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Explanatory Note

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

In January 2000 the Minister of Education published a notice which stated that a learner may only be admitted to grade one at an independent school if he or she turns seven in the course of that calendar year. The purpose for the notice was to bring independent schools in line with public schools, in respect of which the Minister had already imposed the turning-seven requirement.

Talya Harris formed part of a group of children who had for three years been attending pre-primary school in preparation for entry to King David Primary School at the start of the 2001 school year. Since Talya would only turn six in early January 2001 the notice prevented her from entering grade one. Her parents approached the High Court challenging the validity of the notice on a variety of grounds, among others, that it unfairly discriminated against children on the grounds of age and was against the best interests of children such as Talya. The judge in the High Court found in favour of the Harris parents, declared the notice unconstitutional and invalid on a number of constitutional grounds and declared that there was no barrier to Talya being enrolled in Grade 1.

The Minister of Education appealed to the Constitutional Court.

In a judgment handed down today and concurred in by all the justices who heard the matter, Sachs J held that the matter was best decided not on the broad constitutional questions raised, but on whether the Minister had the power under the National Education Policy Act to issue the notice he did. He held that that Act only gave the Minister powers to determine policy and not to impose binding law. Whether or not the Minister had in fact had the power to impose a binding age requirement under the South African Schools Act did not have to be decided, since the Minister had clearly chosen to exercise his powers under the National Education Policy Act. The appeal was therefore dismissed.