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## **Media statement: Constitutional Court says independent schools are not immune from Constitutional obligations**

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Today, the Constitutional Court ruled that independent schools are required to afford parents and learners a fair opportunity to be heard on whether a decision to terminate a contract with the school is in the best interests of the children concerned.

This matter raised important constitutional issues regarding the best interests of the child and the right to basic education in independent schools. Equal Education (EE) welcomes the Constitutional Court's [judgment](#) confirming that independent schools "*are not exempt from constitutional obligations*".

EE intervened as a friend of the Court (*amicus curiae*) in the case. Represented by the Equal Education Law Centre (EELC), EE's [submissions](#) highlighted the context and implications of increased privatisation of education in South Africa, and in particular the rise of low-fee independent schools. EE is pleased that the various judgments penned in the case recognise this important context, with Nicholls AJ specifically noting being indebted to EE for these submissions. As was stated by the majority judgment, penned by Theron J: "*As the power and significance of the independent school sector continues to grow, so too does the need for constitutional protection*". The majority judgment emphasises that section 8(2) of the Constitution subjects private power to Constitutional control and "*recognises that private interactions have the potential to violate human rights and to perpetuate inequality and disadvantage.*"

EE also welcomes the clarity that has been provided by the Constitutional Court on the relationship between sections 29(1)(a) and 29(3) of the Constitution as they relate to the constitutional obligations on private schools. In our submissions, EE argued that the Supreme Court of Appeal (SCA) was incorrect when it concluded that independent schools do not provide basic education in terms of section 29(1)(a) of the Constitution. In line with EE's submissions, the Constitutional Court ruled that independent schools do indeed provide basic education (as set out in the Constitution) and have an obligation not to impair this right. Moreover, in terms of section 29(3) of the Constitution, independent schools assume a positive obligation to maintain standards not inferior to that of public schools.

EE also supported the importance of affording learners an opportunity to be heard before a decision to remove them from their school is taken. The Constitutional Court held that independent schools are bound by section 28(2) of the Constitution, which states that a child's best interests are of paramount importance in every matter concerning that child. As was stated by Khampepe J in her concurring

judgment “removing a child from their school is undoubtedly a life-changing experience event which greatly affects a child”.

The judgment of the Court will not only affect elite independent schools, but will also have consequences for the rights of pupils from poor and working-class families who attend low-fee independent schools.

*Advocates Lerato Zikalala and Nomonde Nyembe, briefed by the Equal Education Law Centre, represented Equal Education in the matter.*

[END]

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