

EE Secretariat: Yoliswa Dwane (Chairperson), Ntuthuzo Ndzomo, Bayanda Mazwi, Sean Feinberg, Brad Brockman, Doron Isaacs

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Minister Motshekga  
Department of Basic Education  
Pretoria  
c/o  
Mr Chris Leukes  
Director: Legal Services  
Department of Basic Education  
Per email: Leukes.c@dbe.gov.za

15 May 2013

**Re: Request for an extension on the settlement agreement pertaining to the publication of Minimum Norms and Standards for School Infrastructure**

Dear Minister Motshekga,

Thank you for your letter dated 9 May 2013.

Please find attached correspondence from Equal Education's legal representative which responds to the request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yoliswa Dwane'.

YOLISWA DWANE  
CHAIRPERSON



Postal: PO Box 40114, Elonwabeni, 7791 Office: Washington Square, Capital Drive, Thembokwezi, Khayelitsha

E-mail: [info@equaleducation.org.za](mailto:info@equaleducation.org.za) Website: [www.equaleducation.org.za](http://www.equaleducation.org.za)

Facebook: Equal Education fan page ~ Twitter: [twitter.com/equal\\_education](https://twitter.com/equal_education) ~ Mxit: +27 72 333 12343

Telephone: 021 387 0022 ~ Fax: 0865169396

Registered S10(1)(cN) and S18A(1)(a) Public Benefit Organisation (PBO) (Exemption Number 930 027 221)

Registered Non-Profit Organisation (NPO) (Registration Number 068-288-NPO)



LEGAL RESOURCES CENTRE

PBO No. 930003292

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

Tel: (046) 622 9230 • Fax: (046) 622 3933, valencia@lrc.org.za, nsomandi@lrc.org.za

Our ref: C McConnachie

16 May 2013

Minister Motshekga  
Department of Basic Education  
Pretoria  
c/o  
Mr Chris Leukes  
Director: Legal Services  
Department of Basic Education  
Per email: Leukes.c@dbe.gov.za

CC: Ms Yako  
State Attorney, East London  
Per email: NoYako@justice.gov.za

Dear Mr Leukes

**RE: REGULATIONS RELATING TO MINIMUM NORMS AND STANDARDS FOR SCHOOL INFRASTRUCTURE**

1. The Minister's letter to our client, Equal Education (EE), dated 9 May requesting an extension of time to publish the finalized Regulations Relating to Minimum Norms and Standards for Public School Infrastructure (the "norms and standards") refers.
2. As you are aware, draft norms and standards were published for public comment by the previous Minister in November 2008.

3. In responding to the Minister's request, it is necessary for us to record the following background:

- 3.1 EE have been attempting to persuade the current Minister to publish the final norms and standards for many years.
- 3.2 The Minister's Director General, Mr Soobrayan, wrote to EE nearly three years ago confirming that the norms and standards "are currently with the DBE Legal Services and will be promulgated as regulations thereafter." (20 July 2010)
- 3.3 The National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment committed to implementing Norms and Standards for School Infrastructure by 1 April 2011.
- 3.4 At a meeting with EE in early 2011 the Minister reiterated that Norms and Standards were being finalised. This same commitment was repeatedly expressed by the Minister in letters to EE.
- 3.5 Norms and Standards for School Infrastructure never materialized. Over this entire period EE campaigned publicly and wrote to the Minister urging her to abide by her obligations under the Constitution and the South African Schools Act 84 of 1996.
- 3.6 It eventually became clear that Minister did not intend to issue Norms and Standards.
- 3.7 This compelled EE to make an application to the High Court on 2 March 2012.
- 3.8 The Minister vigorously opposed the application. She refused to publish norms and standards altogether and on 10 October 2011 declared that she would adopt "guidelines" instead.
- 3.9 The Minister also took many months to file responding papers. EE granted the Minister three separate extensions for the filing of her responding papers. In the end, after three extensions, her responding

papers consisted of a single short affidavit from a Deputy Director General, Mr Padayachee. These delays resulted in the matter being further delayed and a date for the hearing could only be set for 20 November 2012.

- 3.10 Finally, and only days before the case was to be heard, the Minister agreed and undertook to publish norms and standards for comment by 15 December 2012. At her request, we extended the date for the draft norms to be published for comment by a month to 15 January 2013. After all the delays the draft norms were an enormous disappointment as they fail to provide meaningful minimum norms and standards as required by the South African Schools Act. The reinsertion of a new version of the "guidelines" device, to be published 18 months after the norms and standards, constituted yet another attempt to delay providing any substance to the Norms and Standards.
- 3.11 The public was given until 31 March to comment on the draft norms. EE and many other organisations complied with this deadline.
- 3.12 The agreed date, per the settlement agreement, for the Minister to publish the final norms is 15 May 2013.
- 3.13 Then on 9 May 2013, less than a week before the agreed deadline, the Minister requested yet further time. She does not say how long she wants for this purpose.
- 3.14 The above is only a very partial record of the delays, extensions and unfulfilled commitments. EE is presently compiling the full record for public and legal purposes.
- 3.15 Meanwhile learners and teachers suffer under conditions in which inadequate infrastructure puts their health and safety at risk, and in which effective education cannot take place. The constitutional rights of vast numbers of learners are breached on a daily basis due to the

Minister's ongoing failure to comply with her statutory and constitutional obligations.

4. Having canvassed their members at numerous meetings over the past two days, EE have decided to respond to the Minister's request as follows:

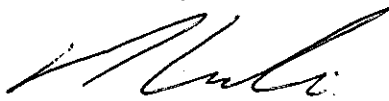
4.1 They will agree, with great reluctance, to extend the agreed date for publication of the norms and standards by one month, to 15 June 2013;

4.2 The new settlement agreement, reflecting the new deadline of 15 June 2013, must be signed by the Minister on or before 17 May 2013;

4.3 If the Minister does not agree to sign the new settlement agreement, or does not comply with the new settlement agreement and carry out her constitutional obligations, EE will immediately renew their application in court.

5. Kindly take instructions and revert before close of business on 16 May 2013 so that the new settlement agreement can be signed before close of business on 17 May 2013. In the meantime, our client's rights are reserved.

Yours faithfully



**LEGAL RESOURCES CENTRE**

Per: **CAMERON MCCONNACHIE**