

Mrs A Motshekga
Minister of Basic Education
By email: Mabua.S@dbe.gov.za

18 August 2020

Dear Minister Motshekga,

RE: *EQUAL EDUCATION & OTHERS v MINISTER OF BASIC EDUCATION & OTHERS* (22588/2020)

1. SECTION27 and the Equal Education Law Centre, on behalf of Equal Education (EE) and the governing bodies of two Limpopo schools, urge the Department of Basic Education (DBE) and each provincial department of education (PEDs) to engage with the **purpose and spirit of the structural order** handed down in the case of *Equal Education & Others v Minister of Basic Education and Others* (22588/2020) on 17 July 2020 so as to ensure that all learners who qualify for the National School Nutrition Programme (NSNP) are able to receive each and every meal to which they are entitled.
2. The structural order required the Minister and MECs to each file their plans and programmes for the implementation of the NSNP within 10 days of the court order. The Minister and MECs are further required to file reports every fifteen days from the date of the court order on steps taken to comply with the court order and to implement their respective plans and programmes.
3. The structural order in this case provides an opportunity for an ongoing **to-and-fro, solution-orientated dialogue** between the parties **in the best interests of the learners**. The DBE and the PEDs were required to develop plans and programmes to ensure the effective and comprehensive implementation of the NSNP, which are then made available for scrutiny. The DBE and the PEDs are further required to provide information through

regular reports to enable all parties to identify issues impacting implementation of the NSNP. This court ordered process, if utilised to its full potential, can facilitate a meaningful engagement between the parties wherein solutions are negotiated to remedy the issues impeding effective implementation.

4. The aforementioned plans and programmes were received from 31 July 2020. The applicants responded to the DBE's plan and programme as well as the plans and programmes from each of the eight PEDs. The responses highlighted concerns with each plan that would impact on the implementation of the NSNP.
5. The first set of reports in terms of the court order were due on 7 August 2020. We note that these have been filed as one consolidated affidavit with annexures on behalf of the DBE and the PEDs (the "Consolidated Report"). We note that the Consolidated Report does provide a more coherent outline of the national plan than that received on 31 July. This national plan however continues to be lacking in detail, in addition, deficits in provincial plans remain. Significantly, the main concern raised by the applicants in our first round of correspondence, being, impediments to the uptake of the NSNP during the school closure, have not been remedied and are cause for increasing concern in the perpetuation of child hunger.

THE POOR UPTAKE OF THE NSNP BY QUALIFYING LEARNERS

6. The main issue affecting the implementation of the NSNP is reported to be the poor uptake of the programme in the current school closure period which, if not extended, will end on 24 August 2020. The Consolidated Report at page 8 states: "Provinces reported that learners that are not phased-in do not support the programme as intended to cover whole school provision of meals or the collect food parcels at school. The NSNP is ready to implement at full scale but due to fears of COVID-19 parents do not allow learners, or learners themselves do not collect; or long distance prevent learners to come to school which affect numbers of learners receiving meals negatively" (sic). The Consolidated Report does not elaborate on how this issue of poor uptake will be addressed or how the reasons stated by the DBE for the poor uptake were identified as the reasons why learners are not collecting food.

7. The poor uptake of the NSNP is reflected in Annexure F to the Consolidated Report that provides provincial updates on the feeding of learners. While it is disappointing that no figures are provided for the Eastern Cape, many provinces reflect a very poor uptake in meals by learners. In Limpopo there appears to be a 100% uptake but this is clarified in the annexure to suggest that this figure is indicative of the meals that are provided to each school and are not meals actually collected by learners. A similar approach has been adopted in KwaZulu-Natal. (these numbers are marked with a * below to denote the inaccurate approach to monitoring in these provinces). As stated in our previous correspondence, we have reports that suggest that no meals are being provided at schools in the Umkhanyakhude District of KwaZulu-Natal, while in Limpopo, learners from a number schools have stated that they are unaware their schools are providing meals during this period. Some of the figures in Annexure F appear to contradict provincial affidavits filed earlier. As an example, Gauteng has said that it is feeding 1.5 million learners, but Annexure F indicates that it is only feeding 117 849 learners.

PROVINCE	NUMBER OF LEARNERS PER DISTRICTS	NUMBER OF LEARNERS RECEIVING MEALS	PERCENTAGE OF QUALIFYING LEARNERS RECEIVING MEALS
NORTH WEST	270 440	63573	23,5%
LIMPOPO	1 595 165	1 595 165	100%*
GAUTENG	1 545 562	117 849	7%
KWAZULU-NATAL	2 349 729	2 347 406	100%*
MPUMALANGA	915 533	700 586	76,5%
FREE STATE	596674	22153	3,7%
NORTHERN CAPE	267 427	17 028	6,3%
WESTERN CAPE	486 799	328 673	67,5%
EASTERN CAPE	NO DATA PROVIDED	NO DATA PROVIDED	UNKNOWN

8. The concerns in respect of poor uptake have been highlighted in previous correspondence. First, in most provinces, there is inadequate to no communication strategies aimed at learners and caregivers in respect of meal provisioning. Second, the absence of adequate provisioning of transport for learners who live far away from the nearest school is a hindrance. The Limpopo Department of Education in its initial plan undertook to assist with scholar transport, but did not provide any further details. The Consolidated Report does not provide any details of whether such scholar transport is now operational and if it is impacting on the uptake of the NSNP.
9. The Consolidated Report notes that lack of social distancing has impacted on learners not feeling safe to collect food. This is despite the existence of protocols and guidelines necessitating social distancing practices being implemented at schools.
10. It is therefore imperative that the DBE provides guidelines to provinces in respect of the following and each province immediately implements the following:
 - 10.1 **A common approach across provinces for collecting and reporting data regarding meal uptake by learners.** For the NSNP to be effective, provincial updates must accurately reflect the number of meals collected by learners as well as reasons for low uptake in certain areas.
 - 10.2 **An effective communication strategy** that informs learners and caregivers of when meals are provided and whether schools are serving cooked meals or food parcels and how often; steps being taken to ensure learners will be transported to schools and collection times; steps to ensure the safety of learners under COVID-19 and the contact details of school/district/provincial officials that learners and caregivers may contact if there are concerns in respect of the provision of meals.
 - 10.3 **Scholar transport** for learners from far flung areas to school to collect food.
 - 10.4 **Social distancing measures** at school in accordance with developed protocols and guidelines.

INSUFFICIENT INFORMATION IN RESPECT OF PROVINCIAL REPORTS AND MONITORING

11. We note that one Consolidated Report does not constitute compliance with the court order. The applicants interpret the court order to require that the DBE provide a report and each PED provides its own context specific report. Furthermore, if PEDs are required to provide reports to the DBE (as stated on pages 3 and 7 of the Consolidated Report), it is uncertain why those reports are not simply attached as part of the court reporting process. For example, in the original DBE plan and in the Consolidated Report, it is stated that PED's must develop province specific implementation plans with various options such as cooked meals, learners collecting meals and provision of food parcels. These reports are not attached and have not been shared with the applicants and the Consolidated Report does not provide this information either. **We request that provincial reports to the DBE detailing the NSNP implementation be included in the court reporting processes.**

12. We note at page 6 of the Consolidated Report that Revised Business plans from the PEDs in response to the COVID-19 adjustments were due on 14 August. **The Revised Business Plans should be included in forthcoming reports to ensure that budgets are efficiently allocated for the provision of meals to all qualifying learners in accordance with the court order.**

13. We note that Annexure E purports to be provincial monitoring plans but, in fact, just appears to be provincial rosters reflecting annual school visits. They do not specifically report on monitoring during the period of school closures and the phased re-opening of schools and also do not distinguish between planned visits and visits that actually happened. These "monitoring plans" do not reflect what monitoring tools are being used or what data is being collected. The Consolidated Report refers to NSNP monitors being utilised in each province, however the questionnaires completed by monitors and the findings emanating from these visits, are not included in the Consolidated Report. It would be useful if provincial monitoring reports could report on schools not implementing social distancing guidelines and measures taken to remedy this situation. In addition, it would

be useful if these reports monitored reasons for low uptake and remedies put in place.
The applicants have previously requested that each province provides its provincial monitoring plan and we do so again in this open letter.

14. The Consolidated Report at page 7 makes reference to the development of the DBE's monitoring strategy referred to as "MRR" that includes monitoring, report and response. No further detail is provided in respect of what MRR entails. The applicants have previously requested that the DBE provide a framework for monitoring the provinces.
Furthermore, details in respect of the MRR strategy as well as data collected should be included in reports filed in court so as to better assess compliance with the court order.

15. Finally, we urge each province to refer to issues raised here and in correspondence to each province and inform the applicants of steps taken to remedy these issues in future reports.

16. We trust that the DBE and each province will take concerns we have raised seriously and report on immediate steps taken to remedy these concerns. As we noted previously, paragraph 103.13 of the court order authorises the applicants to approach the court for further relief to ensure compliance with the order. If our concerns are not addressed in the next report, we do intend to approach the court for appropriate relief to ameliorate ongoing hunger amongst school children.

Sincerely



Sasha Stevenson
Attorney at SECTION27
stevenson@section27.org.za

Chandre Stuurman / Siphon Mzakwe
Attorney at Equal Education Law Centre
chandre@eelawcentre.org.za / siphom@eelawcentre.org.za

Copied:

Mr H Mveli
Director General, Department of Basic Education
By email: Mweli.M@dbe.gov.za; Tom.N@dbe.gov.za

The State Attorney, Pretoria
By email: PrKhosa@justice.gov.za

Mr Fundile David Gade
MEC of Education, Eastern Cape
Per email: nombuyekezo.nkwenkwezi@ecdoe.gov.za / mbuz@webmail.co.za

Mr Pule Herbert Isak Makgoe
MEC of Education, Free State
Per email: mec@edu.fs.gov.za / tate.makgoe@vodamail.co.za

Mr Panyaza Lesufi
MEC of Education and Acting MEC of Social Development, Gauteng
Per email: Panyaza.Lesufi@gauteng.gov.za

Ms Polly Boshielo
MEC of Education, Limpopo
Per email: matloumj@edu.limpopo.gov.za / Mashabakm@edu.limpopo.gov.za / MakgaaMA@edu.limpopo.gov.za

Mr Kwazi Mshengu
MEC of Education, KwaZulu-Natal
Per email: Balakhile.Sishi@kzndoe.gov.za

Mr Bonakele Majuba
MEC of Education, Mpumalanga
Per email: pmhlanga@education.mpg.gov.za / r.motubatse@education.mpu.gov.za

Mr McCollen Jack
MEC of Education, Northern Cape
Per email: mccollenjack@gmail.com

Mr Johannes Nkhono Mohlala
Administrator, North West Department of Education
By email: jntmohlala@nwpg.gov.za / jntmohlala@gmail.com / tmoswatlhe@gmail.com

Ms Debbie Schafer
Minister of Education, Western Cape
By email: edumin.edumin@westerncape.gov.za