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LEGAL RESOURCES CENTRE

NPO No. 023-004

PBO No. 930003292

Grahamstown Office

116 High Street • Grahamstown 6139 • South Africa • www.lrc.org.za

PO Box 932 • Grahamstown 6140 • Tel: (046) 622 9230 • Fax: (046) 622 3933 • Email: info@lrc.org.za

Our Ref: Mr C McConnachie

30 March 2011

Attention: The MEC (Department of Education)
Mr M Makhuphula
Steve Vukile Tshwete Education Complex
Zone 6, Zwelitsha
Per facsimile: 040 608 4249

cc: The Superintendent General (Department of Education)
Advocate M Manny
Steve Vukile Tshwete Education Complex
Zone 6, Zwelitsha
Per facsimile: 040 608 4249

cc The Minister of Basic Education
Government of Republic of South Africa
222 Struben Street
Pretoria
Per Email: mabua.s@doe.gov.za
and
120 Plein Street,
Cape Town
Per facsimile: 021 425 5689

Dear Sir

RE: MWEZENI SPS: DEMAND FOR EMERGENCY SCHOOL FACILITIES

The Legal Resources Centre (LRC) is a not for profit organization with a regional office in Grahamstown. We operate as a law clinic and strive to uphold the rights enshrined in the Constitution of the Republic of South Africa. We have a particular interest in the rights of children. We are addressing this letter to you in our own interests acting in terms of section 38(a) of the Constitution, in the interests of 220 children currently without classrooms at Mwezeni Senior Primary School (the school), the children's parents, and in the public interest in terms of section 38(d) of the Constitution.

The LRC is extremely concerned not only about the situation which the 220 children without a classroom at Mwezeni SPS face, but also about the children at schools similarly situated. The LRC is concerned about the extent to which

National Office:
Cape Town:
Durban:
Grahamstown:
Johannesburg:
Constitutional Litigation Unit:

J Love (National Director), HJ Kim (Development Director), K Reinecke (Director: Finance)
JW Pienaar (Director), A Andrews, CM Fortuin, S Kahanovitz, WR Kerfoot, C May, HJ Smith
MR Chery (Director), C Penn
S Sephton (Director), C McConnachie
N Gobodo (Director), S Dhever, N Fakir, S Shirinda, Z Sujee
T Ngeukautobi (Director), G Bizos SC, A Bodasing, S Cowen, S Nindi

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the state has an adequate and reasonable plan in place to deal with schools in disaster situations, and whether there is a budgetary allocation to implement any such plan.

Mwezeni SPS is located in the Mbashe Local Municipality approximately 60 kilometres south east of Mthatha. It is located in a rural village where the majority of the population is indigent. The school is mandated to provide basic education to 295 children in grades R through six and has eight teachers. It is a public school as contemplated in Chapter 3 of the South African Schools Act 84 of 1996. It is also a section 20, "no fee" school and has been placed in quintile one.

We are advised that 220 of the school's children (or 75%) do not have classrooms, are being taught outside without any protection from the elements, have insufficient desks and chairs, and it is impossible for these children to access their constitutional right to basic education in these conditions. The 220 children are without classrooms because five of the school's eight classrooms were destroyed by heavy rains during January and February of this year. (All five of the destroyed classrooms were so called "mud structure classrooms.") This has resulted in the grade R, one, two, three, and four classes being left without any form of shelter as their classrooms' walls have collapsed and the classrooms are unsafe and unusable. When it rains the children in these grades do not come to school. When they do come to school they have no protection from the wind or sun.

The school's buildings originally consisted of two rondavels built by the community in 1991. In 2007 the community built a block of four mud structure classrooms to accommodate the growing number of children at the school. All of these community built mud structure classrooms have now collapsed.

Only the grade five and six learners and the staff room are housed in permanent classrooms. A block of three classrooms was built with cement and bricks in 2009 using R100 000 sourced from former Premier Nosimo Balindlela's emergency classroom fund. The school used this money to contract local builders to build these three classrooms. While these classrooms are still standing, they are of inferior quality and unlikely to conform with national health and safety building regulations.

The following table indicates the extent of the deplorable situation at the school in terms of the numbers of children forced to learn outside and the shortage of desks and chairs:

Grade	Number of learners	Size of classroom in m ²	seating spaces on benches	Number of Desks (condition)
R	48	Outside	Bring own	0 (varied)

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1	43	outside	20	20 (very poor)
2	41	Outside	18	18 (very poor)
3	42	Outside	30	30 (very poor)
4	46	Outside	28	28 (very poor)
5	38	49	28	28 (good)
6	37	49	22	22 (good)

We are advised that despite numerous letters and verbal requests being made over the past six weeks by the school to both the school's circuit manager as well as the district's DOE physical planning officer, the school has received no written response. The circuit manager told the school verbally that she had alerted the DOE's offices in Bhisho to the crises but had received no feedback. The physical planning manager told the school there was no money available to assist the school in any way. The school has not been given any information about whether they will ever be assisted by the DOE in terms of infrastructure.

Section 3(3) of the South African Schools Act states that "every member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsection 1." This creates a duty on the part of the MEC to ensure that there are sufficient places and infrastructure in order to meet the basic education needs of every child required to attend school. The needs of the learners at the school are not being met, and the State is in breach of its statutory duties and has acted unreasonably in failing to respond to the emergency.

In light of the above circumstances, we demand that within 10 working days of today's date:

1. the DOE confirms that it will provide mobile classrooms or other suitable temporary classrooms to the school on or before 18 April 2011;
2. the DOE confirms that it will simultaneously provide sufficient desks (or desk spaces) together with sufficient chairs (or appropriate seats) of suitable sizes for the learners of the school;
3. the DOE makes known its plan to provide the school with permanent classrooms before Friday, 6 May 2011;
4. the DOE provide our offices with details of any plans and measures adopted by the State to provide the school, and other schools similarly placed, with temporary facilities pending the construction of classrooms that comply with accepted minimum norms and standards;

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Date/Time: 30. Mar. 2011 14:52

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LRC

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cc: The Superintendent General (Department of Education)

Advocate M Manny
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National Office: 1 Level 9 (Second Floor), 85 Elm (Overheadpass) Drive, E. Pretoria (Trans-Corona)
 Cape Town: 4th Floor (Corner) A. Anderson, 101 De Waal, 5 Lohmar, W. J. Koster, C. May, W. Swart
 Durban: 101 Clare (Corner) C. May
 Grahamstown: 5 System (Corner) C. May
 Johannesburg: 14 Colaba (Corner) S. Koenig, J. Koenig, 8 Biko, 2. J. van
 Kimberley: 111 (Corner) D. B. van, 11 (Corner) S. van
 Constitution Hill: 111 (Corner) S. van, 11 (Corner) S. van

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- 5. the DOE provide our offices with their emergency plan or policy, if one exists, to alleviate the plight of schools affected by disasters, together with the details of the funds available to implement any such plan.

Should we not receive the aforesaid confirmations and undertakings, we will approach the High Court, on an urgent basis if necessary, for appropriate relief.

Yours faithfully



**LEGAL RESOURCES CENTRE
PER: CAMERON McCONNACHIE**

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Date/Time: 30. Mar. 2011 14:52

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LEGAL RESOURCES CENTRE

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Member Office: (Law, Planning Director, BU, Liaison (Development Director), C. Tshwete (Director - Finance)
 Dept. Team: (T) Tshwete (Director), A. Ndlovu (Development Director), C. Tshwete (Director - Finance)
 Deputy: (M) Makhophula, C. Tshwete
 Communications: (S) Siphiso (Director), C. Tshwete
 Administration: (N) Ndlovu (Director), S. Mkhize (Director), S. Mkhize
 Compliance/Legal: (C) C. Tshwete, A. Ndlovu, S. Mkhize, S. Mkhize

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Date/Time: 30. Mar. 2011 14:53

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Reason for error

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LEGAL RESOURCES CENTRE

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Address Office Date: 14/03/11 Drafted: Corrected: Approved: Compliance/Regulation Unit:	J. van der Merwe (Director), B. E. van der Merwe (Deputy Director), K. M. van der Merwe (Director: Finance) W. P. van der Merwe (Director: Legal Services), C. J. van der Merwe (Director: Legal Services), C. van der Merwe (Director: Legal Services) M. van der Merwe (Director: Legal Services) S. van der Merwe (Director: Legal Services) H. van der Merwe (Director: Legal Services) T. van der Merwe (Director: Legal Services)
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