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public school may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of section 3(1) of the Educators’ Employment Act, 1994”; s 20(5) makes the same provision for non-educator staff (consolidated text updated to 24 December 2024, https://www.saflii.org/za/legis/consol_act/sasa1996228/).

public or independent. A public school is a juristic person and, in a governing-body post, the employer,¹⁴⁸ and an independent school's proprietor is the employer in the ordinary way; an employer answers for the delicts its employee commits in the course and scope of his employment, and the Constitutional Court's test asks whether there is "a sufficiently close link" between the employee's conduct and the business of the employer;¹⁴⁹ where finding players at other schools is the reason the post exists, the link is not a matter of inference at all. So the delict of intentional interference with contract examined in Part V.4, where it lies, lies against the school as much as against the man; and a fund that pays to procure the boy on the school's nomination is, at the least, a joint wrongdoer with the school, and where it pays on the school's instruction, its agent.¹⁵⁰ At a public school the salary itself must be disclosed: the annual budget must set out the cost of every governing-body post and how it will be met, and the school fund that pays it may be used only for "educational purposes",¹⁵¹ so that a salaried post whose function is player acquisition invites the section 37(6) question of Part IV.7 at the payroll, whoever pays the bursaries; and, as Part V.4 shows, section 60 of the Act may place the delictual consequences of the recruiter's conduct on the province rather than the school. If the post is an educator's post, its holder must be registered with the South African Council for Educators and is subject to its professional discipline.¹⁵² Nor can the governing body that created the post stand behind the man it appointed to it. It "stands in a position of trust towards the school"; it established the post and must disclose its cost in the budget it puts to the parents; it is the body whose functions the Head of Department may, on reasonable grounds, withdraw, and which he may on the same grounds dissolve if it has ceased to perform them; and its members, where they have directed or knowingly permitted recruitment in breach of undertakings the school has given to other schools, have authorised the conduct and cannot, in the ordinary law of delict, disclaim what they authorised.¹⁵³

Two variations are common, and neither improves the school's position. The first is the recruiter who is paid by nobody: the old boy, the parent or the supporter who scouts for the school out of loyalty. He is not an employee, and vicarious liability in the strict sense presupposes employment. But the Supreme Court of Appeal has held that "even in the absence of an actual employer-employee relationship the law will permit the recovery of damages from one person for a delict committed by another where the relationship

¹⁴⁸ Sections 15 and 20(4), (5) and (10) of the Schools Act ("Despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5)").

¹⁴⁹ *K v Minister of Safety and Security* [2005] ZACC 8; 2005 (6) SA 419 (CC) paras 31–32 and 44 <https://www.saflii.org/za/cases/ZACC/2005/8.html>, adopting the test in *Minister of Police v Rabie* 1986 (1) SA 117 (A): an act done by an employee "solely for his own interests and purposes" may fall outside the course or scope of employment, but "if there is nevertheless a sufficiently close link between the servant's acts for his own interests and purposes and the business of his master, the master may yet be liable". Recruitment undertaken as part of the employee's duties does not need the extended test; it is within the course and scope of employment on any approach.

¹⁵⁰ Apportionment of Damages Act 34 of 1956, s 2(1) (persons "jointly or severally liable in delict to a third person ... for the same damage" are joint wrongdoers and may be sued in the same action), https://www.saflii.org/za/legis/consol_act/aoda34o1956265/.

¹⁵¹ Sections 37(6) and 20(9) of the Schools Act (when presenting the annual budget the governing body "must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met").

¹⁵² Section 20(7) of the Schools Act: "A public school may only employ an educator in a post established in terms of subsection (4) if such educator is registered as an educator with the South African Council of Educators"; South African Council for Educators Act 31 of 2000, s 5 (registration, code of professional ethics and disciplinary powers).

¹⁵³ Sections 16(2) ("A governing body stands in a position of trust towards the school"), 20(9), 22(1) ("The Head of Department may, on reasonable grounds, withdraw one or more functions of a governing body") and 25(1) ("The Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions in terms of this Act or any provincial law") of the Schools Act, consolidated text updated to 24 December 2024, https://www.saflii.org/za/legis/consol_act/sasa1996228/.

between them and the interest of the one in the conduct of the other is such as to render the situation analogous to that of an employee acting in the course and scope of his or her employment”, the true inquiry being whether that relationship and that interest are “sufficiently analogous” to employment to justify attributing the one’s conduct to the other.¹⁵⁴ A volunteer who scouts under the director of rugby’s direction, reports to him, carries the school’s name and is thanked in its newsletter is about the school’s business on any view; and where the school has authorised or asked for the approach, its liability is not vicarious at all but direct, as a joint wrongdoer, whoever made the call.¹⁵⁵ The second is the recruiter who is employed and paid by an outside trust or foundation but works under the school’s auspices: he attends its practices, uses its badge and its e-mail, and reports to its director of rugby. The trust is his employer and answers for him in the ordinary way; but the arrangement does not take the school out of the picture, for three reasons. The right to control the manner in which work is done is, in the Supreme Court of Appeal’s words, “an important factor in determining whether” an employment relationship exists for the purposes of vicarious liability,¹⁵⁶ and a school that directs what the recruiter does, whom he approaches and what he may offer has that right whoever pays him. A school that lets a man deal with families in its name has represented, by its own conduct and not merely by his, that he has authority to speak for it, and against a parent who reasonably relied on that representation it cannot disown what he said.¹⁵⁷ And the outside employer is precisely the device that keeps the salary out of the budget the governing body must put to the parents under section 20(9) and the money out of the school fund that section 37(6) confines to educational purposes: the parents are never told that the post exists or what it costs. That is not an argument for the arrangement but the strongest argument against it, and it is why Rule 6 attaches to every benefit “by whomever granted” and Rule 8 to every person who performs the function, whoever pays him.

One feature of the recruiter’s method should be recorded here, because it is the one parents complain of most to me and because no instrument in this Part touches it. The first conversation is very often with the boy himself: at a festival, after a match, or by message on the telephone in his pocket, and the parents hear of it afterwards, if at all. The accredited agent may not do that; clause 12 of his code requires the guardians to be present. No such rule binds the school’s recruiter, whether the school or an outside trust pays him, the union’s coach who approaches a boy at a festival, or the union-linked Rugby Education Foundation, whose bursaries are awarded to identified schoolboys without any application by the family (Part III.3). It should be said plainly that the conversation is not, in itself, actionable by anyone: no delict is committed by speaking to a boy, and this article does not suggest otherwise. What the direct approach does is bypass the guardian, who under the Children’s Act is the person who must “assist or represent the child in administrative, contractual and other legal matters”,¹⁵⁸ and extract from a child an assurance to which the law gives no effect; and when it later produces a promise to the family that is not kept, the

¹⁵⁴ *Messina Associated Carriers v Kleinhaus* [2001] ZASCA 46; 2001 (3) SA 868 (SCA) paras 10 and 15 <https://www.saflii.org/za/cases/ZASCA/2001/46.html>. The case concerned a vehicle owner and a driver who was not his employee; the principle is stated generally.

¹⁵⁵ Apportionment of Damages Act s 2(1) (n 150); and see *Messina* (n 154) para 12 on the distinction between vicarious and personal (direct) liability.

¹⁵⁶ *Messina* (n 154) para 12: “The right to control, being an element of the employer - employee relationship, is regarded as an important factor in determining whether such a relationship exists”.

¹⁵⁷ *NBS Bank Ltd v Cape Produce Co (Pty) Ltd* [2001] ZASCA 107; 2002 (1) SA 396 (SCA) paras 25–26 <https://www.saflii.org/za/cases/ZASCA/2001/107.html> (the representation must be made by the principal “and not merely by” the agent, must be one the principal should reasonably have expected outsiders to act on, and must have been reasonably relied on to the claimant’s prejudice).

¹⁵⁸ Section 18(3)(b) of the Children’s Act 38 of 2005.

inducement of a breach of an existing bursary agreement, or harm to the boy, the liability described above attaches to the school, and the fact that the promise was first made to a fifteen-year-old on his own is what makes it careless to have made it at all. Part IV.4 states the principle and Rule 7 the prohibition: no approach to a learner under eighteen except through his parents.

What is missing is not liability but a lever, and Rule 8 of the Code in Part VIII supplies it: any person who identifies or introduces a learner to a school for sporting purposes on the school's behalf, whether as employee, contractor or volunteer and whoever pays him, performs an agent's function and must be accredited; Rule 6 subjects every sport-linked benefit to the same standards "by whomever granted"; and Rule 7 makes the school answerable for the bodies that act in its name, as the New Zealand regulations bind "staff, representatives, coaches, managers, volunteers or any person acting on [the school's] behalf" and the Utah rule binds "a member school, coach, coaching staff or affiliated boosters".

III.5 World Rugby: a stronger rule for the contract, and a protocol for the young player

World Rugby's Regulation 4 provides, in regulation 4.5.12: "No Union, Rugby Body or Club shall enter into an agreement with any Player which enables the Player to receive Material Benefit unless: (a) such Player has reached the age of contractual majority within the jurisdiction of such Union, Rugby Body, or Club; or (b) in the case of Players under the age of contractual majority who are aged 16 years or over, unless such Material Benefit takes the form of a non refundable financial grant to be applied only for the purposes of a Player's academic and/or vocational training for a period of 12 months or longer."¹⁵⁹ The design is instructive. World Rugby permits a benefit to a sixteen- or seventeen-year-old, but only in the form of a *non-refundable educational grant*, which cannot be clawed back, cannot be conditioned on playing services and cannot bind the boy. SA Rugby's flat bar in regulation 3.7 is stricter as to the written contract and silent as to the bursary; World Rugby regulates the bursary itself. Regulation 4.9.1 then prohibits approaches to contracted players: "No Union, Rugby Body, Club, Agent or any other Person or entity, whether acting on its own account or on behalf of any third party, shall approach (or accept an approach by or on behalf of) any Contract Player or other Contracted Person who has a written agreement with a Union, Rugby Body or Club to induce or attempt to induce such Contract Player or Contracted Person to leave their Union, Rugby Body or Club unless (i) the prior written consent of that Union, Rugby Body or Club has been obtained; or (ii) such approach is made in the final twelve months of the term ..."¹⁶⁰ The rule protects only those who already hold a written agreement, which a schoolboy cannot; but its form (a prohibition on the *approach*, addressed to "any other Person or entity", with a consent gateway) is the drafting model Part VIII adopts for enrolled learners.

Regulation 4 also carries a protocol for young players. It provides that "an essential component of the Protocol is the prohibition on the unauthorized approach to and/or 'poaching' of young players either within a Union and/or between Unions", that unions who make unauthorised approaches "shall be subject to sanction", and that an "Associate Player" registration form for licensed training centres "must be signed by the player, the players' parent(s) (or person with parental responsibility) and the player's head teacher or equivalent person with overall responsibility for the player's education", all of whom "must

¹⁵⁹ World Rugby Regulation 4 (Player Status, Player Contracts and Player Movement) reg 4.5.12 <https://www.world.rugby/organisation/governance/regulations/reg-4> (page dated 21 April 2016).

¹⁶⁰ World Rugby Regulation 4 (n 159) reg 4.9.1.

agree before a player acquires the status of an Associate Player”.¹⁶¹ World Rugby, in other words, already contemplates an express anti-poaching rule for young players and a tripartite consent in which the head teacher signs alongside the parent. None of the South African instruments surveyed in this Part contains an equivalent.

III.6 The gaps, tabulated

The audit may be summarised in a table. The right-hand column asks the only question that matters for a governance design: whom does the instrument bind, and with what consequence?

Instrument	What it regulates	What it does not reach	Who bears the consequence
KZN Headmasters’ Agreement (2012)	Eligibility as a bona fide school sportsman: an U19 must have been at the school since Grade 10	Schools outside KZN; non-signatories; the approach itself	The recruited boy (ineligibility); no sanction on the school
Traditional State Boys’ Schools Charter (2014) / 26-school MOU	Declares Grade 8-only bursaries, principal-to-principal protocol	Independent schools; unions; agents; scouts; no sanction	Nobody; fixtures cancelled by aggrieved schools
WPHSRA resolution (2024)	Defines poaching; complaint and judicial committee; provincial ineligibility	Schools outside WP; unions; agents; alumni acting outside “affiliation”	The transferring boy
Schools Act s 5(2), s 5(5) (BELA 2024)	Admission tests prohibited; HOD final authority; best interests in admission policy	Independent schools; the inducement; the union	Public school governing body (in theory); never applied to sport transfers
National Admission Policy (1998)	Transfer cards; no victimisation for fee arrears	Sporting ability; inducements; timing	None
Draft School Sport Policy (2011); DSAC/DBE Guidelines (2024)	Principles; age cheating; safeguarding officer; vetting	Recruitment, transfers, bursaries	None
National Sport and Recreation Act	Ministerial intervention in disputes bringing sport into disrepute; funding sanctions on federations	School sport; selection; administration	National federation
SA Rugby Player Status Regulations (2017, current) reg 3.7	Written agreement between union/club and a player under 18	Approaches; verbal undertakings; announcements; bursaries; schools; agents; foreign clubs	Union or club (in theory)
SA Rugby Players’ Agents Regulations (2021)	Accredited agents’ dealings with 16–18s: approach only with guardians present; no fee, no obligation on the player, no term beyond 18	The school’s recruiter, whoever employs or pays him; volunteer scouts; unions and their coaches; alumni bodies, trusts and foundations; the direct approach to the boy	Accredited agent

¹⁶¹ World Rugby Regulation 4 (n 159), “Section 2. Young Players Protocol” of the guidelines published with Regulation 4 on the same page. The quotations were read on that page; its paragraph numbering could not be reliably established from the web text and is therefore not cited.

Instrument	What it regulates	What it does not reach	Who bears the consequence
SA Rugby Under-Aged Regulations; Safeguarding Policy	Age bands; playing up; abuse and harassment	Commercial exploitation; recruitment	Union, club, individual
World Rugby reg 4.5.12; 4.9.1; young players protocol	Material benefit to 16–18s limited to non-refundable educational grant; anti-inducement for contracted players; anti-poaching of young players; head-teacher consent	Not adopted in SA in respect of schools	Union (under World Rugby's jurisdiction)

Every instrument regulates something adjacent to the transaction (the professional contract at eighteen, the accredited agent, the boy's age, his safety, his provincial eligibility) and every sanction that exists falls on the union at the top of the market or the child at the bottom. The schools, the recruiters they or their trusts employ, the volunteers who scout for them, the alumni bodies and the coaches who transact in the middle are bound by nothing, and nothing in any of these instruments stops any of them from speaking to the boy before his parents. The chairman of SA Schools was right in 2019 and remains right in 2026: there is no legislation that, in his words, could allow something to be done. But he was speaking of sport law and education law. The law that does something is the subject of the next Part.

Part IV. The law that already applies: the child, the school, the parents and the money

The premise of this Part is simple and, once stated, difficult to resist. Every participant in the market described in Part II is a child. Every transaction in it (the scouting, the approach, the offer, the transfer, the bursary, the conditionality, the selection, the termination) is a decision concerning a child. South African law has an elaborate, constitutionally anchored body of rules about decisions concerning children. So far as the reported cases show, it has simply never been applied to the first XV.

IV.1 The constitutional standard

Section 28(2) of the Constitution provides that “a child’s best interests are of paramount importance in every matter concerning the child”, and section 28(3) that a child is “a person under the age of 18 years”.¹⁶² The Constitutional Court held in *Fitzpatrick* that section 28(2) “creates a right that is independent of those specified in section 28(1)”.¹⁶³ It is a self-standing right, not merely an interpretive guide. In *S v M Sachs J* supplied the operational content: “A truly principled child-centred approach requires a close and individualised examination of the precise real-life situation of the particular child involved. To apply a pre-determined formula for the sake of certainty, irrespective of the circumstances, would in fact be contrary to the best interests of the child concerned”; and, on paramouncy: “The word ‘paramount’ is emphatic. Coupled with the far-reaching phrase ‘in every matter concerning the child’, and taken literally, it would cover virtually all laws and all forms of public action ... Similarly, a vast range of

¹⁶² Constitution of the Republic of South Africa, 1996, ss 28(2) and 28(3).

¹⁶³ *Minister for Welfare and Population Development v Fitzpatrick and Others* [2000] ZACC 6; 2000 (3) SA 422 (CC) para 17 <https://www.saflii.org/za/cases/ZACC/2000/6.html>.

private actions will have some consequences for children.” The Court was careful to add that “if the paramountcy principle is spread too thin it risks being transformed from an effective instrument of child protection into an empty rhetorical phrase of weak application”, and that the best-interests injunction is capable of limitation.¹⁶⁴

Three consequences follow for the recruitment market. First, a decision to recruit a child, to move him, to fund him, to condition his funding on performance, to select or deselect him, or to terminate his bursary is a “matter concerning the child” in the plain sense of the words; it is not a matter concerning a school’s competitive strategy that happens to have a child in it. Secondly, the standard requires “a close and individualised examination” of the particular boy (his attachment to his present school, his family circumstances, his academic trajectory in the FET phase, his readiness to board, his own views) and not the application of the pre-determined formula that a first-XV pipeline needs a particular player. Thirdly, the *S v M* caution cuts both ways. The article does not contend that section 28(2) forbids competition, selection on merit or bursaries; it contends that the standard applies to the institutional decisions through which the market operates, and that those decisions must be shown to have been taken with the child, not the trophy, as their object.

Horizontality. Any suggestion that these norms bind only the State was laid to rest in *AB v Pridwin Preparatory School*, a school-sport case: an independent school had cancelled its parent contract after a father’s misconduct at school sporting events. The Constitutional Court held that “section 8(2) imposes constitutional obligations on private entities, such as Pridwin”; that “independent schools, like Pridwin, are not exempt from constitutional obligations and the demands for transformation of private relations ... Children should not be excluded from this protection merely because parental choices or circumstances have placed them in independent schools”; that section 28(2) has “a procedural component ... which dictates that whenever a decision is taken concerning children, a fair and determinable process must be followed. This may not amount to an oral hearing”; and that the children “also had a self-standing right to have their views heard on this issue, either in person or through a representative”.¹⁶⁵ *Juma Musjid* had already held that a purely private actor bears a negative constitutional obligation not to impair a child’s right to basic education: “the purpose of section 8(2) of the Constitution is not to obstruct private autonomy or to impose on a private party the duties of the state in protecting the Bill of Rights. It is rather to require private parties not to interfere with or diminish the enjoyment of a right.”¹⁶⁶ And in *NFM v John Wesley School* the KwaZulu-Natal High Court declared invalid an independent school’s practice of isolating a learner from examinations over his parents’ fee arrears: “While it is accepted that independent schools are autonomous, this does not exclude them from the operations of the Act and the Constitution”; the conduct “penalized ZM, a minor child for his parents conduct for which he was not liable”; and “any conduct by the school or policy or contract which falls foul of the provisions of s 29(3) of the Constitution is not only unconstitutional but is also invalid”.¹⁶⁷

¹⁶⁴ *S v M (Centre for Child Law as Amicus Curiae)* [2007] ZACC 18; 2008 (3) SA 232 (CC) paras 24–26 <https://www.saflii.org/za/cases/ZACC/2007/18.html>.

¹⁶⁵ *AB and Another v Pridwin Preparatory School and Others* [2020] ZACC 12; 2020 (5) SA 327 (CC) paras 126, 131, 148 and 151 (per Theron J for the majority) <https://www.saflii.org/za/cases/ZACC/2020/12.html>.

¹⁶⁶ *Governing Body of the Juma Musjid Primary School and Others v Essay NO and Others* [2011] ZACC 13; 2011 (8) BCLR 761 (CC) paras 58 and 60 <https://www.saflii.org/za/cases/ZACC/2011/13.html>.

¹⁶⁷ *NFM v John Wesley School and Another* [2018] ZAKZDHC 64; 2019 (2) SA 557 (KZD) paras 80, 82 and 84 <https://www.saflii.org/za/cases/ZAKZDHC/2018/64.html>.

Pridwin is the hinge on which this Part turns. It establishes that the best-interests standard and its procedural component attach to institutional decisions of schools, public and independent, that concern children; that contractual autonomy yields where its exercise visits harm on children who were strangers to the bargain; and that a decision of the magnitude of a child's removal from, or admission to, a school requires at least that the child's interests be solicited and considered before it is taken. The recruitment decision, the bursary-termination decision and the eligibility sanction are all decisions of that kind.

IV.2 The Children's Act: the standard given content

The Children's Act 38 of 2005 gives the constitutional standard statutory content, and several of its provisions read as though drafted with sport-driven transfers in mind.

Section 9 restates paramountcy: "In all matters concerning the care, protection and wellbeing of a child the standard that the child's best interest is of paramount importance, must be applied."¹⁶⁸ Section 6(2) requires 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 ...; (b) respect the child's inherent dignity; (c) treat the child fairly and equitably; ... (e) recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age".¹⁶⁹ Section 6(5) adds a duty of information: "A child, having regard to his or her age, maturity and stage of development, and a person who has parental responsibilities and rights in respect of that child, where appropriate, must be informed of any action or decision taken in a matter concerning the child which significantly affects the child."¹⁷⁰ Section 6(1)(b) applies these principles to "all proceedings, actions and decisions by any organ of state in any matter concerning a child", which includes a public school's governing body, and section 6(1)(a) to the implementation of all legislation applicable to children.

Section 7(1) supplies the factors. Where relevant, a decision-maker must consider "the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from — (i) both or either of the parents; or (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living" (s 7(1)(d)); "the practical difficulty and expense of a child having contact with the parents" (s 7(1)(e)); "the need for the child — (i) to remain in the care of his or her parent, family and extended family; and (ii) to maintain a connection with his or her family, extended family, culture or tradition" (s 7(1)(f)); "the child's — (i) age, maturity and stage of development" (s 7(1)(g)); "the child's physical and emotional security and his or her intellectual, emotional, social and cultural development" (s 7(1)(h)); "the need for a child to be brought up within a stable family environment" (s 7(1)(k)); and "the need to protect the child from any physical or psychological harm that may be caused by — (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation ..." (s 7(1)(l)).¹⁷¹ Applied to a Grade 10 boarder recruited from the Eastern Cape to Gauteng, these are not abstractions: they are the questions a reasonable adult would ask before

¹⁶⁸ Section 9 of the Children's Act 38 of 2005 (consolidated text updated to 28 May 2025: https://www.saflii.org/za/legis/consol_act/ca2005104/).

¹⁶⁹ Section 6(2) of the Children's Act.

¹⁷⁰ Section 6(5) of the Children's Act.

¹⁷¹ Section 7(1) of the Children's Act. Section 7(2) provides that "parent" in the section includes any person who has parental responsibilities and rights in respect of a child.

moving a fifteen-year-old six hundred kilometres from his family in the middle of the FET phase, and they are the questions that, on everything published, are not asked.

Section 10 gives the child his own voice: “Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.”¹⁷² A fifteen- or sixteen-year-old rugby prospect is the paradigm of such a child. Participation is not a veto over selection, discipline or the enforcement of a valid agreement; it is a real opportunity to understand, speak and be considered, separately from the sales atmosphere of a recruitment approach and, where appropriate, with an independent support person. The reporting suggests that transfers are commonly negotiated between adults (coaches, parents, scouts and “middlemen”) over the boy’s head; the Rugby Education Foundation’s own description of its selection process, in which “parents do not need to submit applications” because candidates are chosen through the unions’ programmes, describes a pipeline with no participation step at all.¹⁷³

IV.3 The school as caregiver: in loco parentis and section 32

The common law. The doctrine that an educator stands in loco parentis is among the oldest in South African education law. The courts have converted it into a delictual legal duty to act positively. In *Hawekwa Youth Camp v Byrne* the Supreme Court of Appeal adopted the statement in *Wynkwart* that “teachers owe young children in their care a legal duty to act positively to prevent physical harm being sustained by them through misadventure”.¹⁷⁴ In *Pro Tempo v Van der Merwe* a private remedial school was held liable when a learner was impaled on a steel dropper in a play area, the Court invoking section 28(1)(b) of the Constitution (“every child has the right to appropriate alternative care when removed from the family environment”) and the school’s knowledge of the particular child’s circumstances.¹⁷⁵ In *Mageni* the Western Cape High Court, dealing with a learner who lost an eye in an assault around a game of tag rugby on school grounds before school, held that “while the child is at school the teachers become in loco parentis”, that “when the learners engage in a game with other learners on a school playground, that game falls within the realm of official social activity of the school”, and that the education authorities had “a duty to ensure that the activities which the learners were engaging in on school premises were reasonably safe”.¹⁷⁶

Foster applied the framework to schoolboy rugby. A matric learner dislocated two cervical vertebrae in a tackle during an inter-schools match; the first-aid attendants engaged by the host school moved him without a spine board or neck brace and left him permanently paralysed. The Supreme Court of Appeal

¹⁷² Section 10 of the Children’s Act; art 12 of the United Nations Convention on the Rights of the Child, 1989, read with Committee on the Rights of the Child General Comment No 12 (2009) CRC/C/GC/12. The UNICEF *Children’s Rights in Sport Principles* (2018) restate the point for sport: organisations should “respect that children can express their views freely in all matters affecting themselves”.

¹⁷³ SA Rugby “Rugby Education Foundation” <https://springboks.rugby/general/rugby-education-foundation>.

¹⁷⁴ *Hawekwa Youth Camp and Another v Byrne* [2009] ZASCA 156; 2010 (6) SA 83 (SCA) para 25 <https://www.saflii.org/za/cases/ZASCA/2009/156.html>, quoting *Minister of Education v Wynkwart* NO 2004 (3) SA 577 (C) at 580A–C.

¹⁷⁵ *Pro Tempo Akademie CC v Van der Merwe* [2016] ZASCA 39; 2018 (1) SA 181 (SCA) para 21 <https://www.saflii.org/za/cases/ZASCA/2016/39.html>.

¹⁷⁶ *Mageni v Minister of Education of the Western Cape Education Department* [2021] ZAWCHC 79 paras 46 and 57 <https://www.saflii.org/za/cases/ZAWCHC/2021/79.html>. The injury was inflicted in an assault by another learner, not in the game itself; the case is authority on the school’s duty of supervision, not on rugby injury.

opened with the observation that “because it involves physical contact, rugby is a dangerous sport in which players often sustain serious injuries; which may include permanent paralysis”, held that “a legal duty to avoid negligently causing harm rested on it, based on the relationship of *loco parentis*, which the educators and coaches have vis-a-vis the learners as players during school games when the latter are in their custody”, and found that the host school, “well knowing that rugby is a dangerous contact sport that often leads to injuries”, had done “nothing really” to ensure competent and properly equipped first aid and, “acting in *loco parentis*; and as the host responsible for providing emergency services on the day in question, failed to take reasonable steps”.¹⁷⁷ *Roux v Hattingh* had already held, of a match between two school first teams in which a deliberately illegal scrum manoeuvre broke an opposing player’s neck, that “rugby is a contact sport” in which serious injuries occur “even when the game is played in accordance with its spirit and within its rules”, that conduct within the rules is not wrongful, but that “conduct which constitutes a flagrant contravention of the rules of rugby and which is aimed at causing serious injury or which is accompanied by full awareness that serious injury may ensue, will be regarded as wrongful”.¹⁷⁸ The Regulations for Safety Measures at Public Schools define a “school activity” as “any educational, cultural, sporting or social activity of the school within or outside the premises” and oblige a public school to “take measures to ensure the safety of learners during any school activity”.¹⁷⁹

These are physical-injury cases, and they should not be over-read: they do not hold that every disappointment, deselection or recruitment decision attracts delictual damages. They establish that a school which controls an environment in which foreseeable harm may occur must take reasonable, child-appropriate steps against it; that the standard is that of the reasonably careful parent; and that the school’s custody of the boy on the rugby field is a custody in the full legal sense.

Section 32. What the case law expresses in delictual language, the Children’s Act expresses in statutory language. Section 32(1) provides: “A person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, must, whilst the child is in that person’s care — (a) safeguard the child’s health, wellbeing and development; and (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards.”¹⁸⁰ A “care-giver” is “any person other than a parent or guardian, who factually cares for a child and includes ... (b) a person who cares for a child with the implied or express consent of a parent or guardian of the child”; and “care” includes, where appropriate, “safeguarding and promoting the wellbeing of the child”, “guiding, directing and securing the child’s education and upbringing”, and “generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child”.¹⁸¹ A sixteen-year-old recruited from a rural town to a boarding establishment on a rugby bursary is a child in the factual care of the recruiting school in the fullest sense:

¹⁷⁷ *Member of the Executive Council, Education, North West Province v Foster and Others* [2023] ZASCA 11 paras 2, 19, 26, 30 and 31 <https://www.saflii.org/za/cases/ZASCA/2023/11.html> (Mocumie JA; Masipa AJA dissenting). Public-school claims lie against the State under s 60 of the Schools Act in respect of “any school activity conducted by a public school”; claims against independent schools lie against the school, as in *Pro Tempore*.

¹⁷⁸ *Roux v Hattingh* [2012] ZASCA 132; 2012 (6) SA 428 (SCA) paras 1, 42 and 43 <https://www.saflii.org/za/cases/ZASCA/2012/132.html>.

¹⁷⁹ Regulations for Safety Measures at Public Schools, GN 1040 in *Government Gazette* 22754 of 12 October 2001, as amended by GN R1128 in *Government Gazette* 29376 of 10 November 2006, reg 1 (definition of “school activity”) and reg 8A(2).

¹⁸⁰ Section 32(1) of the Children’s Act. Section 32(2) permits such a person to exercise parental responsibilities and rights reasonably necessary to comply with subsection (1), including consent to medical treatment where parental consent cannot reasonably be obtained, subject to s 129.

¹⁸¹ Section 1 of the Children’s Act, definitions of “care-giver” and “care”.

it houses, feeds, trains, disciplines and controls his daily life, far from his parents, with their consent. Section 32 is not a metaphor in that situation. Its vocabulary (“development”, “exploitation”, “emotional or mental harm”) maps with uncomfortable precision onto the risks the literature identifies: isolation, academic struggle, pressure to “repay” the bursary with performance, doping culture, and discard when the investment disappoints.

Two qualifications prevent overstatement. Neither the common-law doctrine nor section 32 makes the school a parent: it acquires, under section 32(2), only those parental responsibilities and rights “reasonably necessary” to discharge the section 32(1) duties, and its role is limited and coextensive with the period of care. And no reported judgment has yet applied section 32 to a school’s recruitment, bursary or selection system; the application advanced here rests on the provision’s text, which is deliberately broad, rather than on settled doctrine. But the text is exact, and if section 32 binds, as its terms indicate, the au pair and the scout leader it is impossible to explain why it should not bind the institution that has procured the relocation of a fifteen-year-old to its hostel for the strength of its scrum.

Treating the school as caregiver matters in three ways. It collapses the artificial distinction between the school’s “educational” and “sporting” functions: the section 32 duties attach to the whole child, all the time, and a school cannot claim the privileges of a parent from Monday to Friday and the detachment of a franchise owner on Saturday. It fixes the duty on the institution *before* injury: where the delictual cases operate after the event, section 32 informs what a school must consider when it designs a recruitment programme, a training load, a bursary condition or a selection policy. And it extends the duty beyond physical safety, the terrain of *Foster*, into emotional and developmental territory, which is where the harms of the recruitment economy are concentrated.

IV.4 The recruited child: what he is owed

The recruitment conversation occurs at a moment of asymmetry. The school possesses institutional prestige, legal advice and experience with bursary terms. The family may see a once-in-a-generation opportunity. The child may hear promises about a pathway to provincial or professional rugby, even if the written document promises only financial assistance. The 2015 case in which a boy left his school on a coach’s verbal promise of a scholarship, was refused enrolment at the promising school, was admitted by another on a scholarship its official denied offering, and was excluded after one term for academic reasons, is the published illustration of what the asymmetry produces when nobody is bound.¹⁸²

The first protection is the simplest, and it is the one the market most routinely ignores: nobody acting for a school should approach the boy at all except through his parents. A fourteen-year-old spoken to on the touchline after a festival match, or messaged on his phone by a scout he has never met, is being recruited in the one setting in which he is least able to weigh what he is told; SA Rugby’s own agents’ code recognises as much when it requires a guardian’s presence before an accredited agent may approach a boy under eighteen, and there is no reason the school’s own recruiter should be held to less. The point is not only one of good practice. It is the guardian, not the child, who must “assist or represent the child in administrative, contractual and other legal matters”, and a scout who obtains a fourteen-year-old’s telephone number and messages him is processing the personal information of a child, which section 34 of the Protection of Personal Information Act prohibits unless a competent person has consented or

¹⁸² “Recruitment gone wrong: Glenwood & Westville named” *SchoolBoyRugby* (20 July 2015) <https://schoolboyrugby.co.za/?p=12303>.

another of the grounds in section 35(1) applies (Part IV.8).¹⁸³ A child-centred process then requires disclosure that is intelligible rather than merely technically complete. At minimum the family should receive the identity of the grantor and the exact benefits; the duration of the award and objective review criteria; the position after injury, illness, poor form, non-selection or a coaching change; academic and conduct conditions; any repayment or notice obligation; the consequences of changing schools; who decides disputes and whether an independent appeal exists; and what educational continuity is guaranteed if funding ends. The distinction between misconduct and performance is essential. A proportionate sanction for proved serious misconduct is one thing; terminating an educational bursary because a child ceases to be athletically useful is another. Where termination of the bursary predictably ends the child's enrolment, it is a decision about the child's education, engaging section 29(1)(a), the procedural component of section 28(2) and, for an independent school, the *Pridwin* duty to solicit and consider representations before deciding; and the *NFM* court's language (a child "penalized ... for his parents conduct for which he was not liable", conduct "aimed at humiliating, degrading and victimising learners"¹⁸⁴) is available against a school that ends a boy's schooling because a better player arrived.

The Act also resists the use of gratitude as governance. A bursary recipient is entitled to boundaries, medical candour and ordinary developmental failure. He should not be pressured to play injured, specialise prematurely, conceal concussion symptoms or accept abusive treatment because the school "gave him a chance". Section 32 places on the school that cares for him the duty to protect him from exploitation and from emotional harm, and financial dependence is precisely the condition in which a child learns to keep quiet; the doping figures in Part II.4 show what silence produces.

What the move itself costs him is the part of the transaction that the adults price at nothing, and the developmental literature prices it high. Section 7(1)(d) of the Act directs every decision-maker to "the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from" the people with whom he has lived and been schooled, and section 7(1)(f) to his need "to remain in the care of his or her parent, family and extended family" and to maintain a connection with his culture and tradition. The adolescent-development texts explain why those factors are heaviest exactly in the grades in which the market operates. The transition to high school is itself identified as a trigger for the decline in self-esteem that makes adolescence the low point of the lifespan on that measure; a boy bought in Grade 10 or 11 is made to undergo that transition a second time, alone, in his most exposed years. The importance of peer relationships "increases dramatically" from childhood to adolescence, the quality of peer support then matters more than parental support, "a strong sense of belonging is protective against anxiety and depression", and the neural studies "support the importance of peers for the development of adolescent self-concept over the importance of teacher and parent relationships"; a weak peer network is "a significant risk factor for mental health concerns in adolescence".¹⁸⁵ The boy who is moved in Grade 11 is separated from the peer network on which, at his

¹⁸³ Section 18(3)(b) of the Children's Act; ss 34 and 35(1) of the Protection of Personal Information Act 4 of 2013 (Part IV.8).

¹⁸⁴ *NFM v John Wesley School* (n 167) paras 82 and 84.

¹⁸⁵ Avery-Overduin "Adolescent identity" in *Understanding Child and Adolescent Development* (University of Queensland, 2026) ch 6, <https://uq.pressbooks.pub/understanding-child-adolescent-development/chapter/adolescent-identity/> (accessed 20 September 2026; published under a Creative Commons BY-NC-SA 4.0 licence). The chapter is an open-access teaching text that summarises the research literature for educators; it is cited here for its statement of that literature, and the primary studies it relies on for the propositions quoted are Hoffman and Schacter (2024) 60(10) *Developmental Psychology* 1842 (the high-school transition and self-esteem); Letkiewicz et al (2023) 64(9) *Journal of Child Psychology and Psychiatry* 1314 (quality of peer support and depressive symptoms); Romund et al (2017) 38 *Human Brain Mapping* 987 (neural correlates of self-concept and the significance of friends); Kornienko et al (2016) 52(10) *Developmental Psychology* 1578 (peer networks and mental health); and Branje (2022) 45 *Current Opinion in Psychology* 101286 (identity development in context). Those studies have not been

age, his self-concept and his resilience chiefly depend, and is placed in a squad in which his belonging is conditional on the bursary that brought him, at the moment the literature identifies as the one at which belonging matters most. The Identity Status literature adds that stressful life events at this age can push an adolescent back from commitment into exploration, with identity diffusion as the risk, and that adolescents “need the support of family and peers to safely explore aspects of their identity formation”; the bought boy has been removed from both. None of this makes the move unlawful. It makes the move a decision to which the section 7 factors apply with their full weight, in a process that the child is entitled to be part of (section 10), and it is the reason the transfer record in Part VIII requires his views to be taken separately from the recruitment conversation and the exemption panel to ask whether the move serves his schooling and not only his rugby.

IV.5 The parents: what the law asks of the family that is offered a bursary

The Michaelhouse letter located the decision where the law locates it: the move “occurred at the insistence of his parent”.¹⁸⁶ Something direct must be said about the parents, because much of the public debate treats them either as victims of the schools or as accomplices. In the great majority of cases they are neither. Parents who accept a late-stage bursary offer act from love and from a sincere desire to give their child the best possible chance; when a senior coach at a prestigious school offers a full bursary, superior facilities and an implied pathway to professional rugby, it registers as a remarkable opportunity, and a parent who accepts it is doing what most parents would do. The problem is not the parents’ motivation but the information on which they decide, and the process the law requires of them.

Capacity and guardianship. A child becomes a major at eighteen.¹⁸⁷ Below that age his contractual capacity is limited, and the guardian’s role is statutory: section 18(3)(b) of the Children’s Act obliges a guardian to “assist or represent the child in administrative, contractual and other legal matters”.¹⁸⁸ A bursary agreement is such a matter. Where more than one person holds guardianship (the typical case of two parents, married or not) section 18(4) makes each “competent, subject to subsection (5), any other law or any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or responsibility arising from such guardianship”. Section 18(5) requires the consent of all guardians only “in respect of matters set out in subsection (3)(c)”: consent to the child’s marriage, adoption, departure or removal from the Republic, passport application, and the alienation or encumbrance of the child’s immovable property.¹⁸⁹ A change of school, and the bursary contract that accompanies it, is not on that list. It is sometimes suggested that a change of school requires the consent of both parents; on the text of section 18(5), it does not. What the Act does require of co-holders is found in section 31.

separately consulted for this article and the propositions are attributed to the chapter’s summary of them. The chapter also records, on the strength of Sebastian, Burnett and Blakemore (2008) 12(11) *Trends in Cognitive Sciences* 441, that an adolescent’s self-concept is built on “direct appraisals of self and reflective appraisals of the opinion of others”, and, on the strength of Ireson and Hallam (2009) 19 *Learning and Instruction* 201, that where a school emphasises performance through ability grouping an adolescent’s self-concept changes “depending on the group that the individual is placed in”, the point applied to the displaced boy in Part IV.6.

¹⁸⁶ Letter from Michaelhouse to parents (23 January 2026), reproduced in *SchoolBoyRugby* (24 January 2026) <https://schoolboyrugby.co.za/?p=48142>.

¹⁸⁷ Section 17 of the Children’s Act.

¹⁸⁸ Section 18(3)(b) of the Children’s Act. Section 18(3)(a) concerns the administration of the child’s property.

¹⁸⁹ Sections 18(4) and 18(5) read with s 18(3)(c) of the Children’s Act.

Section 31. Before a person holding parental responsibilities and rights takes any decision “which is likely to significantly change, or to have an adverse effect on, the child’s living conditions, education, health, personal relations with a parent or family member or, generally, the child’s wellbeing”, that person “must give due consideration to any views and wishes expressed by the child, bearing in mind the child’s age, maturity and stage of development”.¹⁹⁰ A transfer of schools for rugby (a change of school, and in the boarding case a change of residence) is squarely a section 31(1)(b)(iv) decision. Section 31(2) adds that before a decision “which is likely to change significantly, or to have a significant adverse effect on, the co-holder’s exercise of parental responsibilities and rights” the decision-maker “must give due consideration to any views and wishes expressed by any co-holder”; moving a child to a boarding school in another province is such a decision where the other parent’s contact is affected.¹⁹¹ Section 31 does not confer a veto on the child or the co-holder; it imposes a duty of genuine consideration. But “due consideration” cannot be genuine if the factual picture on which it rests has been curated by an institution with a commercial interest in the outcome.

The information asymmetry. Parents who consent to a late-stage transfer typically do so after a presentation focused on benefits: facilities, coaching, competitive environment, brand, pathway. They are not, so far as anything published shows, told that three of every four boys identified as elite at under-13 level do not reach the under-18 national tournament; that the school’s own peer-reviewed informants describe assessment at twelve as “incredibly difficult”; what happens to the bursary, the hostel place and the enrolment if form dips or injury strikes; that the transfer will displace a boy already at the receiving school; or that the KwaZulu-Natal or Western Province rules may render their son ineligible for provincial selection. Section 31 asks the parent to consider the effect on the child’s wellbeing. A receiving school that approaches a parent with an offer, in full knowledge of that evidence, without disclosing it, has not facilitated a decision the Act contemplates; and a parent who has been given the evidence and still decides to move his son has exercised parental responsibility in the way the Act intends, whatever the source school thinks of it. The law’s answer to the recruitment problem is not to override the parent. It is to ensure that the parent decides on the facts, after hearing the child, and with the other parent considered; Part VIII’s transfer record is designed to make that process visible.

The child’s own voice. Section 10 applies to the boy independently of his parents. Genuine participation requires honest information about benefits and risks, freedom from the authority pressure of a presentation by a senior coach from a prestigious school, and the opportunity to speak freely; and where the parents and the child disagree, the child’s views are a factor the parents must weigh under section 31(1)(a), not a formality.

IV.6 The incumbent learner: the boy who was already there

The recruitment debate is conventionally conducted as a contest between schools. Child law recasts it: every recruitment decision concerns at least two children. The first is the recruit. The second is the incumbent, the boy who has been at the school since Grade 8, who has trained through four winters in its jerseys, whose family has paid full fees, and who on the first day of the new season finds that the position he was groomed for has been filled by a Grade 11 arrival on a bursary. The schools’ own instruments have long recognised him without naming him (Part II.4): the Charter’s Grade 8-only bursaries and the

¹⁹⁰ Section 31(1)(a) read with s 31(1)(b)(iv) of the Children’s Act.

¹⁹¹ Section 31(2) of the Children’s Act.

KwaZulu-Natal eligibility rule both, whatever their stated purpose, protect the place of the boys already at the school.¹⁹²

The incumbent is not a party to any contract, and he has no right to be selected: team selection on sporting merit is not actionable, courts are poorly placed to select school teams, and nothing in this article suggests otherwise. But he is a child, and the school's recruitment decision is a "matter concerning" him in the *Fitzpatrick* and *S v M* sense: it forecloses, by institutional purchase rather than by open competition, opportunities the school itself held out to him for four years. *Pridwin's* procedural component supplies the minimum content of the school's duty: "a fair and determinable process". Translated into this context, that means transparent, published criteria for sports bursaries; honest communication with squad members about recruitment before the team sheet goes up; selection processes that adolescents can recognise as fair; age-appropriate reasons; and support, not silence, for the displaced. Section 6(2)(b) and (c) require that any decision concerning a child "respect the child's inherent dignity" and "treat the child fairly and equitably"; section 6(5) requires that a child "be informed of any action or decision taken in a matter concerning the child which significantly affects the child"; section 7(1)(h) obliges every decision-maker to weigh "the child's physical and emotional security"; section 10 gives the incumbent, no less than the recruit, the right to participate in a matter concerning him; and section 32, which Part IV.3 applied to the recruit in the school's hostel, applies with equal force to the boy who has been in the school's care since Grade 8, whose "development" the school must safeguard and whom it must protect from "emotional or mental harm". A school that manages a R10 million rugby programme but cannot articulate to a sixteen-year-old why he lost his jersey has not merely failed at pastoral care; it has failed a statutory standard.

The team's own sociology is where the harm is transacted. A squad perceives the purchased player precisely as the word suggests. The incumbent reads the arrival as a verdict (that four winters of training weigh less than a term's negotiation with another family), while the recruit arrives branded as bought rather than earned and must justify the bursary weekly. The psychological literature supplies the mechanism: adolescents in elite programmes invest heavily in athletic identity, which narrows the sources of self-worth and converts the loss of a team place into an injury to the self. The systematic review of the youth literature records that athletic identity rises significantly between the ages of ten and fifteen and then plateaus, so that the Grade 8 to Grade 10 years are the years in which the boy's sense of himself as a player is being set; that "the transition to an initial higher level of play", which is what selection for a first XV is, correlates with a stronger athletic identity; that athletes with strong athletic-role identification push boundaries "to keep that identity", including by "using anabolic steroids or other performance enhancing substances, overtraining, playing while injured or adopting disordered eating patterns", which is the doping evidence of Part II.4 explained; that injured adolescents with higher exclusivity scores showed higher depression scores; and that "during adolescence, a time when one's identity is constructed based on various social interactions, a strong exclusivity in athletic identity can hamper the development of other elements of one's individual identity", the review's own closing question being "whether an over-emphasis on performance, excellence and results affects youth athletes' identity development" in a youth sports landscape that "has transformed into a multi-billion dollar industry";¹⁹³ deselection produces

¹⁹² "The Traditional State Boys' Schools Sports Charter" *SchoolBoyRugby* (18 March 2014) <https://schoolboyrugby.co.za/?p=6905>; "KZN Headmaster's Agreement 2012" *SchoolBoyRugby* (20 August 2012) <https://schoolboyrugby.co.za/?p=1039>.

¹⁹³ Brewer, Van Raalte and Linder "Athletic identity: Hercules' muscles or Achilles heel?" (1993) 24 *International Journal of Sport Psychology* 237 (the origin of the construct and of the Athletic Identity Measurement Scale); Edison, Christino and Rizzone "Athletic identity in youth athletes: a systematic review of the literature" (2021) 18(14) *International Journal of Environmental Research and Public Health* 7331, <https://doi.org/10.3390/ijerph18147331> (open access, CC BY). The review, by three paediatric sports-medicine physicians, screened ninety-one studies and analysed the ten that measured athletic identity in cohorts aged

clinically significant distress in a substantial proportion of adolescent athletes;¹⁹⁴ a field study of players contending for selection found that those not selected showed “a significant decrease over time” in athletic identity while the selected showed none, a self-protective withdrawal from the role that had been taken from them;¹⁹⁵ adolescent athletes and their parents experience deselection as a shared injury, “our problem”, from which parents first try to shield the child;¹⁹⁶ and an institution’s failure to protect a person who depends on it is, by analogy with the literature on institutional betrayal, a recognised form of harm.¹⁹⁷ Late-entry purchase wounds both boys at once (the incumbent through displacement, the recruit through conditional belonging) and the appropriate legal response is procedural and systemic, not a guaranteed result: before late recruitment, a school should assess the educational reason for admitting the recruit independently of the immediate team need; the timing and developmental stage; the number of existing players competing for the position; whether coaches have honestly communicated pathways to incumbents; whether any child will be cut off from meaningful participation rather than merely moved between teams; and how the school will support both the newcomer and those displaced.

The displaced boy’s experience deserves to be described, because the adults who run the programme do not see it. He is fifteen or sixteen. He has been at the school since he was thirteen; it chose him, or his parents chose it, and for three or four years it has told him, in assemblies, in the words on its walls and in the attention of its coaches, that effort, loyalty and patience are rewarded there. He has done what he was told. Then a boy he has never met arrives at the start of the new season, is handed the jersey, and is welcomed by the same coaches who told him his turn was coming. Nobody explains it to him, because there is nothing that can honestly be explained: the decision was taken in a meeting he was not at, by people who did not have him in mind, for reasons that have nothing to do with him. He is left to work it out for himself, and the studies already cited show what he tends to conclude: distress, a withdrawal from the identity that has been taken from him, and the sense of betrayal that follows when an institution on which a person depends acts against him. He has no vocabulary for a transaction. He does not know that a fund paid, that a recruiter was employed to find his replacement, that the school’s own charter said this would not happen, or that the law calls him a child whose interests were meant to be paramount in the decision that removed him. He knows only that he was there and now he is not, and that the adults have moved on. Some boys shrug it off, and the selection study suggests how: by ceasing to care about the thing they cared most about, which is a loss of its own. Whether he stays in the game, or at the school, nobody records, because nobody asks. His parents, who have paid the fees that may have funded the

twenty-two and under; its authors caution that the studies were too few for “clear associations” and that the evidence on the rise in athletic identity through adolescence (Houle, ages ten to fifteen) and on the effect of transition to a higher level of play is “cross-study” evidence from studies rated of fair quality. The quotations in the text are from the review’s introduction (the boundary-pushing behaviours, citing its references 8 and 16), its results (Manuel et al, 2002, on depression scores in injured adolescents), its discussion and its conclusions. It does not study deselection or school transfer; it is cited for what athletic identity is, when it forms and what it costs when it is threatened.

¹⁹⁴ Blakelock, Chen and Prescott (2016) 10(1) *Journal of Clinical Sport Psychology* 59.

¹⁹⁵ Grove, Fish and Eklund “Changes in athletic identity following team selection: self-protection versus self-enhancement” (2004) 16(1) *Journal of Applied Sport Psychology* 75–81, <https://doi.org/10.1080/10413200490260062> (female athletes contending for state teams; “similar AIMS scores in the two groups prior to selection, no change over time for selected players, and a significant decrease over time for the players who were not selected”).

¹⁹⁶ Neely, McHugh, Dunn and Holt “Athletes and parents coping with deselection in competitive youth sport: a communal coping perspective” (2017) 30 *Psychology of Sport and Exercise* 1–9, <https://doi.org/10.1016/j.psychsport.2017.01.004> (fourteen adolescent athletes, mean age fifteen, deselected from provincial teams, and fourteen of their parents; “athletes and parents viewed deselection as ‘our problem’”; “initially, parents protected their daughters from the negative emotions arising from deselection”). Both studies concern selection on merit; they are cited for the mechanism of the injury, which displacement by purchase shares and, on the analysis in the text, aggravates.

¹⁹⁷ Smith and Freyd “Institutional betrayal” (2014) 69(6) *American Psychologist* 575.

purchase, watch it happen to their son and have nowhere to take it, because there is no rule, no process and no person whose job it was to think about him. That is the injury the Act's language ("emotional or mental harm", "the child's physical and emotional security", the right to be informed and the right to be heard) was written to reach, and it is an injury the present system does not so much fail to remedy as fail to notice.

The developmental science explains why his age matters, and why the Act's insistence on "the child's age, maturity and stage of development" (section 7(1)(g)) is not a formality here. Grades 8 to 12 span the years from thirteen to eighteen, which is adolescence, and a review of the neuroimaging evidence on the adolescent self records that adolescence is "crucial for many aspects of developing self and identity, including commitments, personal goals, motivations, and psychosocial well-being"; that the brain regions engaged when a person evaluates himself, in particular the ventromedial prefrontal cortex, are engaged more in children and adolescents than in adults, with activity that "seems to increase from late childhood through middle adolescence"; that adolescents "frequently report greater self-consciousness, and are more concerned with and interested in others' perceptions of self"; and that the perceptions of others, "especially peers" but also "respected individuals (e.g., family members, teachers)", "provide information about the self" and "help shape adolescents' personal values and identity".¹⁹⁸ The authors' identity-value model holds that behaviour is valued more when it is relevant to the adolescent's identity, that "aspects of identity that favor consistently chosen actions might be more valued, and aspects of identity that favor actions that are consistently not chosen might be less valued", and that at this age "identity-based and other self-related values may be much more modifiable targets", their own example of the modifiable identity being "athletic versus academic". The inference for the displaced boy is direct, and it is an inference, because the review is a synthesis of the science and not a study of sport. The verdict the purchase delivers is delivered at the age when the self is most actively under construction and most sensitive to what respected adults and peers are seen to think; it is delivered by the adults whose regard the model identifies as an input to identity; and it is delivered not once but weekly, on every team sheet, which is the "consistently not chosen" condition under which the model predicts that the identity concerned will be devalued. That is the mechanism the selection study observed, a significant decrease in athletic identity among the unselected, stated at the level of the developing brain, and it explains why the harm is not the disappointment of an adult passed over for promotion. An adult has a formed identity to fall back on; a fifteen-year-old is in the middle of forming one, and the school has just told him, at the moment of greatest plasticity, what it thinks he is worth. The educational literature says the same thing in the language of the classroom. An adolescent's self-concept is built on two sources, "direct appraisals of self and reflective appraisals of the opinion of others"; the beliefs of teachers about a pupil's competence predict the pupil's own; and where a school emphasises performance by grouping its pupils by ability, self-concept changes "depending on the group that the individual is placed in", with those placed in the higher group carrying a significantly higher self-concept forward (n 185). A first-team squad is ability grouping in its purest form, published weekly, and the coach's team sheet is the reflected appraisal that the literature says the boy incorporates into his view of himself. The same literature records the coping

¹⁹⁸ Pfeifer and Berkman "The development of self and identity in adolescence: neural evidence and implications for a value-based choice perspective on motivated behavior" (2018) 12(3) *Child Development Perspectives* 158–164, <https://doi.org/10.1111/cdep.12279>. The article is a review of the neuroimaging and behavioural literature by two University of Oregon psychologists and a statement of their identity-value model; it is not an empirical study and does not concern sport, and quotations are from the authors' accepted manuscript (National Institutes of Health public access manuscript NIHMS950947) as deposited in PubMed Central. The delay-discounting finding is the authors' summary of the studies they cite (their references 40 and 41). The "athletic versus academic" example is the authors' own.

mechanism: an adolescent whose performance falls in a valued domain protects his self-esteem by devaluing that domain and inflating others, which is what the deselection study saw in the athletes' falling athletic identity and what the description above calls ceasing to care. The boy is not being oversensitive. He is doing, at fifteen, exactly what the science predicts a fifteen-year-old will do when the adults he trusts rank him, in public, below a boy they paid for. Nor is it an answer that the boy should have valued his schoolwork above his rugby. The review's central point is that adolescent choices are rational "from the adolescent point of view", on the values the adolescent actually holds, and that adults who judge them from "the normative adult perspective" are "artificially constraining the sources of value we consider relevant"; a school that spent three years building a boy's athletic identity, and rewarded him for it in every assembly, cannot now complain that he holds it. The same science bears on the recruit, and on why Rules 3 and 7 in Part VIII insist that the boy be heard separately and approached only through his parents: the review records that the preference for a smaller, sooner reward over a larger, later one "decreases rapidly from early to middle adolescence", so that the fifteen-year-old to whom a first-team jersey is offered now weighs it, on the science, more heavily against the disruption of his schooling than an adult would weigh the same offer, and the approach that is made to him directly, at a festival, by the adult who holds the jersey, is made to the one person in the transaction least equipped by his stage of development to discount it.

There is a further, institutional point, and the schools should attend to it in their own interest if in nobody else's. Loyalty is the elite boys' school's core asset. The whole edifice of the old boys' union, the bursary trust, the reunion weekend, the war cry and the blazer rests on one transaction: the school gives a boy five years of belonging, and he spends the rest of his life repaying it. The displaced boy has been shown, at the most impressionable age, that the transaction runs one way. He learns the lesson the institution actually teaches rather than the one embossed on its crest: that loyalty binds the child but not the school. What he does with that lesson the school will never know, because it will never look. He may finish his matric quietly and leave without a backward glance. He may carry a resentment that outlasts the season and colours everything he later says about the place. He is, on any view, an unpromising candidate to be the old boy the school will one day want: the one who comes back for the derby, sits on the committee, gives to the fund, sends his own son, and speaks of the school at every dinner table he ever sits at. The irony is that the alumni body that pools its money to buy a Grade 11 player was itself built, over generations, out of precisely the loyalty the purchase spends, and each visibly bought jersey liquidates a portion of the endowment that paid for it. A governing body that dismisses this as sentiment should translate it into its own currency: the school has traded a lifetime of an old boy's goodwill for two seasons of another school's player, and it has not even recorded the sale.

IV.7 Paying for the purchase: the public school's money

Who pays for the purchased player is not an accounting detail; at a public school it is a question of statutory power. With the exception of a handful of independent schools, every school named in the fifteen-year chronology in Part II is a public school. Where the funding comes from a supporters' trust or an old boys' body applying its own money on its own conditions, the Schools Act is largely bypassed, which is, no doubt, why so much of the recruitment economy is structured that way, and why the 2024 voice note about pooled alumni funds was newsworthy. But where a public school allocates a portion of its school fees or hostel fees to sports bursaries, five features of the Act make the practice legally vulnerable.

First, the school-fund straitjacket. All money a public school receives must be paid into the school fund, which the governing body administers; and section 37(6) provides that “the school fund, all proceeds thereof and any other assets of the public school must be used only for — (a) educational purposes, at or in connection with such school; (b) educational purposes, at or in connection with another public school, by agreement ...; (c) the performance of the functions of the governing body; or (d) another educational purpose agreed between the governing body and the Head of Department”.¹⁹⁹ The question is one of interpretation: is buying a rival’s first-team player an “educational purpose”? The recipient does receive an education, so a bursary is not obviously outside the section; but on a purpose-based reading of a statutorily earmarked fund, an award whose dominant object is competitive advantage for the first XV rather than the education of a child selected on educational or need-based criteria is at least an arguable misapplication. No court has decided the point; the nearest reported analogy is a university case in which sums spent on the rental and food of rugby players “had been shown in the financial statements as bursaries”.²⁰⁰

Secondly, the “all learners” clause. The governing body’s mandate to supplement state resources exists “in order to improve the quality of education provided by the school to all learners at the school”, and its governance mandate is to “promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school”.²⁰¹ Diverting fee income exacted from every parent to procure one athlete for the brand is difficult to square with a mandate cast in universal terms, particularly while other children at the same school must prove poverty through the means-tested exemption machinery to obtain relief.

Thirdly, differential fees. Section 39(6) provides that “a public school may not charge a parent of a learner at that school different school fees based on curriculum or extramural curriculum within the same grade”.²⁰² A public school that remits fees for a Grade 10 recruit because he plays rugby, while charging full fees to the Grade 10 boy he displaces, is charging different fees within the same grade on the basis of extramural curriculum. The provision has never been tested against a sports bursary, and the counter-argument (that a bursary is an award, not a fee) is not frivolous; but the text is inconvenient for the practice.

Fourthly, process. School fees may be charged only pursuant to a resolution of the parents, and the annual budget must be approved by a majority of parents at a general meeting; any parent, as an interested person, may inspect the school’s records and audited financial statements.²⁰³ The practical test of legality is disclosure: does the approved budget show the sports-bursary allocation as a line item? If it does, the governing body has procedural cover, though disclosure cannot cure a section 37(6) purpose defect. If the allocation is buried (and the 2025 Kingswood dispute involved the allegation, denied, that fee discounts were coupled with non-disclosure agreements²⁰⁴) the expenditure is unauthorised in terms of the school’s

¹⁹⁹ Sections 37(1)–(3) and 37(6) of the Schools Act.

²⁰⁰ *Roux v University of Stellenbosch and Others* [2023] ZAWCHC 81 <https://www.saflii.org/za/cases/ZAWCHC/2023/81.html> (a university, not a school; cited only by analogy for the characterisation of expenditure).

²⁰¹ Sections 36(1) and 20(1)(a) of the Schools Act.

²⁰² Section 39(6) of the Schools Act.

²⁰³ Sections 38, 39(1), 42 and 43 of the Schools Act (as amended by Act 32 of 2024).

²⁰⁴ Carlisle “Schools cut ties with Kingswood over pupil ‘poaching’” *TimesLIVE* (11 February 2025) <https://www.timeslive.co.za/sunday-times-daily/news/2025-02-11-schools-cut-ties-with-kingswood-over-pupil-poaching/>. Kingswood is an independent school; the allegation is recorded here only as an illustration of non-disclosure, not as an instance of public-fund misapplication.

own adopted budget. Hostel fees are harder still to defend: boarding charges are levied as cost recovery for a discrete service to boarder families, and cross-subsidising recruited athletes from them is a purpose those families never sanctioned.

Fifthly, consequence. A governing body spending outside section 37(6) or outside its approved budget exercises public power unlawfully and is reviewable on legality grounds; the Constitutional Court's frame in *Ermelo* is that "the governing body of a public school must in addition recognise that it is entrusted with a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time but also in the interests of the broader community in which the school is located and in the light of the values of our Constitution".²⁰⁵ The Head of Department may, "on reasonable grounds, withdraw one or more functions of a governing body" and may, on reasonable grounds, "dissolve a governing body that has ceased to perform its functions in terms of this Act or any provincial law".²⁰⁶ A fee-paying parent with inspection rights, a provincial department with audit powers and an auditor obliged to qualify a misstated statement are all realistic pressure points short of litigation.

There is, finally, the position of the displaced boy's parents. These are parents who have paid fees diligently, year after year, on the ordinary understanding that they were funding the education of the school's learners, their own son among them. If a portion of those fees has been allocated to sports bursaries, they have, without ever being asked in those terms, helped to finance the very purchase that displaced their child. The grievance is precise: not that a better player was selected (selection is coaching judgment, and no parent buys a jersey with the fees) but that money exacted from them under a parents' resolution was applied, undisclosed or under-disclosed, to procure their son's replacement. The law gives such parents more standing than they are commonly told: they vote on the budget and may demand that the bursary allocation appear as a line item; they are interested persons entitled to inspect the records; and they hold the parental responsibilities and rights in respect of the very child whose interests section 28(2) makes paramount in the school's decision.

IV.8 Two boundaries: child labour and children's data

Work and services. Section 28(1)(e) of the Constitution gives every child the right "to be protected from exploitative labour practices", and section 28(1)(f) the right "not to be required or permitted to perform work or provide services that — (i) are inappropriate for a person of that child's age; or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development".²⁰⁷ The Children's Act defines "child labour" as "work by a child which — (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and (b) places at risk the child's wellbeing, education, physical or mental health, or spiritual, moral, emotional or social development", includes such labour within "exploitation", and makes it an offence to "use, procure, offer or employ a child for child labour".²⁰⁸ One need not contend that every rugby bursary is child labour (that would be hyperbole) to see that a bursary conditioned in fact on athletic output, in a programme whose training loads and touring erode the academic calendar, in a televised product that "generates substantial commercial revenue streams ... while the participating children receive neither compensation nor meaningful rights

²⁰⁵ *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* [2009] ZACC 32; 2010 (2) SA 415 (CC) para 80 <https://www.saflii.org/za/cases/ZACC/2009/32.html>.

²⁰⁶ Sections 22(1) and 25(1) of the Schools Act.

²⁰⁷ Section 28(1)(e) and (f) of the Constitution.

²⁰⁸ Sections 1 (definitions of "child labour" and "exploitation") and 141(1)(e) of the Children's Act.

protection”,²⁰⁹ operates uncomfortably close to the constitutional line. The point was made at a global level in Durban in 2022, when a white paper on child labour in sport delivered at the Fifth Global Conference on the Elimination of Child Labour identified as risks “early specialization in a sport, intensive and high-volume regular training and involvement in repeated high stakes competition” and “pressure on the young athlete to succeed, to continue improving in order to retain a place in the system”, and recommended that sports bodies “adopt policies and a culture that are based explicitly on child rights standards and principles”.²¹⁰ UNICEF’s *Children’s Rights in Sport Principles* ask sports organisations and educational institutions to “make the best interests of the child the paramount consideration in all actions concerning children”, warn that “the ‘win at all costs’ mentality does not always serve the best interests of the child”, and, of excessive training and burn-out, state: “Recognize that pushing children into those situations may constitute a form of child abuse.”²¹¹ Section 28(1)(f) at minimum supplies the evaluative standard: a schoolboy’s rugby must remain play and education, not service; and section 6(2)(e) of the Children’s Act (the child’s “need for development and to engage in play and other recreational activities appropriate to the child’s age”) says the same thing in statutory language.

Children’s personal information. The market runs on data: scouting databases from age twelve, agency watch-lists built from streamed matches, and public transfer trackers that list children by name, school, position and destination. Section 34 of the Protection of Personal Information Act provides that “a responsible party may, subject to section 35, not process personal information concerning a child”, and section 35(1) lifts the prohibition only on stated grounds, among them processing “carried out with the prior consent of a competent person”, processing “necessary for the establishment, exercise or defence of a right or obligation in law”, and processing of information “deliberately been made public by the child with the consent of a competent person”; outside those grounds the Information Regulator may authorise processing in the public interest under section 35(2), on conditions that may include a requirement that the responsible party “refrain from any action that is intended to encourage or persuade a child to disclose more personal information about him- or herself than is reasonably necessary given the purpose for which it is intended”.²¹² A school’s, agency’s or union’s database of identified minors, and a website’s published list of named fourteen-year-olds who have changed schools, are processing of children’s personal information; whether the Act’s conditions are met is a question none of the participants in the market appears to have asked. It is one reason this article names no boy.

IV.9 Development, not procurement: what the money should buy

The distinction that organises this field is between *developing* players and *procuring* them, and the law has a view on it. The distinction is not between funded and fee-paying boys; a school that funds a talented Grade 8 from a township primary and coaches him for five years is developing, whatever the balance sheet says. Development is education: it is why a school fields teams at all, and it is what section 6(2)(e)

²⁰⁹ Belinda Matore, quoted in Pongweni “Hilton College and others grapple with the cost of commercialisation in school sports” *Daily Maverick* (20 May 2026) <https://www.dailymaverick.co.za/article/2026-05-20-hilton-college-and-others-grapple-with-the-cost-of-commercialisation-in-school-sports/>.

²¹⁰ Centre for Sport and Human Rights *Child Labour in Sport: Protecting the Rights of Child Athletes* (white paper, delivered 19 May 2022 at the Fifth Global Conference on the Elimination of Child Labour, Durban) <https://www.sporhumanrights.org/media/thph1xuc/white-paper-june-2022.pdf>, recommendations 6, 8 and 13(b).

²¹¹ Japan Committee for UNICEF and UNICEF *Children’s Rights in Sport Principles* (2nd ed, December 2018) principles 1, 2 and 4, https://childinsport.jp/assets/downloads/Children’s_Rights_in_Sport_Principles_English.pdf.

²¹² Sections 34 and 35(1) and (3) of the Protection of Personal Information Act 4 of 2013 (s 34 in force from 1 July 2020). See also Matore (11 November 2025) (n 88): “In youth sport, visibility must be balanced with protection.”

of the Children's Act protects when it obliges every decision-maker to "recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age"; and it is what the schools themselves say they are doing: the first of the 2014 Charter's stated principles was that "sport is an important aspect of our educational programme that is designed to develop all our boys".²¹³ A first XV assembled from boys the school has coached since under-14 is the visible end of an educational process. A first XV assembled in the transfer market is something else: the procurement of a result, for the rankings, the derby, the broadcast audience, and the sponsors and enrolments that audience attracts.

The procurement model fails on its own terms before it fails on the law's. Talent identification in early adolescence is, on the schools' own evidence, a statistical gamble: "only 24% of U13 rugby provincial players progress to play provincial under-18 rugby", and the elite schools' own staff describe assessment at twelve as "incredibly difficult".²¹⁴ The boy bought at fifteen on that assessment may prove to be discarded stock within two seasons, and the discarding, as the 2013 and 2015 episodes show, is done to a child far from home. The hiring criterion one first-team coach described without embarrassment (a professional coach who "has already built up the necessary network to acquire players for his school's team")²¹⁵ is the criterion of a franchise, not of a school. Meanwhile the evidence that the alternative works is on the scoreboard. The school that beat Grey College and Paarl Gimnasium in 2026 did so on the express footing that "we can't splash out bursaries", by keeping its own primary-school boys "at home in the Stellenberg system" and building "a proper coaching structure from U14E straight to U19A" with "a specialist forwards and backline coach for every team".²¹⁶ Paarl Gimnasium's coach describes each season as "starting all over again".²¹⁷ The former head of rugby at Pretoria Boys High recruits "only ... for Grade 8" and commits "to look after them for five years".²¹⁸ Smit's own account of what the Grade 8 boy gets is that he "live[s] the traditions" and "become[s] a part of" the school, and his complaint is that the schools "start buying them at 15, 16, 17"; the write-up's prescription is to "build a programme rooted in genuine development rather than short-term results".²¹⁹

The law's terms point the same way. A public school's rugby budget is, on the *Ermelo* principle, "a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time but also in the interests of the broader community";²²⁰ the governing body's mandate is to improve "the quality of education provided by the school to all learners at the school";²²¹ and section 32 fixes on the school a duty to "safeguard the ... development" of every child in its care.²²² A rand spent on

²¹³ Section 6(2)(e) of the Children's Act; "The Traditional State Boys' Schools Sports Charter" *SchoolBoyRugby* (18 March 2014) <https://schoolboyrugby.co.za/?p=6905>.

²¹⁴ Ekron et al (2025) 7 *Frontiers in Sports and Active Living* art 1574442; Durandt et al (2011) 23(4) *South African Journal of Sports Medicine* 103 (see Part II.1).

²¹⁵ Ruan Jacobs, quoted in Thomaidis "Intense level of school rugby reveals the high-performance reality needed to compete" *Daily Maverick* (17 April 2026) <https://www.dailymaverick.co.za/article/2026-04-17-intense-level-of-school-rugby-reveals-the-high-performance-reality-needed-to-compete/>.

²¹⁶ Andras Molnar, quoted in Sawula "How Stellenberg used Bok blueprint to become schoolboy giant slayers" *Rugby365* (26 March 2026) <https://rugby365.com/schools/news-sa-schools/how-stellenberg-used-bok-blueprint-to-become-schoolboy-giant-slayers/>; results in Part II.5.

²¹⁷ Pieter Rossouw, quoted in Cardinelli "Paarl Gim's Pieter Rossouw: SA's pool of top schools has grown" *Rugby365* (11 March 2026) <https://rugby365.com/schools/news-sa-schools/paarl-gim-coach-sas-pool-of-top-schools-has-grown/>.

²¹⁸ Paul Anthony, quoted in Wetdewich "World Cup winner suggests 80% rule for school rugby" *NovaNews* (10 September 2026) <https://novanews.co.za/school-rugby/john-smit-80-percent-rule-schoolboy-rugby-bursaries/>.

²¹⁹ Podcast episode (n 14); Wetdewich (10 September 2026) (n 218).

²²⁰ *Hoërskool Ermelo* (n 205) para 80.

²²¹ Section 36(1) of the Schools Act; see also s 20(1)(a).

²²² Section 32(1)(a) of the Children's Act.

a coach for the under-14 E team develops thirty of the school's own boys; a rand spent on a Grade 11 recruit from another town develops none of them, displaces one of them, and rests on an assessment of adolescent talent that the schools' own informants describe as unreliable. Money spent on coaching depth across every team and age group is, in the statutory language, expenditure for an educational purpose at the school for all its learners. Money spent acquiring another school's finished product is a far harder thing to describe in those terms.

The practical corollary is the answer to every governing body that pleads competitive necessity. The lawful answer to a weak first XV is investment in coaching (in the number, quality, accreditation and continuity of coaches across all age groups and all teams, not only the first XV) and not the acquisition of other schools' players. A school that redirects its transfer-market budget into developing the boys it already has honours its caregiving role, keeps faith with its incumbents, spends its public resource on all its learners, and builds the only kind of sporting excellence that is also education. The governance framework in Part VIII therefore does not merely restrict recruitment; it requires the schools that participate in sanctioned competition to show that they are spending on development first.

Part V. The bursary as a contract, and the losing school's remedies

V.1 Identify the legal relationship first

When a bursary holder transfers, the former school's first question should not be "how much did we spend?" but "who promised what to whom?". Three preliminary disciplines govern any claim.

The first is the identity of the grantor. A public school is a juristic person,²²³ but the funder of a rugby bursary is frequently not the school at all: a trust, an old boys' association, a supporters' body or a specialist foundation. Expenditure by one entity is not recoverable under a contract concluded by another; the claimant must prove its own standing, the authority of its signatories and the source of the obligation.

The second is characterisation. An unconditional remission of fees, once granted, is in the nature of a gift or remission and is not retrospectively convertible into a loan because the boy later leaves; an annual award subject to review is conditional funding for each period; only an express clawback, or a loan structured to be written off on completion of Grade 12, creates a repayment obligation. A court will not invent one because the school expected sporting loyalty in return. The contemporaneous practitioner discussion confirms that repayment clauses were, at least until recently, typically absent from school bursary contracts, and that schools regarded money spent on a departing boy as simply gone.²²⁴

The third is formality where a parent's liability is meant to be accessory: a "parent acknowledgement" is not necessarily a suretyship, and "no contract of suretyship ... shall be valid, unless the terms thereof are embodied in a written document signed by or on behalf of the surety".²²⁵

Because the player is a child, the law of contractual capacity controls. Three configurations are possible. If the parents contract in their personal capacity (they undertake the obligations and the child is merely the object of the arrangement), the obligations bind the parents alone, and nothing binds the boy: he can

²²³ Section 15 of the South African Schools Act 84 of 1996.

²²⁴ "Recruitment: What about the bursary money?" *SchoolBoyRugby* (4 December 2012) <https://schoolboyrugby.co.za/?p=1882>.

²²⁵ Section 6 of the General Law Amendment Act 50 of 1956.

walk across town to the rival school and no contractual obligation of his is breached. If the minor contracts with the guardian's assistance under section 18(3)(b), the contract is prima facie binding on him; but the law's policy, in the Appellate Division's words, "is to protect (minors) against their own immaturity of judgment",²²⁶ and a minor bound by an assisted contract that was prejudicial to him when concluded may obtain restitution. And on attaining majority the young man may ratify or repudiate obligations purportedly undertaken by him as a child without the assistance the law requires. Already, then, the "purchase" is legally precarious in a way professional player contracts are not: the school's counterparty is either not the player at all, or a player armed with protective doctrines designed for exactly this situation.

V.2 Contract: the clawback against the family

Suppose the bursary contract contains what prudent drafting would insert: a clause requiring repayment of bursary value should the learner leave before completing Grade 12. Is it enforceable?

Against parents who contracted personally, the claim is in principle sound but attenuated. A repayment stipulation triggered by early departure is a penalty stipulation within the meaning of the Conventional Penalties Act 15 of 1962: enforceable under section 1, but subject to section 3: "If upon the hearing of a claim for a penalty, it appears to the court that such penalty is out of proportion to the prejudice suffered by the creditor by reason of the act or omission in respect of which the penalty was stipulated, the court may reduce the penalty to such extent as it may consider equitable in the circumstances: Provided that in determining the extent of such prejudice the court shall take into consideration not only the creditor's proprietary interest, but every other rightful interest which may be affected by the act or omission in question."²²⁷ The debtor bears the onus of proving disproportion.²²⁸ The school's difficulty is quantifying prejudice. Its patrimonial loss is, at most, the fees and benefits actually remitted; its real grievance (the lost player, the weakened derby side, the reputational forfeit) is largely non-patrimonial and speculative, and a court asked to enforce a full clawback against a family of modest means for a departure in Grade 11 would have ample warrant to reduce it.

Against the child himself, the claim compounds every weakness. If he was not a properly assisted party, he was never bound. If he was, restitution looms wherever the bargain was prejudicial when made, and a contract binding a fourteen-year-old's secondary schooling to his rugby output is a strong candidate. Above all stands public policy. Since *Barkhuizen v Napier*, "a term in a contract that is inimical to the values enshrined in our Constitution is contrary to public policy and is, therefore, unenforceable"; the enquiry asks "whether the clause itself is unreasonable" and, if not, "whether it should be enforced in the light of the circumstances"; "the extent to which the contract was freely and voluntarily concluded is clearly a vital factor"; "the relative situation of the contracting parties is a relevant consideration ... This is an important principle in a society as unequal as ours"; and "public policy would preclude the enforcement of a contractual term if its enforcement would be unjust or unfair".²²⁹ *Beadica* calibrated the balance: "it is only where a contractual term, or its enforcement, is so unfair, unreasonable or unjust that it

²²⁶ *Edelstein v Edelstein NO and Others* 1952 (3) SA 1 (A) at 15, as quoted in *Malcolm v Premier, Western Cape Government NO* [2014] ZASCA 9; 2014 (3) SA 177 (SCA) para 8 <https://www.saflii.org/za/cases/ZASCA/2014/9.html>.

²²⁷ Sections 1 and 3 of the Conventional Penalties Act 15 of 1962, <https://www.justice.gov.za/legislation/acts/1962-015.pdf>. Section 2(1) precludes cumulation of the penalty with damages; s 4 extends ss 1–3 to forfeiture clauses.

²²⁸ *Steinberg v Lazard* [2006] ZASCA 55; 2006 (5) SA 42 (SCA) para 7 <https://www.saflii.org/za/cases/ZASCA/2006/55.html>.

²²⁹ *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC) paras 29, 56, 57, 59 and 73 <https://www.saflii.org/za/cases/ZACC/2007/5.html>.

is contrary to public policy that a court may refuse to enforce it”; courts exercise “perceptive restraint” and act “sparingly, and only in the clearest of cases”; but “in our new constitutional era, *pacta sunt servanda* is not the only, nor the most important principle informing the judicial control of contracts”, and “the notion that there must be substantial and incontestable ‘harm to the public’ before a court may decline to enforce a contract on public policy grounds is alien to our law of contract”.²³⁰ A clause whose function is to price a child’s exit from a school, making his family buy back his freedom to change schools, collides with section 28(2), with section 29’s right to education and with the section 7(1) factors, and is a strong candidate for the clearest of cases. It is difficult to conceive of a South African court, after *Pridwin* and *NFM*, enforcing a bursary clawback against a child whose effect is to penalise the child’s own change of school. The defensible design, and the practical advice to schools, is the mirror image: obligations undertaken by parents alone, quantum limited to a pro rata refund of value actually received, no term purporting to restrain the child, and full disclosure in plain language of what happens if form dips or injury strikes.

Two adjacent contractual routes deserve mention. A school that granted an award on the strength of a fraudulent or negligent misrepresentation (a concealed commitment to another school coupled with a false statement of present intention) may in principle rescind and claim damages; but proof that the family later transferred is not proof that the original intention was dishonest, for intentions change lawfully. And ordinary contractual damages for breach of a valid term remain available against contracting parents, subject to proof of causation and loss: the rhetoric of “investment” is not a head of damage, and the value of teaching and board already supplied is not automatically loss caused by the departure.

V.3 Restraint: holding the player

Could the school instead hold the player to his contract, as a professional club would? South African courts do hold professional sportsmen to theirs. In *Santos v Igesund* the court enforced a football coach’s contract, observing that he was “certainly no ordinary servant, but a contracting party, contracting on equal terms with applicant, and being able to command a high sum of money in doing so”, and that “in our law, specific performance is a primary and not a supplementary remedy”.²³¹ In *Vrystaat Cheetahs v Mapoe* the Free State High Court ordered a contracted professional rugby player to report for duty, restrained him from rendering services to the poaching union, and restrained that union from allowing him to do so and “om inbreuk te maak op die kontraktuele verhouding tussen applikant en eerste respondent gedurende die duur van die spelerskontrak”.²³²

The professional cases do not carry over to the schoolboy, for three reasons. First, capacity: *Santos* and *Mapoe* enforced contracts between adults who had, as the *Santos* court stressed, contracted on equal terms; a schoolboy’s “contract” suffers the infirmities described above. The academic commentary makes the same point from the other side. The reason the courts were prepared to order specific performance in *Santos* and *Mapoe*, when they will not ordinarily compel personal services, is that the professional player’s contract is *sui generis*: a contract in which the player had himself agreed to specific performance, was given a free hand in his work and “contracted on equal terms with the employer”, commanding “the

²³⁰ *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* [2020] ZACC 13; 2020 (5) SA 247 (CC) paras 80, 87, 88 and 90 <https://www.saflii.org/za/cases/ZACC/2020/13.html>.

²³¹ *Santos Professional Football Club (Pty) Ltd v Igesund* 2003 (5) SA 73 (C) at 79D–E and 83I, as quoted in *Vrystaat Cheetahs (Edms) Beperk v Mapoe and Others* [2010] ZAFSHC 175 paras 105 and 107 <https://www.saflii.org/za/cases/ZAFSHC/2010/175.html>.

²³² *Vrystaat Cheetahs v Mapoe* (n 231) para 126 (order, paras 3–5).

large sum of money” that showed he was no servant in the ordinary sense.²³³ Every one of those features is absent from the bursary. The schoolboy agreed to nothing, is under the school’s authority in everything, and is paid nothing; the very characteristics that let a court hold the professional to his word are the characteristics a child does not have. Secondly, subject matter: the *Mapoe* court itself distinguished amateur sport, observing that a contract with a professional player “grens in my oordeel baie nader aan ’n gewone kommersiële kontrak as wat die geval sou wees in amateur sport”,²³⁴ and the schoolboy has no trade: the school cannot cast its bursary as an employment-style restraint without conceding that it has made the child a worker, an admission with section 28(1)(f) consequences it cannot want. Thirdly, the constitutional trend: in *Coetzee v Comitis* the Cape High Court declared the National Soccer League’s constitution and regulations unconstitutional and invalid in so far as they denied a player whose contract had ended a free transfer or free-agent status, and suspended the declaration for six months to allow the league to cure the defect; a later court has described the case as concerning “a contractual term imposed on a soccer player by the governing body that was akin to a restraint of trade”, “decided on general public policy grounds and on the Constitutional right to freedom of movement and dignity”.²³⁵ A private system that tied children to schools through bursary-based restraints would fare no better. An order compelling a child to remain at, or play for, a school he wishes to leave is, finally, unthinkable as a matter of section 28(2): no court will decree specific performance of a childhood.

V.4 Delict: suing the recruiting school

The more promising target is the recruiting school, and the cause of action is the Aquilian claim for intentional interference with contractual relations. The Constitutional Court has marked its boundaries tightly. “In cases of pure economic loss ... the criterion of wrongfulness assumes special importance ... conduct causing pure economic loss is not *prima facie* wrongful ... There is no general right not to be caused pure economic loss”; wrongfulness “has thus far been established in limited categories of cases, like intentional interferences in contractual relations”.²³⁶ The recognised delict “involve[s] a situation where a third party, A, the defendant, intentionally induces a contracting party, B, to breach his contract with the claimant, C, without lawful justification for doing so”, requiring “an act of persuasion directed at [B] with the intent that it dishonour its agreement”; causing a breach as a by-product of pursuing one’s own interests is not enough.²³⁷ In *Masstores v Pick n Pay* the Court cautioned that “inducement without harm to or infringement of the right to goodwill, will not usually be wrongful”; that “as a general proposition then, there is no legal duty on third parties not to infringe contractually derived exclusive

²³³ Mould “The suitability of the remedy of specific performance to breach of a ‘player’s contract’ with specific reference to the *Mapoe* and *Santos* cases” (2011) 14(1) *PER/PELJ* 189 at 202–205 (“the nature of the contract of employment between a professional sportsman or sportswoman (an employee) and his or her employer is *sui generis*, and should therefore be approached differently from the *prima facie* contract of employment”; the three features relied on are the contractual right to specific performance, the coach’s *carte blanche*, and that he “had contracted on equal terms with the employer”, which “appears from the large sum of money” he commanded), <https://www.saflii.org/za/journals/PER/2011/8.html>. Mould also records the court *a quo*, *Santos Professional Football Club (Pty) Ltd v Igesund* 2002 (5) SA 697 (C) (Desai J), which had refused the order the full bench granted.

²³⁴ *Vrystaat Cheetahs v Mapoe* (n 231) para 106.

²³⁵ *Coetzee v Comitis and Others* 2001 (1) SA 1254 (C) at 1273–1274 paras 41–43 (Traverso J, Ngwenya J concurring); the pinpoint is confirmed in *Traut v Fiorine and Another* [2006] ZAWCHC 45; 2008 (1) BCLR 84 (C) para 30 <https://www.saflii.org/za/cases/ZAWCHC/2006/45.html> (citing *Coetzee* “at 1273 para [40]”), and the reasoning is described in *Chess South Africa v South African Sports Confederation and Olympic Committee and Another* [2024] ZAGPPHC 601 para 49 <https://www.saflii.org/za/cases/ZAGPPHC/2024/601.html>. The judgment is not on SAFLII or LawLibrary.

²³⁶ *Country Cloud Trading CC v MEC, Department of Infrastructure Development, Gauteng* [2014] ZACC 28; 2015 (1) SA 1 (CC) paras 22–23 <https://www.saflii.org/za/cases/ZACC/2014/28.html>.

²³⁷ *Country Cloud* (n 236) para 30.

rights to trade”; and that “the underlying purpose of the law of unlawful competition is to protect free competition, not to undermine it by making it less free”.²³⁸ The Supreme Court of Appeal has recently restated the two species of the delict: “a party to a contract enjoys a remedy in delict where a third party to the contract intentionally, and without justification, induces another party to the contract to breach the contract ... Second, a third party that interferes with the contractual right of another by usurping that right will be liable for such conduct, even absent inducement.”²³⁹

Apply that to the poach. The source school must prove, first, a valid subsisting contract (and Part V.1 shows how fragile that foundation is); if only the parents were bound, the “breach” induced is the parents’, and the quantifiable loss flowing from it is thin. Secondly, an act of persuasion by the recruiting school aimed at procuring the breach, with knowledge of the bursary contract: scouting, an approach to the parents, an offer. Thirdly, and decisively, wrongfulness: *Masstores* teaches that the recruiting school’s better bursary is presumptively merit competition, not delict. What could tip the *boni mores* against it? Deliberate, clandestine recruitment in breach of a charter or memorandum to which both schools subscribed is the strongest candidate: the codes may be unenforceable inter partes as contracts, but they are powerful evidence of the convictions of the relevant community, and conduct flouting them (approaches to boys at festivals, inducements concealed by non-disclosure agreements, recruitment of another school’s bursary holders with full knowledge) is exactly the material from which a court constructs competition contra bonos mores. Even then, the source school must quantify patrimonial loss: the bursary value expended is recoverable in principle as wasted expenditure caused by the induced breach; the lost silverware is not. The claim is real but narrow: it disciplines the flagrant poacher, not the better recruiter. And there is a sobering feature: the evidence needed to prove inducement (who approached whom, when, with what offer) resides with the child and his family, who will almost invariably be aligned with the recruiting school by the time of trial. Litigation would conscript a teenager as the central witness in a commercial battle between his old school and his new one. A school alive to sections 10 and 6(2) of the Children’s Act, let alone to its own pastoral obligations, should hesitate long before issuing summons whose first casualty is the child.

One further peculiarity attends the public school, and it has not been noticed. Section 60(1)(a) of the Schools Act provides that “the State is liable for any delictual ... damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section”; the claim must be instituted against the Member of the Executive Council for the province; and a “school activity” is “any official educational, cultural, recreational or social activity of the school within or outside the school premises”.²⁴⁰ The Supreme Court of Appeal has held that within that field only the State is liable, and that the exemption in section 60(4) for an “enterprise or business” run under section 36 to supplement the school’s resources is confined to genuine commercial ventures.²⁴¹ Whether the recruitment of another school’s

²³⁸ *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* [2016] ZACC 42; 2017 (1) SA 613 (CC) paras 21, 33 and 36 <https://www.saflii.org/za/cases/ZACC/2016/42.html>.

²³⁹ *East Asian Consortium BV v MTN Group Ltd and Others* [2025] ZASCA 50; 2025 (5) SA 33 (SCA) para 13 <https://www.saflii.org/za/cases/ZASCA/2025/50.html>.

²⁴⁰ Sections 1, 60(1)(a) and 60(3) of the Schools Act, as quoted in *Parktown High School for Girls v Hishaam and Another* [2019] ZASCA 10; 2019 (4) SA 188 (SCA) <https://www.saflii.org/za/cases/ZASCA/2019/10.html>; and see *Member of the Executive Council, Education, North West Province v Foster and Others* (n 177) paras 18–19, treating an inter-schools rugby match as an activity in connection with an educational activity of the host school.

²⁴¹ *Parktown High School for Girls v Hishaam* (n 240), holding that a learner-organised fundraising event was not an “enterprise or business” under s 36 and that the State, not the school, was liable.

rugby player is an act “in connection with” a recreational activity of the school, so that the State answers for it, or an administrative act outside the four categories, so that the school answers itself, has never been decided. Either answer is uncomfortable. If recruitment is a school activity, the source school’s delictual claim for the poach lies not against the school that poached but against the MEC, and the province underwrites the recruitment programme of every public school in it. If it is not, the school stands alone, without the State’s indemnity, for the conduct of the recruiter it employs. A public school governing body that funds a recruiter should know which of those positions it occupies; none, on the published material, has asked.

V.5 Enrichment and interdict

If the bursary contract is void or unwound, the school’s fallback is unjustified enrichment, the general requirements being enrichment of the defendant, impoverishment of the plaintiff, that the enrichment was at the plaintiff’s expense, and the absence of a legal cause.²⁴² Against the family, a *condictio* for value transferred is conceivable, but consumed tuition, board and coaching are the paradigm of enrichment that does not survive. Against the recruiting school no *condictio* lies: nothing passed from one school to the other, and South African law recognises no general enrichment action into which “the value of a developed rugby player now enjoyed by a rival” could be poured; the Supreme Court of Appeal, while describing the decision of the majority in *Nortje v Pool* as “clearly wrong”, has deliberately left recognition of a general action for “that rare case ... which cannot be accommodated within the existing framework and which compels such recognition”.²⁴³ A boy’s talent is not part of his old school’s patrimony.

May the source school interdict the poach? The requirements are trite: a clear right, an injury committed or reasonably apprehended, and the absence of another satisfactory remedy.²⁴⁴ *Mapoe* is the professional example, in which the poaching union itself was restrained. But every element strains in the schoolboy setting: the “clear right” is the fragile contract; the clawback is at least arguably an alternative remedy; and the decisive obstacle is constitutional. An interdict whose practical effect is to prevent a child from attending, or playing sport at, the school of his and his family’s choice is a “matter concerning the child” in which his best interests are paramount and in which he is entitled to be heard. A court asked to bench a sixteen-year-old for a season so that a school’s investment case is not undermined is being asked to treat the child as the *res* in a commercial dispute, the precise error this article has traced through the whole market. Relief restraining a recruiting school’s *conduct* (further solicitation of contracted bursary holders in breach of subscribing codes) is coherent and, on egregious facts, attainable. Relief restraining the child is not.

²⁴² *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* [2003] ZASCA 64; 2003 (5) SA 193 (SCA) para 17 <https://www.saflii.org/za/cases/ZASCA/2003/64.html> (liability limited to the lesser of the enrichment and the impoverishment).

²⁴³ *McCarthy Retail Ltd v Shortdistance Carriers CC* [2001] ZASCA 14; 2001 (3) SA 482 (SCA) paras 8–11 <https://www.saflii.org/za/cases/ZASCA/2001/14.html>, discussing *Nortje en 'n Ander v Pool* NO 1966 (3) SA 96 (A).

²⁴⁴ *Setlogelo v Setlogelo* 1914 AD 221 at 227, as restated in *Hotz and Others v University of Cape Town* [2016] ZASCA 159; 2017 (2) SA 485 (SCA) para 29 <https://www.saflii.org/za/cases/ZASCA/2016/159.html>: “An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy.”

V.6 The audit summed up

The losing school's realistic remedial hierarchy is therefore: a contractual clawback against parents who bound themselves personally, enforceable but reducible to actual, provable prejudice under section 3 of the Conventional Penalties Act, and drafted at its peril if aimed at the child; a delictual claim against the recruiting school on proof of intentional inducement of breach in circumstances the *boni mores* condemn, available in flagrant cases, defeated by the merit-competition principle in ordinary ones; an interdict against the recruiter's continuing solicitation, never against the child's schooling or participation; and enrichment, in theory. To the question every headmaster asks his attorney (can we claim for the bursary we spent on the boy they took?) the answer is: barely, and never against the boy. The rules that disarm the school are not lacunae; they are the law of childhood operating exactly as designed: contractual capacity doctrine exists so that adults cannot bind children into disadvantageous long-term commitments; section 28(2) exists so that no institution's interests (commercial, sporting or reputational) outrank the child's; and public policy exists so that contracts cannot achieve what the Constitution forbids. A school that finds itself without remedy when its "investment" walks has discovered that a child was never a permissible object of investment at all, which is why the answer to the market cannot be litigation between schools, and must be governance.

Part VI. How other systems govern the movement of minors

South Africa is not the only rugby country with an elite schools market, and rugby is not the only sport that has confronted the movement of children for competitive advantage. Six comparators are surveyed here, each for a specific design feature.

VI.1 New Zealand: stand-downs, and a best-interests standard applied by an independent tribunal

New Zealand's first XV competitions regulate the *effect* of a school transfer rather than its motive. The Auckland 1A Rugby Code of Practice, agreed among principals, provides: "Any transferring student who was involved in another Auckland 1A School's Rugby Development Programme from Year 8 will not be permitted to play 1st XV Rugby for a 2 year period from date of enrolment."²⁴⁵ The North Harbour secondary-school by-laws provide that a student registered in his school's first XV in the top three grades who "subsequently transfers in that year or the following year to another North Harbour Secondary School will be stood-down for six consecutive 1st XV competition games", that a late-season transferee is "ineligible for a maximum of ten weeks of official rugby competition", and that a student arriving from outside the region is ineligible "for four successive competition games".²⁴⁶ The design does not require proof of poaching; it removes the incentive by delaying the recruit's usefulness. A Mount Albert Grammar principal has said the Auckland code "helped stop poaching and inappropriate recruitment".²⁴⁷

²⁴⁵ Auckland 1A Rugby Code of Practice, as quoted in *Tommy Taylor v King's College* ST 05/2023 (Sports Tribunal of New Zealand, decision 23 June 2023, reasons dated 26 June 2023) para 12, <https://sportstribunal.org.nz/wp-content/uploads/2023/06/ST-0523-Reasons-for-Decision.pdf>.

²⁴⁶ North Harbour Rugby 2020 NHSSRU Secondary School Rugby By-Laws cl 23(c)-(e), <https://www.northharbourrugby.co.nz/media/files/2020-NHSSRU-Secondary-School-Bylaws.pdf>.

²⁴⁷ Pat Drumm, quoted in "Auckland First XV poaching law 'shatters' schoolboy's dreams" *1News* (12 May 2023) <https://www.1news.co.nz/2023/05/12/auckland-first-xv-poaching-law-shatters-schoolboys-dreams/>.

Above the regional codes sits a national instrument that South Africa has nothing to match. School Sport New Zealand's Eligibility Regulations, approved on 26 November 2025 and in force from 1 January 2026, govern every event it sanctions at national, inter-island and inter-regional level, and state their purpose in terms: schools "should be encouraged to invest in Secondary School sport across Years 9 to 13 by prioritising their own 'home-grown' Students rather than allowing New to School Students ... to take their place", and schools "should be protected from their talented sports Students from being induced, encouraged, influenced or approached to move to another Secondary School for sporting purposes". Clause 15, headed "No Poaching", then provides that no member school, "including its staff, representatives, coaches, managers, volunteers or any person acting on its behalf", will "induce, encourage, influence or approach (whether directly or indirectly) a Student to transfer to its School or another School for reasons (whether wholly or partially) related to their participation for the School", or "offer or provide any incentive or benefit to a Student (such as a scholarship, fees reduction, sponsorship, or accommodation) that enables a Student to attend its School and participate for the School, unless that benefit is publicly available to any Student, by application"; and every school "must inform their Students and their Primary Caregivers of this rule and take all practicable steps to prevent a breach of this rule".²⁴⁸ The prohibition is enforced through eligibility rather than proof of motive. A student whose most recent enrolment in Years 10 to 13 falls within the twenty-four months before an event is "New to School"; a team may field no more than the number of such students that the schedule fixes for its sport (four in fifteen-a-side rugby, two in sevens), on the Board's stated criterion that new-to-school students "should ordinarily not make up more than 20% of the School's squad"; and no new-to-school student plays at all unless the receiving principal, having obtained the consent of the student and his caregivers, has sent a transfer form to the previous principal and to the national body at least ten working days before the event, whereupon the previous principal either declares in good faith that the transfer does not breach the regulations or invokes statutory declarations from the student, the receiving principal and the caregivers. Exemptions from the count are granted by a national panel, not by the receiving school, on proof of a caregiver's relocation, extraordinary family or personal circumstances or other special circumstances specific to the student, and only if the panel is satisfied that the receiving school did not breach the no-poaching rule and that the move "is primarily for academic purposes, not sporting purposes"; no more than two exemptions may be granted for the same team in a year, and the penalties for breach include exclusion of the school or the student from the event and liability for any false declaration, the onus of verification resting on the principal.²⁴⁹ Almost every element of the Code proposed in Part VIII (the recruitment prohibition that binds the adults, the publicly advertised benefit as the exception, the home-grown quota, the four-party transfer record, the independent exemption panel and the sanction on the institution) is already in force in New Zealand school sport.

What makes the New Zealand model instructive for South Africa is what sits above the code. The College Sport Auckland rules provide, in rule 5.2(b): "The overall best interests of the student(s) concerned (including from both an educational and a sporting perspective) must be paramount in all decision-

²⁴⁸ School Sport New Zealand *Eligibility Regulations* (approved by the SSNZ Board 26 November 2025, in force 1 January 2026) <https://www.schoolsportnz.org.nz/asset/downloadasset?id=3e75c490-2406-4a37-a4c5-bef8feb2b86c>, cl 1(c)(iii)–(iv), cl 3.2 (application to Sanctioned Events at national, inter-island and inter-regional level, and to defined Qualifying Events) and cl 15.

²⁴⁹ SSNZ *Eligibility Regulations* (n 248) cl 11.1, 11.2(a), 11.5, 12.1, 12.3, 12.5, 14.2(a) and 18; Schedule 1 as published in 2026 *School Sport New Zealand New To School (NTS) Quota numbers for Championship tier sanctioned sports* <https://www.schoolsportnz.org.nz/asset/downloadasset?id=5189c959-3c5d-4963-86e1-aa38bf0498b9> (Rugby Union 15s: 4; Rugby Union 7s: 2). The NTS limits do not apply to Cup Level Competitions or Carnival Level Events (cl 11.1, note).

making.”²⁵⁰ In *Tommy Taylor v King’s College* the Sports Tribunal of New Zealand, an independent adjudicative body, held that a boy who had withdrawn from his former school’s rugby academy in Year 10 and transferred for reasons of personal well-being unrelated to rugby should not have been caught by the two-year stand-down, that “King’s is in our view entitled to apply the relevant provision of the Code in a way that is consistent with Rule 5.2(b)”, and declared him immediately eligible.²⁵¹ Three things happened in that case that cannot happen in South Africa: a private sporting code was read subject to an express best-interests paramountcy standard; the standard was applied to the particular child’s real-life situation; and an independent tribunal, not a headmasters’ association, decided. Rule 5.2(b) is in the same register as section 28(2) of the Constitution and section 9 of the Children’s Act, which South Africa already has, and has never applied to a schoolboy rugby transfer.

VI.2 Ireland: four-party consent to every youth transfer

Leinster Rugby’s youth competition regulations require that every player be registered and that transfers between clubs be authorised by the Leinster Youths Committee with the approval of four parties (the departing club, the receiving club, the parent or guardian, and a Leinster official) within a defined window, on defined grounds that include a change of school, family relocation, proximity and a home club’s inability to field a team at the player’s age grade.²⁵² The design feature is the *mandatory parental signature as one of four required approvals* and the *defined window and grounds*. Nothing in South African school rugby requires the source school, the receiving school and the parent to sign the same document.

VI.3 Football: FIFA’s protection of minors and its compensation mechanisms

FIFA does not have a single “minors-and-compensation” model. It has three instruments that are constantly conflated in the South African debate. Article 19 of the Regulations on the Status and Transfer of Players is a child-protection rule: a default prohibition on the international transfer, and the first foreign registration, of a player under eighteen, subject to a closed list of exceptions and prior clearance by the Players’ Status Chamber of the Football Tribunal. Articles 20 and 21, with Annexes 4 and 5, are different. They are a tax on the professional transfer market. Training compensation is payable by a club that first registers the player as a professional, or takes him on a later international transfer before he turns twenty-three, to the clubs that trained him in the calendar years of his twelfth to twenty-first birthdays. The solidarity mechanism deducts 5 per cent from a paid transfer of a professional during an existing contract and distributes it to the clubs that trained him between the years of his twelfth and twenty-third birthdays. Neither levy is paid by the child or the parents. Neither is a fee for moving an amateur sixteen-year-old from one school to another. The comparative value of FIFA for this article lies in Article 19. The compensation clauses are a lesson about professional football’s labour market, not a template for governing movement between South African schools.

²⁵⁰ College Sport Auckland Rules, Guiding Principles, r 5.2(b), as quoted in *Tommy Taylor v King’s College* (n 245) para 25.

²⁵¹ *Tommy Taylor v King’s College* (n 245) paras 20, 21, 26, 29 and 30 (John Macdonald (Chair), Warwick Smith (Deputy Chair), Ruth Aitken DNZM).

²⁵² Leinster Rugby *Competition Regulations: Youths 2024–2025* regs 6.1, 6.4 and 7.1–7.8, <https://d2tqzbbf1n6xva.cloudfront.net/leinster2023/wp-content/uploads/2024/09/30103208/Leinster-Rugby-Youth-Regulations-2024-25.pdf>.

FIFA's Regulations on the Status and Transfer of Players prohibit the international transfer of minors outright, subject to narrow exceptions each of which carries affirmative welfare obligations. Article 19(1): "International transfers of players are only permitted if the player is over the age of 18." The exceptions include the case where "the player's parents move to the country in which the new club is located for reasons not linked to football"; the case of a player aged sixteen to eighteen moving within the EU or EEA, where the new club must "provide the player with an adequate football education and/or training in line with the highest national standards", must "guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education", must "make all necessary arrangements to ensure that the player is looked after in the best possible way", and must "on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations"; and a 50-kilometre border rule.²⁵³ Every such transfer of a player aged ten or over requires the prior approval of a standing FIFA body (in the current regulations the Players' Status Chamber of the Football Tribunal; in the 2016 edition "the sub-committee appointed by the Players' Status Committee"), obtained before any request for an International Transfer Certificate or first registration; for a player under ten the registering association must itself "verify and ensure that the circumstances of the player fall, beyond all doubt, under one of the exceptions" before registering him; and violations are sanctioned by the Disciplinary Committee.²⁵⁴ The current edition adds humanitarian and student-exchange exceptions and, in Article 19bis, mandatory registration and reporting of minors attending club and private academies.²⁵⁵

A boy who moves from one South African football club to another, inside SAFA, is not in Article 19 at all. FIFA does not, by that article, stop or price a domestic school-to-school transfer. What it does supply, and what a South African code can borrow, is the architecture: a default prohibition; a closed list of documented exceptions; clearance by an independent body before registration; duties on the receiving institution; and sanctions that fall on clubs and associations rather than on the child's eligibility as the first-line penalty.

Two further distinctions matter before training compensation and the solidarity mechanism are offered as a model for schools. First, the creditor is a club, not a school as such. Second, nothing is payable on a domestic amateur-to-amateur move. Solidarity, in particular, is not payable at all unless a professional is transferred for a fee during a contract. A "FIFA-style" payment from one South African school to another for a Grade 11 flyhalf would not be training compensation. It would be a transfer fee in all but name, levied on a minor's movement between two educational institutions.

²⁵³ FIFA *Regulations on the Status and Transfer of Players* art 19(1) and (2)(a)–(c), quoted from the edition of 17 March 2016 (in force 1 June 2016) https://www.icsspe.org/wp-content/uploads/2025/06/FIFA-Regulations-on-the-Status-and-Transfer-of-Players_0.pdf, and from The Football Association's reproduction of the current article (2024) <https://www.thefa.com/-/media/files/thefaportal/governance-docs/registrations/fifa-article-19—feb-2024.ashx>. The January 2025 edition is published by FIFA at <https://digitalhub.fifa.com/m/696d877ea35ca761/original/Regulations-on-the-Status-and-Transfer-of-Players-January-2025-edition.pdf>; the current wording relied on here is taken from The Football Association's reproductions. The January 2025 and subsequent 2025–2026 editions of the RSTP restate Articles 19, 20 and 21 on the same architecture. Article 19(8), inserted with effect from 16 November 2022, adds a general safeguarding duty for every registered minor (FIFA Circular no 1816, Amendments to the Regulations on the Status and Transfer of Players, https://digitalhub.fifa.com/m/322878408e42d360/original/Circular-No-1816-Amendments-to-the-Regulations-on-the-Status-and-Transfer-of-Players_EN.pdf). Clearance is now by the Players' Status Chamber of the Football Tribunal through TMS. The current FIFA text should be consulted before forensic use.

²⁵⁴ FIFA RSTP art 19(4)–(6), in the current form reproduced by The Football Association (n 253); the 2016 edition (n 253) art 19(4) for the quoted words.

²⁵⁵ FIFA RSTP art 19(2)(d)–(e), 19(6)–(7) and art 19bis, as summarised in The Football Association's reproduction (n 253).

FIFA also monetises development. Training compensation is paid to a player's training clubs when he "is registered for the first time as a professional" and "each time a professional is transferred ... until the end of the calendar year of his 23rd birthday", for the training he received "from the calendar year of his 12th birthday to the end of the calendar year of his 21st birthday" (the 2016 edition, from which this article otherwise quotes, spoke of his first professional contract, the end of the season of his 23rd birthday, and training between the ages of 12 and 23); and the solidarity mechanism provides that "if a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club", up to five per cent, distributed among the clubs that trained him between twelve and twenty-three.²⁵⁶ This is the model Dave Wessels proposed for rugby in May 2026, and it is examined in Part VII.4. Two cautions apply. FIFA's compensation flows from *professional clubs* on the *professional* transfer of an *adult* or contracted player; it does not price the movement of a schoolboy between schools, and South Africa's own courts have struck down a contractual term, imposed on a footballer by the governing body, that operated as a restraint of trade on his movement.²⁵⁷ And the *protection* of minors under Article 19 rests on prohibiting the move, subjecting the exceptions to prior approval by a standing body, and attaching welfare conditions to the receiving club, not on compensation. It is the protective architecture, not the compensation, that South Africa can borrow.

VI.4 The United States: regulating the date and manner of contact, and presuming recruitment

The NCAA's recruiting rules regulate *when and how* an institution may contact a prospect. "Contact" is "any face-to-face encounter between a prospective student-athlete or the prospective student-athlete's relatives or legal guardian(s) and an institutional staff member or athletics representative during which any dialogue occurs in excess of an exchange of a greeting"; the calendar is divided into contact, evaluation, quiet and dead periods; and each form of recruiting activity is prohibited before a fixed date tied to the prospect's school year. In the compliance copy read for this article, in-person off-campus contact, telephone calls and athletically related recruiting materials may not be directed at a prospect before "June 15 immediately preceding the prospective student-athlete's junior year in high school", each subject to sport-specific exceptions; the current Manual should be consulted for the dates now in force.²⁵⁸ That is a *date-certain rule*: a published recruitment timetable, activity by activity, before which the listed forms of contact may not occur. South African rugby has no analogue for union or agent contact with school players.

American state high-school associations regulate transfers with a device that solves the proof problem that makes anti-poaching rules unenforceable. Utah's rule provides that "recruiting of student-athletes by a

²⁵⁶ FIFA RSTP arts 20 and 21, Annexe 4 art 1(1) and Annexe 5 art 1(1), in the 2016 edition (n 253) and in the current wording as reproduced by The Football Association, "FIFA Training Rewards" <https://playerstatus.thefa.com/support/solutions/articles/80001137039-fifa-training-rewards>. See also Smith "A guide to training compensation and solidarity payments in football" *LawInSport* (24 July 2015) <https://www.lawinsport.com/topics/item/a-guide-to-training-compensation-and-solidarity-payments-in-football>.

²⁵⁷ *Coetzee v Comitit* (n 235).

²⁵⁸ NCAA Division I Manual, art 13 (Recruiting), bylaws 13.02.3, 13.02.4.1–13.02.4.4, 13.1.1.1, 13.1.3.1 and 13.4.1, as reproduced in an institutional compliance copy <https://static.lrbears.com/custompages/Compliance/BylawArticle13-Recruiting.pdf> (edition not stated). The current edition, the 2025–2026 NCAA Division I Manual, is published free of charge at <https://ncaapublications.com/products/2025-2026-ncaa-division-i-manual> and through the NCAA's legislative database <https://web3.ncaa.org/lstdbi/>; the current Manual was not opened for this article and should be consulted before forensic use.

member school, coach, coaching staff or affiliated boosters is considered a serious violation”, that “prima facie evidence of recruiting” exists where a student seeks eligibility at a school outside his residential area after having “attended a school or coach sponsored camp” or having been “players together on a ‘super-league,’ ‘all-star,’ ‘select’ or other traveling or combined team” with that school’s players in the year before his first high-school participation, and that a transferring student may be confined to sub-varsity competition for twelve months, subject to exceptions for a genuine family move, bereavement, divorce, custody changes and documented bullying.²⁵⁹ The transferable device is the *rebuttable presumption*: prior contact plus an out-of-area transfer shifts the evidential burden to the school. SA Rugby’s own agent code already contains a presumption of that kind for agents (“it shall be presumed, unless the contrary is proven, that any Agent involved in a contractual breach committed by a Player without just cause has induced such breach”²⁶⁰) and Part VIII extends it.

Two further features of the American system answer the two questions South Africa has never asked: what the professional league may do with a schoolboy, and what the law does to the intermediary who deals in one. The answer to the first is nothing. The National Football League’s own bylaws make a player ineligible for its draft until three full seasons after his high-school class has graduated, and in *Clarett v National Football League* the United States Court of Appeals for the Second Circuit upheld that rule against an antitrust challenge because it is a term collectively bargained with the players’ union.²⁶¹ The line at which the professional league may take the player is drawn not at eighteen, as SA Rugby draws it, but some three years after school. The answer to the second is a statute. The Uniform Athlete Agents Act, promulgated in 2000, revised in 2015 and adopted in most states, defines a “student athlete” as an individual who “engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport” and an “educational institution” to include a secondary school, so that a fifteen-year-old is within it; it defines an “athlete agent” as an individual, “whether or not registered”, who “directly or indirectly recruits or solicits a student athlete to enter into an agency contract” or, for compensation, procures or negotiates professional employment for him, which is to say the intermediary who trades a schoolboy towards professional sport, the counterpart of the union recruiter and the agent of Part II.2 rather than of the school’s own scout; it prohibits him from giving false or misleading information or promises to induce a signing, from furnishing anything of value to the athlete, and from initiating contact “directly or indirectly, with a student athlete or, if the athlete is a minor, a parent or guardian” unless he is registered; it requires him to give written notice to the athletic director of the athlete’s school before any recruiting contact; it gives the school a civil right of action against him for damages; and it makes breach a criminal offence, in Delaware’s enactment punishable by a fine and up to a year’s imprisonment.²⁶² The American under-eighteen, in other words, is protected from the professional

²⁵⁹ Utah High School Activities Association *Transfer Rule* (art 1 s 9 and Interpretations & Guidelines 1.9.1) <https://www.uhsaa.org/news/TransferRule.pdf> (undated).

²⁶⁰ SA Rugby *Players’ Agents Regulations* (2021) Code of Conduct cl 39.

²⁶¹ *Clarett v National Football League* 369 F.3d 124 (2d Cir 2004) (per Sotomayor, Circuit Judge, 24 May 2004) <https://law.justia.com/cases/federal/appellate-courts/F3/369/124/532258/>, describing the rule in art XII of the NFL Constitution and Bylaws that a player may enter the draft only “three full seasons after that player’s high school graduation” and holding it within the non-statutory labour exemption from the antitrust laws.

²⁶² Uniform Athlete Agents Act (2000) and Revised Uniform Athlete Agents Act (2015, amended 2019), Uniform Law Commission; quoted from Delaware’s enactment, 24 Del C ch 54 (Delaware Revised Uniform Athlete Agents Act) ss 5402 (definitions), 5409–5410 (contracts and notice), 5413 (prohibited conduct), 5414 (criminal penalties) and 5415 (civil remedy of the educational institution) <https://delcode.delaware.gov/title24/c054/index.html>; see also NCAA “NCAA and the Uniform Athlete Agents Act” <https://www.ncaa.org/governance/legislation-policy/uniform-athlete-agents-act/> (notification to the institution within 72 hours of signing; “criminal, civil and administrative penalties with enforcement at the state level”; the institution’s “right of action against the agent or former student-athlete for any damages”).

market not by the league's goodwill but by a draft rule the league cannot bargain away and by a statute that puts the school and the criminal law between him and the person who would trade in him. Rule 8 of the Code proposed in Part VIII gives SA Rugby the first two parts of that design, accreditation of the scout and, for the accredited agent, notice to the school; the third, a sanction on the person who recruits a schoolboy without accreditation and answers to no federation, is the part only the legislature can supply.

VI.5 Australia and England: permissiveness and prohibition side by side

The comparison is completed by two systems that do less. The Queensland GPS rugby rules make eligibility turn on age and current enrolment alone ("no student is eligible to take part in this competition at any time in the year of his 19th birthday or if he had turned 19 before the year of competition", "students in Years 5 to 12 only, enrolled in a GPS member school may participate in the competition") with no bona fide student rule, no stand-down, no scholarship rule and no recruitment prohibition.²⁶³ New South Wales, by contrast, has had since at least 2013 an association-wide code: the AAGPS headmasters' *Code of Behaviour in Sport* provides that "no inducements such as sporting scholarships, whether direct, disguised, or at arm's length, shall be offered by any member school", that "financial assistance to talented sportsmen shall not form part of the enrolment strategy of any member school", and that "in the selection and training of boys in teams or crews, the good of the individual boy shall remain paramount", a flat prohibition on the sporting scholarship itself that no South African instrument has attempted, though whether it is enforced, and how, is not published.²⁶⁴ The RFU's Regulation 15 on age-grade rugby is, like SA Rugby's age-banding regulations, a playing and welfare instrument: it fixes age grades, requires annual registration of age-grade players within 45 days, and contains no provision on transfers, recruitment or material benefit.²⁶⁵ England does regulate the agent: RFU Regulation 8 provides that registered agents "must not make any offer of contract, provide any letter of intent or offer any inducement to any Player under the age of 18 or to any parent, guardian, trustee or other person of such Player", save, for a player of sixteen or more, a contract whose only material consideration is "a non-refundable financial grant to be applied only for the purposes of the Player's academic and/or vocational training", which is World Rugby's regulation 4 restated for the agent.²⁶⁶ But an agents' regulation is not a school-transfer code. The lesson of Queensland and of the RFU's playing rules is negative: where a system regulates only age and safety, the market regulates itself, and the results look like South Africa's. The lesson of New South Wales is the opposite one: a headmasters' association can, if it chooses, prohibit the sporting scholarship outright.

²⁶³ Great Public Schools' Association of Queensland 2016 *GPS Rules of Competition – Rugby* (v 6, 12 July 2016) rr 9.1–9.3, https://websites.mygameday.app/get_file.cgi?id=35919037.

²⁶⁴ AAGPS *A Code of Behaviour in Sport* (revised 2013 by the Headmasters of the GPS Schools of New South Wales), as reproduced on the website of The Scots College Old Boys' Union <https://scotsoldboys.tsc.nsw.edu.au/events/old-boys-back-scots/>. The Code is not rugby-specific; no copy is published on the Association's own site, and its current text and enforcement could not be verified.

²⁶⁵ RFU *Regulation 15 – Age Grade Rugby* (effective 15 May 2023) regs 15.1.1–15.1.4, <https://www.rpns7.co.uk/wp-content/uploads/2023/11/RFU-Regulation-15.pdf> (third-party mirror).

²⁶⁶ RFU *Regulation 8 – Agents* reg 8.8.4, as quoted by the Association of Rugby Agents, "Representation of Age Grade Players" <https://aragents.co.uk/representation-of-age-grade-players/>. The regulation as published on the RFU website <https://www.englandrugby.com/run/rules-governance/rfu-rules-and-regulations/regulation-8-agents> (stated to be effective from 1 August 2026) could not be opened for this article, and is reported to add an express prohibition on approaching a player under sixteen and a requirement that a parent, guardian, coach, academy manager or teacher be present at, and copied into, any approach to a player under eighteen.

VI.6 What South Africa can borrow

Every comparative system reached in this survey regulates something South Africa does not: New Zealand regulates the *effect* of a transfer, prohibits the *approach* and the *undisclosed inducement* at national level, and subjects a private code to a best-interests paramountcy standard applied by an independent tribunal; Ireland requires *four-party consent* including the parent; FIFA regulates the *move itself* with prior approval and affirmative welfare conditions on the receiving institution; the NCAA regulates the *date and manner of first contact*; the American states create an *evidential presumption* of recruiting, keep the professional league away from the schoolboy altogether, and make the unregistered agent who recruits a schoolboy a *criminal*; World Rugby's own young-player protocol requires the *head teacher's signature* and prohibits unauthorised approaches; the New South Wales headmasters prohibit the *sporting scholarship itself*; and the RFU's agents' regulation restates World Rugby's non-refundable-grant rule for the agent. Any one of these is a drafting model. The New Zealand paramountcy provision is the one that corresponds most directly to section 28(2), because South Africa already has the standard; what it lacks is the code, the tribunal and the will to apply them.

Part VII. The proposals on the table, tested against the standard

Four proposals are in public circulation. Each is tested here against a single question: does it protect the child, and does it place the cost of the adults' transaction on the adults?

VII.1 The “80 per cent rule”

Smit's proposal (that 80 per cent of the team in its final year “needs to have started at school when they were 13 years old”, or, as the press put it, since Grade 8) is a *squad-composition rule*. Its merits are real. It sanctions the school, not the boy: a school that buys four Grade 11 players may start only three of them, and the cost of its choice falls on the institution that made it. It removes the incentive rather than prohibiting the approach, which avoids the proof problem that has defeated every anti-poaching code. It is simple to administer: a team sheet and an enrolment register suffice. It has a domestic precedent (the 2013 proposal of “a minimum of 12 boys that have been at the school since Grade 8”)²⁶⁷ and a foreign one in New Zealand, where the regional codes impose stand-downs and the national eligibility regulations fix a new-to-school quota on the stated criterion that such students “should ordinarily not make up more than 20% of the School's squad”. And there is evidence that eligibility rules change the schools' behaviour: when Craven Week became an under-18 tournament, “the incentive to stay in school a year longer disappeared and so did just about every school's willingness to continue offering post-matric”.²⁶⁸ It also has a following it did not know about: within days of the blog's August 2026 post, and a month before Smit spoke, a reader proposed an 85 per cent version of the same rule, with the additional features that any move after Grade 10 should require the federation's sanction and that a school should be permitted no more than one such move in two years (n 77). Three independent formulations of one rule in thirteen years, from a specialist writer, a supporter and a World Cup-winning captain, are some evidence that the rule answers to something the game's own participants recognise.

²⁶⁷ “School rugby quotas” *SchoolBoyRugby* (5 December 2013) <https://schoolboyrugby.co.za/?p=5970>.

²⁶⁸ “School rugby quotas” (n 267).

Its difficulties are also real, and they are the difficulties of design rather than principle. First, “squad” and “first XV” need definition: a rule that counts the starting fifteen invites circumvention through the bench; a rule that counts a match-day 23 needs to say so; and a rule that counts a season’s “squad” needs a register. Twelve of a starting fifteen (80 per cent) and nineteen of a match-day 23 (80 per cent rounded up) are the natural numbers. Secondly, the rule must accommodate the genuinely relocating family: a boy whose parents move for employment, whose home breaks up, who is bullied, or whose school closes its boarding house (the 2013 stranded recruits) is not a purchase, and a rule that counted him as one would offend section 28(2) in the way the Western Province resolution does. That requires an exemption process, decided not by the receiving school but by an independent panel on the criteria the Utah rule and the Leinster regulations already use (family move, bereavement, divorce or custody change, documented bullying, welfare, closure of the source school’s programme). Thirdly, the rule must choose between Smit’s formulation by age (thirteen) and the press’s by grade (Grade 8), because a boy who repeats a year or arrives at twelve or fourteen satisfies one and not the other, and must then decide what the chosen test means for a boy who arrives in Grade 9 because his family moved; the Auckland code’s undefined phrase “Rugby Development Programme” is a warning about drafting. Fourthly, the rule needs a home: it is unenforceable as a podcast proposal, weakly enforceable as a headmasters’ agreement, and enforceable only as an eligibility condition of a competition, a festival, a broadcast platform or a provincial union’s schools league, which is where Part VIII places it. Fifthly, the rule addresses the first XV and not the under-16 pipeline that the Grant Khomo Week has made the real scouting window; it needs an under-16 counterpart. And sixthly, it does nothing about the union or the agent, whose “signing season” operates above the schools entirely.

None of these is a reason to reject the proposal. They are reasons to draft it. As drafted in Part VIII it becomes a *home-grown eligibility rule*: an eligibility condition binding the school, with numbers for the starting fifteen and the match-day squad, an under-16 counterpart, and an independent exemption process for the child whose move was not a transaction.

VII.2 The KwaZulu-Natal “since Grade 10” rule

The 2012 agreement’s fourth criterion (an under-19 must have attended the school since Grade 10, absent bona fide family relocation) is the 80 per cent rule’s older and blunter sibling. It has two virtues: it has been in force for thirteen years, and the SA Schools chairman credits it with reducing poaching. It has two defects. Its sanction falls on the boy (a Grade 11 recruit becomes ineligible for first-team sport in his matric year, while the school that recruited him fields the rest of its side) and its threshold is late: it permits, indeed structures, the Grade 10 transfer, which is the transfer the Grant Khomo Week makes valuable. Its relocation exception is sound in principle and needs a fair process in practice: who decides whether a family’s relocation is bona fide, on what evidence, and with what right of appeal? Part VIII answers those questions.

VII.3 The Western Province resolution

The 2024 resolution is the field’s most sophisticated code and its most constitutionally vulnerable. Its definition of poaching is good: “enticed by any person or entity affiliated to the new school ... including coaches, sport organizers and alumni ... based on such player’s sporting talent” reaches the alumni body and the coach, and its exceptions for parental relocation and academic reasons are correct. Its procedure

(written complaint, prima facie investigation, judicial committee) is the skeleton of a proper adjudicative process. But its sanction is imposed on the transferring boy: loss of under-16 provincial trials for a move in Grades 8 to 10, loss of Craven Week trials for a later move. A voluntary association exercising what is, in substance, a public function over children's access to provincial representative sport, and imposing a detriment on a child for a decision adults made about him, would face two objections if tested. The first is section 28(2) with its procedural component: the boy is not the wrongdoer, is not a party to the code, and has no hearing before losing his pathway. The second is rationality: a sanction designed to deter a school by devaluing the recruit is a means directed at a different person from its object. The Sports Tribunal of New Zealand's reading of the Auckland code subject to the best-interests rule shows how a court or tribunal would approach the question here; and South Africa's courts have already held that a sporting body performing a public function is subject to review.²⁶⁹ The resolution's design should be inverted (retain the definition, the complaint procedure and the judicial committee; redirect the sanction to the school, the coach and the alumni body) and Part VIII does so.

VII.4 The FIFA-style compensation model

Two different transplants are using FIFA's name, and they should not be tested as one proposal. The first is the proposal made by SA Rugby's high-performance general manager, Dave Wessels, in May 2026: that World Rugby should require a professional club which signs a South African-developed player to compensate the schools and academies that trained him. That is a proposal about the professional game's duty to the structures that produced the player. It does not require a boy to be held or charged when he changes school, and it is not something a National Code among schools can enact. The second is a levy or letter of release between schools as a condition of the child's enrolment or selection. That is a different idea. It is also the one that collides with the analysis in Part V.

Wessels's proposal has the moral force of its slogan, "the system rewards the buyer and punishes the developer", and it addresses a real injustice: the Eastern Cape school that finds, develops and loses a boy receives nothing, while the school or union that acquires him receives the finished product. But it should be adopted, if at all, in one form only and rejected in another.

In the form FIFA actually uses (training compensation and solidarity payments made by *professional clubs* when a player *turns professional or is transferred as a professional*, calculated by reference to the years each training institution contributed, between the ages of twelve and twenty-one for training compensation and twelve and twenty-three for solidarity payments) the model is defensible, and SA Rugby could adopt it tomorrow by amending section 4 of the Player Status Regulations, which presently leaves transfer fees to be "agreed between" unions and contains no development-compensation mechanism.²⁷⁰ A union that signs a boy at eighteen would pay a scheduled sum to each school and club that trained him from twelve, into a ring-fenced development fund. The payer is a professional body; the trigger is an adult's professional contract; the child is not priced during his schooling. That form of the model also gives the source schools what fixture cancellations never have: an economic reason for the system to value development.

²⁶⁹ *Chess South Africa v South African Sports Confederation and Olympic Committee and Another* [2024] ZAGPPHC 601 para 41 <https://www.saflii.org/za/cases/ZAGPPHC/2024/601.html>; and see *Ndoro and Another v South African Football Association and Others* [2018] ZAGPJHC 74; 2018 (5) SA 630 (GJ) <https://www.saflii.org/za/cases/ZAGPJHC/2018/74.html> (review of a sports arbitration award on a player's registration).

²⁷⁰ SA Rugby *Player Status, Player Contracts and Player Movement Regulations* (2017) regs 4.8–4.9.

In the other form (compensation payable by a *receiving school* to a *source school* on a *schoolboy's transfer*, or a “letter of release” from the source school as a condition of the boy’s admission) the model must be rejected. It creates the very thing the law forbids: a market in which a child’s movement between schools carries a price and requires the consent of an institution with a commercial interest in keeping him. A letter-of-release requirement gives the source school a veto over a child’s education, which no school may have under section 29 and the Schools Act; a transfer fee between schools would be a restraint on the child’s educational mobility of the kind the Cape court struck down in *Coetzee v Comitis*, where even a professional footballer whose contract had ended could not constitutionally be denied a free transfer, imposed here on a child; and both would sit squarely within *NFM*’s condemnation of practices that penalise a child for adult conduct. Any compensation mechanism must therefore be triggered by a professional contract, paid by a professional body, and applied to development; never by a school’s admission of a child.

A development levy paid by a professional club, after the boy has left school and signed as a professional, does not treat the child as an asset and is not, on that ground, incompatible with section 28(2). A payment from School B to School A, or a release that School A must grant before the boy may play, does. It recreates a governing-body restraint that treats the player as the object of a debt between institutions. If any money is to move between schools at all, it should be confined to reimbursement of documented, non-sport costs already incurred (books, boarding already billed, a tour already paid), not a tariff on the boy’s rugby.

VII.5 The Department of Basic Education

A fifth proposal is implicit in every headmaster’s lament: that the Department should “play a role”. Part III showed the legal levers that exist: the Minister’s power to determine national policy on “the admission of students to education institutions”, the amended section 5(5) of the Schools Act with its best-interests factor and the Head of Department’s “final authority” to admit, and the prohibition on admission tests in section 5(2). What the Department cannot do is prohibit a family from changing schools, and it should not try. What it can do (require disclosure of any sport-linked inducement attached to a transfer application, treat a rugby trial as an admission test, and instruct provincial Heads of Department to apply the best-interests factor when a mid-stream admission of a recruited learner is placed before them) is set out in Part VIII.5.

Part VIII. How the movement of players should be governed under the current dispensation

This Part sets out a governance framework that can be adopted now, using powers that already exist, without new legislation. It is offered as a design, with model rules in Annexure B, and it is built on five principles that the preceding Parts establish.

VIII.1 Five principles

First: the child is never the object of a sanction. No rule may make a boy ineligible, bench him, exclude him from a provincial trial or price his movement because adults transacted over him. Sanctions attach to schools, coaches, alumni bodies, agents, scouts and unions: the persons and institutions capable of

wrongdoing. Where a squad-composition rule affects a recruited boy's selection, it does so as a consequence of the *school's* choice to recruit beyond its allowance, and the boy's own pathway (provincial trials, Youth Weeks) is untouched.

Secondly: regulate timing and transparency, not choice. The law cannot and should not prevent a parent from choosing a school for his child. It can require that a change of school after Grade 8 be made on full information, after the child has been heard, and on a record that both schools have seen, and that nobody acting for the receiving school has solicited it. The professional systems that work (the NCAA's contact calendar, FIFA's approval gateway, Leinster's four-party form) regulate *when* and *how* the transaction may occur, not *whether* a family may move.

Thirdly: bind the adults through the levers that already exist. Schools can be bound as members of schools' rugby associations and as participants in sanctioned competitions, festivals and broadcasts; coaches through SA Rugby's coaching accreditation; agents through the Players' Agents Regulations; unions through the Player Status Regulations and Youth Week participation; public schools through the Schools Act and their provincial departments; independent schools through their associations and *Pridwin*; alumni bodies through the schools whose names they use.

Fourthly: every transfer gets a "fair and determinable process". *Pridwin* requires it of every decision concerning a child. A transfer record, an independent panel and an ombud supply it.

Fifthly: development before procurement. A school's rugby money is spent first on coaching the boys it has. This is the principle on which the others rest, because it is the only one that changes what the boys receive rather than what the adults may do: every boy in a Grade 8 intake is going to change shape, speed and temperament over five years (Part II.1), and what decides whether a school has a first XV in Grade 12 is not who it identified at twelve but who coached the whole intake while they grew. Part IV.9 gives the legal reasons; the framework gives them teeth by making a development-first allocation a condition of participation, so that the competitive advantage now bought in the transfer market must instead be built in the coaching structure.

VIII.2 The instrument: a National Code on the Recruitment and Transfer of School Rugby Players

The vehicle should be a single national code adopted jointly by SA Rugby, the Department of Basic Education, the public schools' governing-body associations, the Independent Schools Association of Southern Africa and the provincial schools' rugby associations, and incorporated by each of them into the instruments through which they already bind their members: SA Rugby into its General Competition Rules and the eligibility conditions of the Youth Weeks; the schools' rugby associations into their affiliation conditions, as the Western Province association did in 2024; the independent schools' association into its membership conditions; the Department into the National Admission Policy. A single text, incorporated five ways, avoids the leak in the Western Province resolution (the boy who moves provinces) and the fragmentation that has defeated every regional agreement.

The Code should apply to every school that participates in a SA Rugby-sanctioned schools competition, festival or Youth Week nomination process, public or independent, and to every union, club, agent, scout and alumni body that deals with learners at such schools. Its scope should be rugby, because that is where the market is; its design should be portable to other codes, because the market will move.

VIII.3 The rules

Rule 1: Definitions. “Recruitment” is any approach, offer, inducement or communication, direct or through any intermediary, by or on behalf of a school, union, club, agent, scout or alumni body, to a learner enrolled at another school or to his parents, whose object or effect is to procure the learner’s enrolment at, or commitment to, the school, union or club, and which is based in whole or in part on the learner’s sporting talent. The Western Province definition is the model; it is widened to unions, clubs, agents and scouts, and to indirect approaches.

Rule 2: Recruitment after Grade 8 entry. Nothing in the Code restricts the recruitment of a boy for entry in Grade 8, or the award of a bursary for Grade 8 entry, from any primary school anywhere: that is the opportunity bursary Part I defends, and the Code leaves it alone, asking only that the award meet the bursary standards in Rule 6 and that the approach be made to the parents (Rule 7), as any approach to a child should be. Recruitment of a learner enrolled at a secondary school, from Grade 8 onwards, is prohibited, and the prohibition is absolute in Grades 10, 11 and 12, where the market operates: no school, and nobody acting for one, may approach a learner in those grades or his parents for any purpose connected with his sporting talent, and a learner in those grades who nonetheless moves counts as home-grown at the new school only where the transfer panel certifies, under Rule 5, that the move was for one of the reasons that rule recognises: a genuine relocation of the family, the welfare, care and academic grounds it lists, or the opportunity bursary that brings a boy from a disadvantaged community into a school that can educate him. A learner may still change schools after Grade 8; the Code does not restrict the family. What it prohibits is the *approach* by or for the receiving institution. The distinction is the one World Rugby’s regulation 4.9.1 already draws for contracted players: the prohibition is on the *approach*, addressed to “any ... Person or entity, whether acting on its own account or on behalf of any third party”.

Rule 3: The transfer record. No school may enrol a rugby learner transferring from another secondary school (defined as any learner who has played representative or A-team rugby at the source school in the preceding twelve months, or who receives any sport-linked financial benefit at the receiving school) unless a transfer record has been completed and lodged with the Code’s secretariat. The record is signed by the principal of the source school, the principal of the receiving school and the learner’s parents or guardians; it records the learner’s own views, taken separately from the recruitment conversation and, where the learner asks, with an independent support person; it discloses every financial benefit attached to the transfer, its grantor and its conditions; it states the reason for the transfer; and it discloses any contact between the receiving school (or anyone acting for it) and the family in the preceding twelve months. World Rugby’s associate-player form, which requires the head teacher’s signature alongside the parent’s, and Leinster’s four-party approval, are the models. The source principal’s signature is *not* a consent: a source school may not veto a child’s education. It is an acknowledgement that the record has been furnished, and it triggers the source school’s right to lodge a complaint under Rule 9 if it believes Rule 2 has been breached.

Rule 4: The home-grown eligibility rule. In any first-XV match in a sanctioned competition or festival, at least twelve of the starting fifteen, and at least nineteen of a match-day squad of twenty-three (the figures are proposals, bracketed as such in Annexure B), must be “home-grown”: enrolled at the school since the beginning of Grade 8 or admitted later under an exemption certificate. A boy is home-grown by virtue of when he arrived, not where he came from: the learner admitted to Grade 8 from Namibia, from another province or from the school’s own feeder primary is equally home-grown, and the Western Cape schools

that draw their Grade 8 intake from across the country and beyond lose nothing by the rule. The Code's quarrel is with the timing of the transaction, never with the origin of the boy. In any under-16 A-team match, at least twelve of the starting fifteen must be home-grown. A school in breach forfeits the match and, on repetition, its festival, broadcast and Youth Week nomination privileges under Rule 10. This is the 80 per cent rule, with numbers, an under-16 counterpart and a home. It binds the school; it does not touch any boy's eligibility for provincial trials or Youth Weeks, which remain governed by age-banding and merit.

Rule 5: Exemption certificates. A learner who transfers after Grade 8 is certified home-grown by the transfer panel (Rule 9) where the transfer is shown to be for a reason unconnected with recruitment: a bona fide relocation of the family's residence; the death, divorce or separation of parents or a change in the child's care arrangements; documented bullying, safeguarding or welfare grounds; the closure or discontinuance of the source school's boarding establishment or rugby programme; or academic reasons on proof. A sixth ground stands on its own footing and is the one Part I insists on: a learner from a disadvantaged community, or from a school that could not offer him the education the receiving school offers, who is admitted after Grade 8 on an opportunity bursary is certified home-grown where the panel is satisfied that the award funds his education and not only his rugby, that it meets the bursary standards in Rule 6 (in writing, with educational continuity guaranteed and no confidentiality term) and that the move serves the boy's schooling. The Code exists to stop schools buying other schools' first-team players, not to shut the door on the boy for whom the bursary is the door; and the panel, not the receiving school, decides which of the two it is looking at, so that the ground cannot become the label every buyer attaches to every purchase. An exemption certificate is decided within twenty-one days on the transfer record, and pending decision the learner plays. The receiving school never decides its own exemption. The Utah, Leinster and New Zealand criteria supply the categories; *Tommy Taylor* supplies the reminder that the rule is read subject to the child's best interests.

Rule 6: Bursary standards. Every sport-linked financial benefit to a learner, by whomever granted, must be in writing, must identify the grantor, must be decided by a committee that includes an educator, a finance representative and a safeguarding professional (the director of rugby heard but not deciding), must state its duration and objective review criteria, must guarantee continuity of the educational award for the academic year in which injury, loss of form or non-selection occurs and reasonable notice and a teach-out thereafter, must impose no obligation on the child, must contain no promise of team, position or playing time, must, for a learner of sixteen or older, take the form of a non-refundable educational grant, and for a younger learner must limit any repayment obligation to the parents alone and to a pro rata refund of value actually received, and must be furnished to the family in plain language with a written record that no selection has been promised. World Rugby's regulation 4.5.12 (benefit to a sixteen- or seventeen-year-old only as a "non refundable financial grant to be applied only for the purposes of a Player's academic and/or vocational training") is the international standard the Code adopts.

Rule 6A: The advertised bursary. A sport-linked benefit that is publicly advertised by the school, open to any learner by application on published criteria and awarded for Grade 8 entry is not recruitment for the purposes of Rules 1 and 2. The formulation is School Sport New Zealand's, and it draws the line that Part I draws: the opportunity bursary is protected; the private offer to a boy already enrolled elsewhere is not. It is also, almost exactly, the line the blog's own readers drew for themselves in August 2026, when the one classification of moves that the thread produced treated the advertised bursary and the bursary to a

needy boy as unconditionally acceptable and the approach to an enrolled boy as unconditionally not (n 77).

Rule 7: Conduct of adults. No coach, staff member, alumni body, sponsor, scout or agent may, on behalf of a school, make any approach prohibited by Rule 2, offer any benefit not disclosed under Rule 6, or make any representation about selection. No person acting for a school may approach a learner under eighteen directly, whether in person at a match, trial, festival or school, or by telephone, messaging or social media: every approach the Code permits is made to the learner's parents or guardians, and the boy is spoken to only in their presence and with their consent. SA Rugby's own agents' code already requires a guardian to be present before an accredited agent may approach a boy under eighteen; the Code asks no less of the school's scout. A school is responsible for the conduct of its alumni and supporters' bodies where they act with its knowledge or use its name. Non-disclosure agreements about sport-linked benefits to learners are prohibited.

Rule 8: Unions, clubs and agents. SA Rugby should amend regulation 3.7 of the Player Status Regulations to prohibit not only a written agreement but any *approach, negotiation, undertaking, announcement or benefit* directed at a learner enrolled at a school, or his parents, before a date certain in the learner's Grade 12 year (the NCAA model), and should require that any such contact after that date be notified in writing to the learner's school and recorded in a register. The Players' Agents Regulations should be amended to bring the "talent scout" within accreditation: any person who identifies or introduces a learner to a school, club or union for sporting purposes on its behalf, whether as employee, contractor or volunteer and whoever pays him, performs an agent's function and must be accredited; clause 12 of the Code of Conduct should be aligned with the school-contact rule; and the clause 39 presumption should be extended to schools: a school that enrolls a learner in breach of Rule 2 is presumed, unless the contrary is proved, to have recruited him. The Rugby Education Foundation's selection process should be brought within the Code, with a family application and a participation step for the child.

Rule 9: The transfer panel and ombud. Each provincial schools' rugby association appoints a transfer panel of three (an educator, a legally qualified chair and a child-welfare professional), none of whom holds office at a school in the competition concerned. The panel issues exemption certificates, receives complaints of breach from source schools, parents or learners, investigates on the Western Province model (*prima facie* enquiry, then hearing) and reports to a national ombud who hears appeals and publishes reasons. The learner's education and sport continue undisturbed pending any dispute. The panel does not select teams and does not review ordinary coaching judgment; it decides recruitment conduct, bursary process and child welfare.

Rule 10: Sanctions on institutions and accredited persons. For breach of Rules 2, 4, 6 or 7: a warning; forfeiture of matches played with ineligible players; exclusion of the school from festivals, from sanctioned broadcast fixtures and from the right to nominate learners for Youth Week trials for a stated period (the learners themselves remain eligible for trials through their union); a bursary-programme audit at the school's cost; a fine payable into a provincial development fund; and, for coaches, suspension of SA Rugby coaching accreditation. For unions and clubs: forfeiture of the right to nominate coaches to Youth Week teams, and the sanctions available under the Player Status Regulations. For agents and scouts: the sanctions of the Agents Regulations. No sanction of any kind may be imposed on a learner.

Rule 11: The register. The secretariat publishes annually, in anonymised and aggregated form (grade, timing, region, funding source and stated reason), the transfers recorded under Rule 3 and the exemptions

granted and refused under Rule 5. No learner is identifiable. Public accusations will remain unreliable until the system produces trustworthy information; the register replaces the enthusiast trackers that presently name children, and it complies with the Protection of Personal Information Act because it processes no identifiable information at all.

Rule 12: Development compensation. SA Rugby amends section 4 of the Player Status Regulations to introduce a scheduled development contribution, payable by a union or club on the conclusion of a player's first written contract at eighteen and on each subsequent professional transfer to the end of the season of his twenty-third birthday, into a national development fund, distributed to the schools and clubs that trained him from age twelve in proportion to their years. The trigger is the adult professional contract; the payer is the professional body; no compensation is ever payable by, to or in respect of a school on a learner's transfer.

Rule 13: Development-first allocation. A school participating in a sanctioned competition or festival must satisfy, and certify annually to the secretariat, three conditions. First, a coaching-establishment standard: every rugby team the school fields from under-14 to under-19 is coached by at least one coach holding current SA Rugby coaching accreditation and BokSmart certification,²⁷¹ with a specialist forwards or backs coach available to every age group, and the school's coaching establishment is published on its website by team; and every coach of an age-group team, and every person who scouts or recruits for the school, has completed an accredited module on adolescent growth, maturation and the relative age effect, of the kind World Rugby's coaching curriculum already contains, so that nobody selects, buys or discards a boy for a school without having been taught that the thirteen-year-old and the seventeen-year-old are not the same size for reasons that have nothing to do with rugby. Secondly, a development-first ratio: the school's total annual expenditure on sport-linked benefits to learners admitted after Grade 8 (by whomever funded: a benefit is attributed to the school where the school, its staff, its alumni or supporters' body or a trust or foundation that recruits for it arranged, nominated or administers it) may not exceed [one-third] of its total annual expenditure on the remuneration and development of rugby coaches across all its teams (so that a school spends at least three rand on coaching its own boys for every rand it spends on acquiring anyone else's), and the ratio is certified annually by the chair of the governing body and the principal, is disclosed in the register under Rule 11, and is subject to audit at the school's cost where a complaint under Rule 9 puts the figure in issue. Thirdly, a coaching-development plan: each school files with the secretariat a three-year plan for the recruitment, accreditation and retention of coaches at every age group, reviewed annually. A school that fails the ratio or the establishment standard is ineligible, until it complies, for the festival, broadcast and Youth Week nomination privileges referred to in Rule 10, and the development fund constituted under Rule 12 is applied, in the first instance, to the accreditation and remuneration of coaches at schools that meet the standard and at the source schools that trained contracted players. The bracketed ratio is a proposal; the principle is that the certified number must show development ahead of procurement.

²⁷¹ SA Rugby's BokSmart programme already "aims to legislate that no coach or referee may put a team on the field or blow a game respectively, unless they have undergone the BokSmart training workshop", with renewal every two years: SA Rugby "BokSmart legislation" <https://springboks.rugby/general/boksmart-legislation>. The coaching-establishment standard proposed here builds on that existing certification requirement rather than creating a new one.

VIII.4 Why sanctions on the child are excluded, and what “fair and determinable process” adds

The exclusion of sanctions on the child is not sentiment; it is the operative content of section 28(2) as *Pridwin* explains it (a decision concerning a child requires a fair and determinable process in which the child’s interests are solicited), of section 6(2)(c) of the Children’s Act, which requires that a child be treated “fairly and equitably”, and of the courts’ repeated refusal to permit a child to be “penalized ... for his parents conduct for which he was not liable”.²⁷² A code that punished the boy would be vulnerable to review for the reasons given in Part VII.3, and a code that is vulnerable to review is a code the schools will not enforce. The design in Rules 4 and 5 keeps the pressure on the school while leaving every boy’s pathway intact; and the transfer record and panel supply, for every transfer, the process that the Constitution requires and no instrument in the field has ever provided.

VIII.5 The legal vehicles: who can enact what, now

Each element of the Code rests on a power that already exists.

SA Rugby can adopt Rules 1 to 13 as conditions of participation in the competitions, festivals and Youth Weeks it sanctions; it can amend regulation 3.7 and section 4 of the Player Status Regulations and the Players’ Agents Regulations at a General Meeting or General Council, as it did in 2017 and 2021; it can publish the Youth Week eligibility rules that are presently unpublished; and it can extend its Safeguarding Policy, which already makes the protection, safeguarding and welfare of vulnerable persons the paramount consideration, to treat predatory recruitment and premature contracting of a child as safeguarding harms. World Rugby’s regulation 4.5.12, its young-player protocol and its regulation 4.9.1 are the models, and adopting them domestically requires no international permission.

The provincial schools’ rugby associations can adopt the Code as an affiliation condition, as the Western Province association did in 2024 (with the sanction redirected from the boy to the school), and can constitute the transfer panels under Rule 9.

The Department of Basic Education can, under section 3(4)(i) of the National Education Policy Act, amend the Admission Policy for Ordinary Public Schools to require that any application for the admission of a learner transferring from another secondary school disclose any sport-linked financial benefit attached to the transfer and its grantor; can issue guidance that a sporting trial or assessment functioning as the gateway to a bursary-funded place at a public school is a “test related to the admission of a learner” prohibited by section 5(2) of the Schools Act; and can direct provincial Heads of Department, who now hold “the final authority” to admit under section 5(5)(b), to apply the best-interests factor in section 5(5)(a)(i) to mid-stream admissions of recruited learners and to require the Rule 3 transfer record before exercising that authority.²⁷³ The Department cannot prevent a family from changing schools and should not try; disclosure and process are its proper contribution.

Public school governing bodies can adopt Rules 6 and 7 as policy under section 20 of the Schools Act; must, under section 37(6), confine the school fund to educational purposes and, under sections 38 and 39,

²⁷² *NFM v John Wesley School and Another* [2018] ZAKZDHC 64 para 82; *AB v Pridwin Preparatory School* [2020] ZACC 12 paras 148 and 151.

²⁷³ Section 3(4)(i) of the National Education Policy Act 27 of 1996; ss 5(2) and 5(5)(a)(i) and (b) of the South African Schools Act 84 of 1996 (s 5(5) as substituted by Act 32 of 2024).

disclose any sports-bursary allocation as a budget line item for the parents' approval; and are answerable to their Heads of Department, who may withdraw functions from, or dissolve, a governing body that fails to perform them under sections 22 and 25.²⁷⁴

Independent schools are bound by *Pridwin* to a fair and determinable process in every decision concerning a child, by *Juma Musjid* not to impair the right to basic education, and by *NFM* not to adopt policies that penalise a child for adult conduct; their association can adopt the Code as a membership condition. Their bursary contracts are subject to *Barkhuizen*, *Beadica* and the Conventional Penalties Act in the way Part V describes.

The Minister of Sport, Arts and Culture holds, under section 13(5) of the National Sport and Recreation Act, the power to intervene “in any dispute, alleged mismanagement, or any other related matter in sport or recreation that is likely to bring a sport or recreational activity into disrepute” by referring it for mediation or issuing a directive, subject to the bar on interference in team selection and administration and to prior referral to the Sports Confederation.²⁷⁵ A market in children that the national federation's chairman of schools rugby has publicly described as unregulated is, at the least, a “related matter”; the Minister's most useful contribution is to convene the parties who must adopt the Code and to make SA Rugby's adoption of Rules 8 and 12 a condition of continued recognition and funding if persuasion fails.

The courts remain available to a child, a parent or a source school on the grounds set out in Parts IV and V (review of a public school's or association's decision, enforcement of *Pridwin*'s procedural component, the Schools Act's fund provisions, and delict in the flagrant case) but litigation is the remedy of last resort in a system whose first casualty is always the boy. The Code exists so that the courts need not be used.

VIII.6 Sequencing, and the administrative burden

The obvious objection to Annexure B is that it is too much: fourteen clauses, five adopting bodies, panels, an ombud, a register and an auditor's certificate, to be accepted by associations that are run by serving headmasters in their spare time. The objection is fair as to the whole and wrong as to the parts, and the answer is that the Code is designed to be adopted in stages, and that the first stage needs no new institution at all.

The first stage is four rules, and it does most of the work. Rule 4, the home-grown eligibility rule, is enforced on the team sheet, and SA Rugby already runs team-sheet and age-banding compliance for every sanctioned fixture; a school that fields too many late arrivals forfeits, exactly as a school that fields an over-age player does now. Rule 2, no recruitment of an enrolled learner and an absolute bar in Grades 10 to 12, and Rule 7, no approach to the boy and the school answerable for the adults who act in its name, are conduct rules that need a complaint and a committee, which the Western Province association has already shown one chairman and a judicial committee can supply. Rule 10 attaches the sanctions to the one thing the leading schools cannot do without, their festival, broadcast and Youth Week nomination privileges. SA Rugby can adopt these four rules on its own, as a condition of sanction for every competition, festival and youth week, and of nomination to every provincial trial; no other body's consent is needed to start, and a single season would show the difference. The Western Province association's 2024 procedure is the model for the machinery, with its sanction inverted from the boy onto the school.

²⁷⁴ Sections 20, 22, 25, 37(6), 38 and 39 of the Schools Act.

²⁷⁵ Section 13(5)(a)–(c) of the National Sport and Recreation Act 110 of 1998.

The second stage is administrative rather than institutional and follows a season later: the transfer record (Rule 3), which is a fuller version of the transfer card the 1998 Admission Policy already requires of every principal, and the bursary standards and disclosures (Rules 6 and 6A), which bind the school that grants a benefit and cost it nothing but a form and a committee it already has. With these in place the exemption certificates (Rule 5) can be issued by the same committee that hears complaints, and the register (Rule 11) is a spreadsheet the secretariat already holds.

The third stage is where the cost sits, and it should be said plainly rather than hidden in the drafting. Independent provincial panels and a national ombud (Rule 9), the development contribution from unions (Rule 12, which requires SA Rugby to amend its own regulations and which the unions will contest), the amendments to regulation 3.7 and the Agents Regulations (Rule 8), the Department's amendment of the Admission Policy and its section 5 guidance, and the independent schools' association's adoption of the Code as a membership condition, are measures for the second and third year. Rule 13, the development-first allocation, belongs here too, and its certification has been drafted with the burden in mind: the school certifies its ratio through its governing body chair and principal, and an auditor is involved only where a complaint puts the figure in issue. An annual auditor's certificate on rugby spending is the one requirement in this article that would unite every headmaster against it, and it is not necessary; a certified figure that can be audited on complaint is enough to make a false one expensive.

None of these steps requires Parliament. All of them require the parties who have complained about the market for fifteen years to accept that it will not be governed by fixture cancellations, and that a rule which punishes the boy is not a rule the Constitution will let them keep. Nor will it be governed by conscience. The most candid contribution to the August 2026 debate came from a reader who had recruited for a school and described the restraints he had observed in doing it, and his conclusion was not that those restraints could be restored but that the horse had bolted and that individuals could now only "self-regulate" (n 77). Self-regulation by the scrupulous is exactly what the last fifteen years have tested. It binds the recruiter who would have behaved anyway and leaves the field to the one who would not, and a code that depends on it is the Charter of 2013 under another name.

VIII.7 The objection that the Code protects the established schools

The most serious objection to a code of this kind is not that it is unworkable but that it is self-serving, and it was put by the readers of *SchoolBoyRugby* in August 2026 more sharply than any headmaster has put it (n 77). On this view a bursary that takes a boy from a rural Eastern Cape school to a Johannesburg boys' school, and a second move that takes the developed player to a bigger programme where he can test himself against the best in the country, gives that boy "a literal free hit at life"; the schools that now complain said nothing while their own hierarchy stood and complain because the recruiting school has begun to win; the traditional schools have drawn boys from other provinces for decades without a word said, and the outrage is reserved for the upstart; and the conclusion is that the objectors do not care about the boys but about whether the status quo is changing. The objection has two parts and they deserve different answers.

The first part is an accusation of hypocrisy, and the chronology in Part II.3 shows it to be largely true. The same schools appear as accuser in one season and accused in the next; the fixture cancellation, which is the only sanction the field has ever used, is a weapon available only to a school with fixtures worth cancelling; and a code drafted by the losers of the last transfer window would deserve the suspicion it

would attract. That is why the Code binds by category and not by name. It applies to every school in a sanctioned competition, public or independent, old or new; the home-grown rule counts when a boy arrived and not where he came from (Rule 4); and the sanction falls on the buyer whether the buyer is a school with a century of first XV photographs on its walls or one that fielded its first strong side in 2024. The Code has no interest in the hierarchy. It has an interest in the transaction, and the transaction is the same whoever conducts it.

The second part is a constitutional argument and must be met on its own terms, because it is right about the danger. A rule that fixed every boy at the school where he stood at thirteen would bear hardest on the boy whose Grade 8 school could not develop him and on the family that could not afford the school that could; and since the boys in that position are, in this country, disproportionately black and poor, such a rule would reproduce the very hierarchy the objectors accuse it of protecting. Section 9(2) of the Constitution permits measures designed to protect or advance persons disadvantaged by unfair discrimination; section 9(3) prohibits indirect as well as direct discrimination; section 29(1)(a) gives every child the right to a basic education and, as *Juma Masjid* holds, that right may not be impaired by the institutions that provide it; and section 6(2)(d) of the Children's Act requires every decision-maker to protect a child from unfair discrimination, while section 7(1)(g) makes the child's background a factor in his best interests. A code that closed the door on the boy for whom the bursary is the door would fail those provisions, and would deserve to.

The Code does not close it, and the design shows how. First, it does not fix the boy; it regulates the approach and its timing. A family may change schools in any grade, for any reason, and no rule in Part VIII says otherwise (Rule 2). What is prohibited is the solicitation of an enrolled boy by or for the receiving institution, which is the conduct that carries the price, not the boy's movement. Secondly, the opportunity bursary is protected at both ends of the school career. At Grade 8 entry it is untouched (Rules 2 and 6A); and after Grade 8 the sixth exemption ground in Rule 5 exists for precisely the boy the objection describes: a learner from a disadvantaged community, or from a school that could not offer him the education the receiving school offers, admitted on a bursary that funds his education and not only his rugby, is certified home-grown. That ground is a section 9(2) measure written into the Code itself, and the panel that applies it, not the receiving school, decides whether it is looking at that boy or at a purchase wearing his label. Thirdly, the boy whom the Code does restrict is a different boy: the one already at a strong school, already educated, whose second move to a stronger programme in Grade 11 is a move not for schooling but for the last two seasons of his rugby. His family remains free to make it; what the receiving school loses is the right to have solicited it and to count him as its own. The "free hit at life" for that boy is a professional contract at eighteen, and Rule 12 sends the development contribution on that contract to the school that developed him rather than to the one that bought him in his final year. Fourthly, the Code protects the family the objection invokes at the point where it is most exposed. The rural family offered a place in a city school is the family least able to read the contract that comes with it, and the readers who pressed the equality argument were answered, in the same thread, by the reader who had seen the contracts and called them "skokkend eensydig". The transfer record, the written bursary with guaranteed educational continuity, the prohibition on confidentiality terms and the requirement that every approach be made to the parents (Rules 3, 6 and 7) are protections for that family, not obstacles to it.

What the objection gets right, and what the Code takes from it, is that a code of this kind must not be administered by the schools it regulates. Rule 9 therefore places the exemption decision with a panel none of whose members holds office at a school in the competition; and Rule 11 makes the outcome visible,

because a register that records, by region and funding source, the exemptions granted and refused on the sixth ground will show within two seasons whether the Code is doing what this Part says it does or what its critics fear. If the certified exemptions run overwhelmingly to the traditional schools and the refusals to the rest, the register will say so, and the Code will need amendment. That is a better answer to the charge of entrenchment than any assurance in an article, and it is the answer the thread's own demand for transparency invites.

VIII.8 What the framework leaves alone

The framework does not restrict competition, selection on merit, bursaries or the pursuit of excellence, and it leaves entirely untouched the bursary that brings a boy from a disadvantaged community into a strong school at the start of his high-school career, which Part I identifies as an educational act and which section 9(2) of the Constitution expressly permits. It does not prohibit a family from changing schools, or a school from admitting a boy whose family has moved. It does not create a proprietary interest in any child, a transfer fee between schools, or a letter of release. It does not ask the courts to select teams. What it does is convert the gentlemen's agreements of the last fifteen years into an enforceable code; move every sanction from the child to the adult; give every transfer the process the Constitution already requires; and require, not merely recommend, that the money now spent acquiring other schools' players be redirected into the coaching of the boys a school already has, which Stellenberg's 2026 season suggests is, in any event, the better investment.

Part IX. Conclusion

The commercialisation of South African schoolboy rugby has outrun its governance. Money, television and rankings have built a professional talent market; charters and handshakes pretend to regulate it; the national federation's rules begin on a player's eighteenth birthday; the education authorities "play no role"; and the children inside the market (the purchased, the poached, the stranded and the displaced) are governed by instruments none of them signed and processes none of them can see. The only instruments with a sanction impose it on the boy. The only proposal with a following, the 80 per cent rule, was made in December 2013 and again in September 2026, and in the intervening thirteen years nothing was done.

This article has argued that the applicable law already exists, and that it is child law. A late transfer is a matter concerning a child, to which section 28(2) and its procedural component attach; the school that recruits, boards and fields a boy is his caregiver under section 32 and stands in loco parentis on the common law; the parents who consent must do so on the facts, after hearing the child, under section 31; the incumbent is a child too; the public school's money is earmarked by statute; and when the market malfunctions, the law systematically declines to treat the child as an asset over which schools may fight. It has also argued that the market can be governed now, without legislation, by a national code that regulates timing and transparency rather than choice, binds the adults through the levers that already exist over each of them, gives every transfer a fair and determinable process, never sanctions a child, and requires every school that competes to spend on the coaching of its own boys before it spends on the acquisition of anyone else's.

One boy in that list deserves the last word, because he is the one the market never mentions. The displaced boy did not ask to be part of a transaction. He came to the school in Grade 8, was coached by it

for three seasons, and was in its care on exactly the same footing as the boy who has now been bought to replace him: the Children’s Act does not distinguish between the child a school purchased and the child it already had. Section 32 binds the school that cares for a child to safeguard his health, wellbeing and development and to protect him from emotional harm; section 6(2)(e) requires every decision-maker to recognise his need for development; section 7 counts among the factors of his best interests the likely effect on him of any change in his circumstances; and section 10 gives him the right to be heard in a decision that concerns him.²⁷⁶ The school stands in loco parentis to him, and the duties of that position do not lapse because a more useful child has arrived. A school that has had a boy in its care for three years does not discharge them by telling him, without a reason and without a hearing, that his place has been given to someone it has paid for. The Sports Medicine Association asked in 2018 whether schoolboy rugby was losing the plot, and warned that poaching was “more prevalent than is recognised or acknowledged, often to the detriment of ‘smaller’ schools”.²⁷⁷ The smaller school is one casualty. The boy on the bench, who was promised nothing in writing and everything in every assembly, is the other, and he is the answer to the school that asks why any of this is its concern. The old boys on whom a school will one day depend are the boys it has now, and whether a boy comes back at forty is decided by how the school treated him at sixteen, in the year it had a reason to prefer somebody else.

Schoolboy rugby at its best is one of the glories of South African education. Nothing in the Children’s Act is hostile to excellence, to hard competition, or to the bursary that transforms a talented child’s life. What the Act is hostile to is forgetting: forgetting that the boy under the high ball is a child in the school’s care and not a line item in its marketing budget; forgetting the incumbent while celebrating the signing; forgetting, when the union announces that a boy still at school has “decided to start his professional journey”, that the regulation which was meant to protect him ends at a written signature, and that the signature may lawfully follow the recruitment by months; and forgetting, when a headmasters’ association reaches for the only sanction it can find, that the person it has chosen to punish is the one person in the transaction who did nothing wrong. The first school that loses a Craven Week captain to a rival’s chequebook and reaches for its lawyers will discover the thesis of this article in a single consultation: the law never gave it a proprietary claim to a child. It gave it something else: the duties of a parent. Those duties, and a code built on them, are the only governance this market has ever needed.

Annexure A. The regulatory texts, verbatim

For the convenience of administrators and governing bodies, the operative provisions on which Parts III and VIII rely are reproduced here as read in their current published form. Clause numbers are as they appear in the source; the SA Rugby PDFs are hosted on the federation’s content-delivery network and should be re-checked against the governance page before forensic use.

SA Rugby, Player Status, Player Contracts and Player Movement Regulations (approved 8 December 2017)

“Player”: “means a player aged 18 years and older and Registered with a Club and/or Province”.

²⁷⁶ Sections 32(1), 6(2)(e), 7(1)(d) and 10 of the Children’s Act 38 of 2005.

²⁷⁷ Hagemann (n 21).

“Contract Player”: “means a Player who has concluded a written Player Contract with a Province and/or Club and receives a material benefit”.

“Material benefit”: “means money, consideration, gifts or other benefits whatsoever promised or given to a Player or any other individual, body corporate, partnership (or any other body or entity whether incorporated or not) in respect of such Player’s participation in the Game”.

Reg 3.7: “No Club or Province shall enter into a written agreement with any Player unless the Player has reached the age of 18 years.”

Reg 4.2: “A Player leaving or proposing to leave a Current Province to play in a New Province shall not be registered or eligible to participate in any competition or rugby activity in the New Province until the Clearance Certificate has been signed by the CEO of the Current Province, or his nominee.”

Reg 4.8: “Any Transfer fees payable to the Current Club or Province for the movement of a Contract Player shall be agreed between the intended New Club or New Province and the New Club or New Province.”

SA Rugby, The Players’ Agents Regulations (approved 10 December 2021)

“Rugby Body”: “a union, associate member, club or similar organization which is a member of or is affiliated, directly or indirectly, to a member or associate member of SARU”.

Reg 13.1: “Subject to the proviso immediately following, only an Agent may perform the functions set out in Clause 1.2 above, and no Rugby Body, or person acting on behalf of a Rugby Body, shall negotiate with, or otherwise engage with, a person who is not an Agent ...”

Sub-reg 1.1: “Rugby Bodies are not allowed to negotiate a Player Agreement or other employment Agreement or provide consent for the use of a Player’s image rights in any commercial activity, with a person who is not an Agent”.

Sub-reg 7.2: “Pertaining to agreements between an Agent and a Player between the age of 16 and 18 years the following shall apply: 7.2.1. The player’s parent or legal guardian has to sign the agreement on behalf of the player; 7.2.2 the Agent shall not receive any form of remuneration, including commission; 7.2.3 the player shall not have obligations emanating from the Agreement; 7.2.4 the agreement shall not contain an option to enter into a Player Agent Agreement with the player when he reaches the age of 18 years; 7.2.5 the duration of the agreement shall not exceed two (2) years; 7.2.6 the termination date of the agreement shall not extend beyond the day the Player turns 18 years of age; or 7.2.7 such agreement shall not place any obligation on the Player after reaching the age of 18 years, including but not limited to an undertaking, promise, agreement, or an option to enter into a Player Agent Agreement.”

Code of Conduct cl 12: “The Agent will not approach a Player who has not yet reached the age of eighteen (18) years to sign an Agency Agreement, or any other agreement with the same objects, without the presence of such Player’s guardians.”

Code of Conduct cl 13: “An Agent shall not be allowed to enter into an agreement with a player between the age of 16 and 18 years and his parent or legal guardian in terms whereof: 13.1 he will receive any form of remuneration, including commission; 13.2 the Player will have obligations emanating from the Agreement; 13.3 he is awarded an option to enter into an Agency Agreement when the player becomes 18

years old; 13.4 the duration of the agreement exceeds two (2) years; 13.5 the termination date of the agreement extends beyond the day the Player turns 18 years of age; or 13.6 such agreement places any obligation on the Player after reaching the age of 18 years, including but not limited to an undertaking, promise, agreement, or an option to enter into a Player Agent Agreement.”

Code of Conduct cl 39: “The Agent will not approach any Player who is under a Player Contract with the aim of persuading him to terminate his Contract prematurely or to violate any obligations stipulated in the Player Agreement. It shall be presumed, unless the contrary is proven, that any Agent involved in a contractual breach committed by a Player without just cause has induced such breach.”

SA Rugby, Regulations for Under-Aged Rugby: School Rugby Age-Banding (Addendum 1, effective 1 January 2026)

“An Age-grade is determined by the maximum age, as determined on 31st December of that specific year, of a player allowed to participate within the prescribed Age-grade.”

Cl 4(b): “the player may not be older than the stipulated Age-grade e.g. in the U18 division, a player may not be 19 years old or be turning 19 years old, during the year in question”.

Cl 8(i): “At no given time, may any U19 level Age-grade rugby team select or field players aged 19 years old turning 20, or players older than 20 years old, during the year in question”.

World Rugby Regulation 4

Reg 4.5.12: “No Union, Rugby Body or Club shall enter into an agreement with any Player which enables the Player to receive Material Benefit unless: (a) such Player has reached the age of contractual majority within the jurisdiction of such Union, Rugby Body, or Club; or (b) in the case of Players under the age of contractual majority who are aged 16 years or over, unless such Material Benefit takes the form of a non refundable financial grant to be applied only for the purposes of a Player’s academic and/or vocational training for a period of 12 months or longer.”

Reg 4.9.1: “No Union, Rugby Body, Club, Agent or any other Person or entity, whether acting on its own account or on behalf of any third party, shall approach (or accept an approach by or on behalf of) any Contract Player or other Contracted Person who has a written agreement with a Union, Rugby Body or Club to induce or attempt to induce such Contract Player or Contracted Person to leave their Union, Rugby Body or Club unless (i) the prior written consent of that Union, Rugby Body or Club has been obtained; or (ii) such approach is made in the final twelve months of the term of that Player or Contracted Person’s Contract or at the next option/break clause of that Player or Contracted Person’s Contract.”

Young players protocol: “An essential component of the Protocol is the prohibition on the unauthorized approach to and/or ‘poaching’ of young players either within a Union and/or between Unions.” Associate-player registration forms “must be signed by the player, the players’ parent(s) (or person with parental responsibility) and the player’s head teacher or equivalent person with overall responsibility for the player’s education.”

World Rugby Regulation 5

Reg 5.4.3: “Where a Player is under the age of 18, the Agency Contract must be countersigned by a parent or guardian.”

Western Province High Schools Rugby Association resolution (October 2024)

Poaching: “A pupil/player being enticed by any person or entity affiliated to the new school (affiliated to WPHSRA), including coaches, sport organizers and alumni to move from his registered school (affiliate of WPHSRA) to a new school (affiliate of WPHSRA) based on such player’s sporting talent.”

KwaZulu-Natal Headmasters’ Agreement (14 March 2012)

A bona fide school sportsman: a full-time learner in Grade 12 or lower registered for at least seven subjects from Grade 10; not a Grade 12 repeat; in the under-19 age group or younger; and, if under-19, one who “must have been a bona fide pupil of the school since Grade 10”, save for family relocation.

South African Schools Act 84 of 1996 (as amended by Act 32 of 2024)

S 5(2): “The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorise the principal of the school or any other person to administer such test.”

S 5(5): “... the admission policy of a public school is determined by the governing body of such school in line with the Constitution and relevant legislation: Provided that — (a) the governing body ... must take into account factors including, but not limited to — (i) the best interests of the child, with emphasis on equality as provided for in section 9 of the Constitution, and equity; ... and (b) the Head of Department, after consultation with the governing body of the school, has the final authority, subject to subsection (9), to admit a learner to a public school”.

S 37(6): “The school fund, all proceeds thereof and any other assets of the public school must be used only for — (a) educational purposes, at or in connection with such school; (b) educational purposes, at or in connection with another public school, by agreement ...; (c) the performance of the functions of the governing body; or (d) another educational purpose agreed between the governing body and the Head of Department.”

S 39(6): “A public school may not charge a parent of a learner at that school different school fees based on curriculum or extramural curriculum within the same grade”.

Children’s Act 38 of 2005

S 10: “Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.”

S 31(1)(b)(iv): a decision “which is likely to significantly change, or to have an adverse effect on, the child’s living conditions, education, health, personal relations with a parent or family member or, generally, the child’s wellbeing”.

S 32(1): “A person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, must, whilst the child is in that person’s care — (a) safeguard the child’s health, wellbeing and development; and (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards.”

Annexure B. Model provisions for a National Code on the Recruitment and Transfer of School Rugby Players

The following clauses are offered as a drafting skeleton for the Code proposed in Part VIII. They are intended for adoption by SA Rugby as competition and Youth Week conditions, by the provincial schools' rugby associations as affiliation conditions, and by the schools' associations as membership conditions. Bracketed figures are proposals. The clauses are drafted for staged adoption as Part VIII.6 describes: clauses 1, 2, 3, 5, 9 and 11 can be adopted by SA Rugby alone as competition conditions and need no new institution; clauses 4, 6, 7, 8 and 12 follow; clauses 10, 13 and 14 are second- and third-year measures. The clauses correspond to the Rules in Part VIII.3 as follows: clauses 1 and 2 to Rule 1; clause 3 to Rules 2 and 6A; clause 4 to Rule 3; clause 5 to Rule 4; clause 6 to Rule 5; clauses 7 and 8 to Rule 6; clause 9 to Rule 7; clause 10 to Rule 9; clause 11 to Rule 10; clause 12 to Rule 11; clause 13 to Rules 8 and 12; clause 14 to Rule 13.

1. Purpose and interpretation. 1.1 The purpose of this Code is to ensure that the recruitment and movement of learners for rugby is governed in accordance with section 28(2) of the Constitution and the Children's Act 38 of 2005. 1.2 This Code must be interpreted and applied so that the best interests of every learner concerned, including a learner already enrolled at a receiving school, are of paramount importance. 1.3 No provision of this Code may be applied so as to impose any sanction, penalty, ineligibility or detriment on a learner.

2. Definitions. "Learner" means a person enrolled at a school in Grade 12 or below, whether or not he has attained the age of 18; a provision of this Code that refers to a learner under the age of 18 applies according to its terms. "School" means a public or independent school participating in any competition, festival or nomination process sanctioned by SA Rugby or a Provincial Union. "Recruitment" means any approach, offer, inducement or communication, direct or through any intermediary, by or on behalf of a school, union, club, agent, scout or alumni or supporters' body, to a learner enrolled at another school or to that learner's parents or guardians, the object or effect of which is to procure the learner's enrolment at or commitment to the school, union or club, and which is based in whole or in part on the learner's sporting talent. "Sport-linked benefit" means any bursary, scholarship, fee remission or discount, accommodation, stipend, kit, equipment, travel, medical or other benefit provided to or for a learner by or through a school, alumni or supporters' body, union, club, foundation or sponsor, the award of which is based in whole or in part on the learner's sporting talent. "Home-grown learner" means a learner enrolled at the school from the beginning of Grade 8, wherever he was previously schooled, or a learner certified as home-grown under clause 6. "Transfer panel" means the panel constituted under clause 10.

3. Recruitment after Grade 8 entry. 3.1 Nothing in this Code restricts the recruitment of a learner for entry in Grade 8 or the award of a sport-linked benefit for Grade 8 entry; clauses 7, 8 and 9.2 apply to such an award and approach as they apply to any other. 3.2 Recruitment of a learner enrolled at a secondary school is prohibited. 3.3 In respect of a learner in Grade 10, 11 or 12 the prohibition in clause 3.2 is absolute, and a learner in those grades who transfers is a home-grown learner at the receiving school only where the transfer panel certifies under clause 6 that one of the grounds in clause 6.1 applies. 3.4 Nothing in this Code restricts the right of a parent or guardian to enrol a learner at any school. 3.5 A sport-linked benefit that is publicly advertised by the school, open to any learner by application on published criteria and awarded for Grade 8 entry is not recruitment for the purposes of this Code.

4. Transfer record. 4.1 A school may not enrol a rugby learner transferring from another secondary school unless a transfer record in the prescribed form has been completed and lodged with the secretariat. 4.2 A “rugby learner” is a learner who has played A-team or representative rugby at the source school in the preceding twelve months, or who is to receive any sport-linked benefit at the receiving school. 4.3 The transfer record must be signed by the principal of the source school, the principal of the receiving school and the learner’s parents or guardians, and must record: (a) the learner’s own views, obtained separately from any recruitment discussion and, at the learner’s request, in the presence of an independent support person; (b) every sport-linked benefit attached to the transfer, its grantor and its conditions; (c) the reason for the transfer; (d) any contact between the receiving school, or any person acting for it, and the learner or family in the preceding twelve months. 4.4 The signature of the source principal is an acknowledgement that the record has been furnished and is not a consent; a source school may not withhold its signature for the purpose of preventing the transfer. 4.5 Where the source school declines to sign within [10] school days, the record may be lodged without its signature and the secretariat must notify the source school.

5. Home-grown eligibility. 5.1 In any first XV match in a sanctioned competition or festival, at least [12] of the starting fifteen and at least [19] of a match-day squad of twenty-three must be home-grown learners. 5.2 In any under-16 A-team match in a sanctioned competition, at least [12] of the starting fifteen must be home-grown learners. 5.3 A school in breach of this clause forfeits the match, and on a second breach in a season is liable to the sanctions in clause 11. 5.4 Nothing in this clause affects any learner’s eligibility for selection to any provincial or national team or trial.

6. Exemption certificates. 6.1 The transfer panel must certify as home-grown a learner who transferred after Grade 8 where it is satisfied, on the transfer record and any further information, that the transfer was for a reason unconnected with recruitment, including: (a) a bona fide relocation of the family residence; (b) the death, divorce or separation of parents, or a change in the learner’s care arrangements; (c) documented bullying, safeguarding or welfare grounds; (d) the closure or discontinuance of the source school’s boarding establishment or rugby programme; (e) academic grounds on proof; (f) the admission of a learner from a disadvantaged community, or from a school unable to offer him the education the receiving school offers, on a sport-linked benefit that funds his education, complies with clause 7 and, in the panel’s assessment, serves the learner’s schooling. 6.1A In deciding an application under clause 6.1(f) the panel must have regard to the learner’s circumstances at the source school, the educational content of the benefit, and whether the learner or his family was approached in breach of clause 3, which does not disqualify the learner but is recorded against the receiving school under clause 9.4. 6.2 The panel must decide within [21] days of lodgement; pending decision the learner is eligible. 6.3 The receiving school may not decide any exemption in respect of its own learner. 6.4 An exemption decision must be reasoned and is appealable to the ombud.

7. Sport-linked benefits. 7.1 Every sport-linked benefit must be recorded in a written agreement that identifies the grantor and the benefit, states its duration and objective criteria for review, and is decided by a committee comprising at least an educator, a finance representative and a safeguarding professional; the director of rugby or head coach may be heard but may not decide. 7.2 No agreement may impose any obligation on the learner, or contain any promise or representation regarding selection to any team, position or playing time; a written record that no such promise has been made must be furnished to the family. 7.3 Where a benefit funds the learner’s education, it may not be withdrawn during an academic year by reason of injury, illness, loss of form or non-selection, and thereafter only on [one term’s] written

notice with reasons and a transition arrangement that avoids abrupt exclusion from schooling. 7.4 Any repayment obligation, which is permitted only in respect of a learner under the age of sixteen, may bind the parents only, may not exceed a pro rata proportion of value actually received, and may not be triggered by the learner's transfer where the transfer is certified under clause 6. 7.5 No agreement may contain a confidentiality or non-disclosure term concerning the benefit. 7.6 Every agreement must be furnished to the family in plain language with the disclosures in clause 8. 7.7 A sport-linked benefit to a learner aged sixteen or older must take the form of a non-refundable grant applied only to the learner's education or vocational training.

8. Disclosure to families and participation of the learner. 8.1 Before any sport-linked benefit is accepted, the school must furnish the family with a written disclosure statement in the prescribed form covering: the identity of the grantor; the benefits; duration and review; the position on injury, illness, loss of form, non-selection and coaching change; academic and conduct conditions; repayment and notice; the effect of any change of school; dispute resolution and appeal; and educational continuity. 8.2 The school must afford the learner an opportunity, separately from any recruitment discussion and in an age-appropriate manner, to express his views, and must record them.

9. Conduct of adults and affiliated bodies. 9.1 No coach, staff member, alumni or supporters' body, sponsor, scout or agent acting for or with the knowledge of a school may make any approach prohibited by clause 3, offer any benefit not recorded under clause 7, or make any representation regarding selection. 9.2 No person acting for or with the knowledge of a school may approach a learner under the age of eighteen directly, in person or by any electronic means; any approach permitted by clause 3 must be made to the learner's parent or guardian, and the learner may be addressed only in the presence and with the consent of a parent or guardian. 9.3 A school is responsible for the conduct of any alumni or supporters' body that uses its name or acts with its knowledge. 9.4 A school that enrolls a learner in circumstances where a person acting for it has had contact with the learner or family in breach of clause 3 is presumed, unless the contrary is proved, to have recruited the learner.

10. Transfer panel and ombud. 10.1 Each provincial schools' rugby association must constitute a transfer panel of three persons (an educator, a legally qualified chair and a child-welfare professional) none of whom holds office at a school in the competitions concerned. 10.2 The panel decides exemption applications under clause 6 and complaints of breach lodged by a school, parent or learner; it may conduct a preliminary enquiry and, where a prima facie case exists, a hearing at which the school concerned is heard. 10.3 The learner's education and participation continue undisturbed pending any complaint. 10.4 An ombud appointed nationally hears appeals from panel decisions and publishes reasoned decisions in anonymised form. 10.5 The panel and ombud do not select teams and do not review ordinary coaching judgment.

11. Sanctions. 11.1 On a finding of breach of clauses 3, 5, 7 or 9 the panel or ombud may impose on a school one or more of: a warning; forfeiture of matches; exclusion from festivals, sanctioned broadcast fixtures or the right to nominate learners for trials for a stated period (learners remaining eligible to be nominated through their union); an audit of the school's sport-linked benefit programme at the school's cost; a fine payable to the provincial development fund. 11.2 On a finding against a coach or staff member the panel may recommend suspension of SA Rugby coaching accreditation. 11.3 Findings against agents or scouts are referred to the Players' Agents Committee. 11.4 No sanction may be imposed on a learner.

12. Register. 12.1 The secretariat publishes annually, in anonymised and aggregated form, the transfers recorded under clause 4 and the exemptions granted and refused under clause 6, by grade, timing, region, funding source and stated reason. 12.2 No learner may be identifiable from the register.

13. Unions, clubs and agents. (For adoption by SA Rugby by amendment of the Player Status Regulations and the Players' Agents Regulations.) 13.1 No union, club, or person acting for either, shall approach, negotiate with, make any undertaking to, announce the commitment of, or provide any benefit to a learner enrolled at a school, or the learner's parents or guardians, before [1 July] of the learner's Grade 12 year; any such contact thereafter must be notified in writing to the learner's school within [7] days and recorded in a register maintained by SA Rugby. 13.2 Any person who identifies or introduces a learner to a school, club or union for sporting purposes on its behalf, whether as an employee, a contractor or a volunteer and irrespective of who remunerates him, performs a function reserved to accredited agents. 13.3 On the conclusion of a player's first written contract, and on each subsequent professional transfer to the end of the season of his twenty-third birthday, the union or club shall pay a scheduled development contribution to the national development fund for distribution to the schools and clubs that trained the player from age twelve in proportion to their years of training. 13.4 No compensation is payable by, to or in respect of any school on the transfer of a learner.

14. Development-first allocation. 14.1 A school must ensure that every rugby team it fields from under-14 to under-19 is coached by at least one coach holding current SA Rugby coaching accreditation and BokSmart certification, that every such coach and every person who scouts or recruits for the school has completed an accredited module on adolescent growth, maturation and the relative age effect, and must publish its coaching establishment by team. 14.2 A school's total annual expenditure on sport-linked benefits to learners admitted after Grade 8 may not exceed [one-third] of its total annual expenditure on the remuneration and development of rugby coaches across all its teams; a benefit is attributed to the school, by whomever funded, where the school, its staff, its alumni or supporters' body or a trust or foundation that recruits for it arranged, nominated or administers it. 14.3 The school must certify compliance with clause 14.2 annually to the secretariat by a certificate signed by the chair of its governing body and its principal; the ratio must be disclosed in the register under clause 12; and where a complaint under clause 10 puts the certified figure in issue the panel may require an audit of it at the school's cost. 14.4 The school must file with the secretariat a three-year coaching-development plan covering the recruitment, accreditation and retention of coaches at every age group, reviewed annually. 14.5 A school that does not comply with this clause is ineligible, until it complies, for the festival, broadcast and nomination privileges referred to in clause 11.1. 14.6 The development fund constituted under clause 13.3 is applied in the first instance to the accreditation and remuneration of coaches at schools that comply with this clause and at schools that trained contracted players.

Annexure C. Model bursary clauses for schools

The following clauses are suggested for incorporation in sport-linked bursary agreements, whether or not the Code in Annexure B is adopted. They reflect Part V and clause 7 of the Code.

Grantor and benefit. "This award is made by [the School / the XYZ Foundation / the Old Boys' Association] ('the Grantor'). It comprises [remission of tuition fees of R...; boarding; ...] for the period [] and is subject to annual review on the criteria in clause []."

No obligation on the learner. “Nothing in this agreement imposes any obligation on the Learner. The Learner is not a party to this agreement. No provision of this agreement may be enforced against the Learner.”

No selection promise. “The Grantor and the School make no promise or representation regarding the Learner’s selection to any team, position or playing time. Selection is a coaching judgment made on merit. The Parents acknowledge that no such promise has been made.”

Continuity. “The award will not be withdrawn during an academic year by reason of the Learner’s injury, illness, loss of form or non-selection. Any non-renewal will be notified in writing with reasons not later than [] and the School will make a reasonable transition arrangement so that the Learner’s education is not abruptly interrupted.”

Repayment. “If the Learner leaves the School before completing Grade 12 for a reason other than one certified under clause [6 of the Code] / a bona fide relocation of the family, the Parents shall refund to the Grantor a pro rata proportion of the value of benefits actually received in the academic year of departure, and no more. No other amount is repayable.”

Disclosure and participation. “The Parents confirm that they have received the disclosure statement annexed as ‘A’, and that the Learner has been afforded an opportunity, separately from any recruitment discussion, to express his views, which are recorded in annexure ‘B’.”

No confidentiality. “Nothing in this agreement prevents the Parents or the Learner from disclosing its existence or terms to the Learner’s former school, any transfer panel or any education authority.”

Annexure D. Table of authorities

Constitution and legislation

Constitution of the Republic of South Africa, 1996, ss 8(2), 9(2), 28(1)(b), (e), (f), 28(2), 28(3), 29(1), 29(3).

Children’s Act 38 of 2005, ss 1, 6, 7, 9, 10, 17, 18, 31, 32, 129, 141.

South African Schools Act 84 of 1996, ss 1, 5, 15, 20, 22, 25, 36, 37, 38, 39, 42, 43, 60 (as amended by the Basic Education Laws Amendment Act 32 of 2024, in force 24 December 2024).

National Education Policy Act 27 of 1996, ss 3(1), 3(3), 3(4)(i), 4.

National Sport and Recreation Act 110 of 1998 (as amended by Act 18 of 2007), ss 4(2)(e), 13, 13A.

Conventional Penalties Act 15 of 1962, ss 1–4.

General Law Amendment Act 50 of 1956, s 6.

Apportionment of Damages Act 34 of 1956, s 2.

South African Council for Educators Act 31 of 2000, s 5.

Protection of Personal Information Act 4 of 2013, ss 34–35.

Admission Policy for Ordinary Public Schools, GN 2432 in GG 19377 of 19 October 1998.

Regulations for Safety Measures at Public Schools, GN 1040 in GG 22754 of 12 October 2001, as amended by GN R1128 in GG 29376 of 10 November 2006.

Draft School Sport Policy, GN 1025 in GG 34830 of 9 December 2011.

Cases

AB and Another v Pridwin Preparatory School and Others [2020] ZACC 12; 2020 (5) SA 327 (CC).

Barkhuizen v Napier [2007] ZACC 5; 2007 (5) SA 323 (CC).

Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others [2020] ZACC 13; 2020 (5) SA 247 (CC).

Chess South Africa v South African Sports Confederation and Olympic Committee and Another [2024] ZAGPPHC 601.

Coetzee v Comitis and Others 2001 (1) SA 1254 (C).

Country Cloud Trading CC v MEC, Department of Infrastructure Development, Gauteng [2014] ZACC 28; 2015 (1) SA 1 (CC).

East Asian Consortium BV v MTN Group Ltd and Others [2025] ZASCA 50; 2025 (5) SA 33 (SCA).

Edelstein v Edelstein NO and Others 1952 (3) SA 1 (A).

Governing Body of the Juma Musjid Primary School and Others v Essay NO and Others [2011] ZACC 13; 2011 (8) BCLR 761 (CC).

Hawekwa Youth Camp and Another v Byrne [2009] ZASCA 156; 2010 (6) SA 83 (SCA).

Hotz and Others v University of Cape Town [2016] ZASCA 159; 2017 (2) SA 485 (SCA).

Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another [2009] ZACC 32; 2010 (2) SA 415 (CC).

K v Minister of Safety and Security [2005] ZACC 8; 2005 (6) SA 419 (CC).

Kudu Granite Operations (Pty) Ltd v Caterna Ltd [2003] ZASCA 64; 2003 (5) SA 193 (SCA).

Mageni v Minister of Education of the Western Cape Education Department [2021] ZAWCHC 79.

Malcolm v Premier, Western Cape Government NO [2014] ZASCA 9; 2014 (3) SA 177 (SCA).

Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd [2016] ZACC 42; 2017 (1) SA 613 (CC).

McCarthy Retail Ltd v Shortdistance Carriers CC [2001] ZASCA 14; 2001 (3) SA 482 (SCA).

Messina Associated Carriers v Kleinhaus [2001] ZASCA 46; 2001 (3) SA 868 (SCA).

MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others [2013] ZACC 34; 2013 (6) SA 582 (CC).

Member of the Executive Council, Education, North West Province v Foster and Others [2023] ZASCA 11.

Minister for Welfare and Population Development v Fitzpatrick and Others [2000] ZACC 6; 2000 (3) SA 422 (CC).

Minister of Education v Wynkwart NO 2004 (3) SA 577 (C).

Minister of Police v Rabie 1986 (1) SA 117 (A).

NBS Bank Ltd v Cape Produce Co (Pty) Ltd and Others [2001] ZASCA 107; 2002 (1) SA 396 (SCA).

Ndoro and Another v South African Football Association and Others [2018] ZAGPJHC 74; 2018 (5) SA 630 (GJ).

NFM v John Wesley School and Another [2018] ZAKZDHC 64; 2019 (2) SA 557 (KZD).

Nortje en 'n Ander v Pool NO 1966 (3) SA 96 (A).

Parktown High School for Girls v Hishaam and Another [2019] ZASCA 10; 2019 (4) SA 188 (SCA).

Pro Tempo Akademie CC v Van der Merwe [2016] ZASCA 39; 2018 (1) SA 181 (SCA).

Roux v Hattingh [2012] ZASCA 132; 2012 (6) SA 428 (SCA).

Roux v University of Stellenbosch and Others [2023] ZAWCHC 81; [2023] 3 All SA 248 (WCC).

S v M (Centre for Child Law as Amicus Curiae) [2007] ZACC 18; 2008 (3) SA 232 (CC).

Santos Professional Football Club (Pty) Ltd v Igesund 2002 (5) SA 697 (C); 2003 (5) SA 73 (C) (full bench).

Setlogelo v Setlogelo 1914 AD 221.

Steinberg v Lazard [2006] ZASCA 55; 2006 (5) SA 42 (SCA).

Traut v Fiorine and Another [2006] ZAWCHC 45; 2008 (1) BCLR 84 (C).

Vrystaat Cheetahs (Edms) Beperv v Mapoe and Others [2010] ZAFSHC 175.

Tommy Taylor v King's College ST 05/2023 (Sports Tribunal of New Zealand, decision 23 June 2023, reasons dated 26 June 2023).

Clarett v National Football League 369 F.3d 124 (2d Cir 2004).

Regulatory instruments

SA Rugby, Player Status, Player Contracts and Player Movement Regulations (8 December 2017).

SA Rugby, The Players' Agents Regulations (10 December 2021).

SA Rugby, Regulations for Under-Aged Rugby: School Rugby Age-Banding (Addendum 1, effective 1 January 2026); Regulations for Under-Aged Rugby: Adult Rugby (1 April 2011).

SA Rugby, Safeguarding Policy & Procedures against Harassment and Abuse in Rugby (May 2020, rev August 2022).

World Rugby, Regulation 4 (Player Status, Player Contracts and Player Movement); Regulation 5 (Agents).

FIFA, Regulations on the Status and Transfer of Players (2016 edition; January 2025 edition), arts 19, 19bis, 20, 21.

Western Province High Schools Rugby Association, anti-poaching resolution (October 2024).

KwaZulu-Natal Headmasters' Agreement (14 March 2012).

Traditional State Boys' Schools Sports Charter (November 2013 / March 2014).

Auckland 1A Rugby Code of Practice; College Sport Auckland Rules, r 5.2(b).

School Sport New Zealand, Eligibility Regulations (in force 1 January 2026), cls 1, 3, 11, 12, 14, 15 and 18, and Schedule 1 (2026 NTS quota numbers).

North Harbour Rugby, 2020 NHSSRU Secondary School Rugby By-Laws.

Leinster Rugby, Competition Regulations: Youths 2024–2025.

NCAA Division I Manual, art 13.

Utah High School Activities Association, Transfer Rule.

Uniform Athlete Agents Act (2000); Revised Uniform Athlete Agents Act (2015); Delaware Revised Uniform Athlete Agents Act, 24 Del C ch 54.

NFL Constitution and Bylaws, art XII (draft eligibility), as described in *Clarett*.

Great Public Schools' Association of Queensland, 2016 GPS Rules of Competition – Rugby.

RFU Regulation 8 – Agents; RFU Regulation 15 – Age Grade Rugby (2023).

Athletic Association of the Great Public Schools of New South Wales, Code of Behaviour in Sport (2013).

Department of Sport, Arts and Culture and Department of Basic Education, School Sport Regular Participation Guidelines (draft, 2024).

Japan Committee for UNICEF, Children's Rights in Sport Principles (2nd ed, 2018).

Centre for Sport and Human Rights, Child Labour in Sport: Protecting the Rights of Child Athletes (2022).

Mould K "The suitability of the remedy of specific performance to breach of a 'player's contract' with specific reference to the Mapoe and Santos cases" (2011) 14(1) PER/PELJ 189.

UN Committee on the Rights of the Child, General Comment No 12 (2009) CRC/C/GC/12.