

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 22588/2020

In the matter between:

Equal Education	First Applicant
School Governing Body of Vhulaudzi Secondary School	Second Applicant
School Governing Body of Mashao High School	Third Applicant

and

Minister of Basic Education	First Respondent
MEC of Education, Eastern Cape	Second Respondent
MEC of Education, Free State	Third Respondent
MEC of Education, Gauteng	Fourth Respondent
MEC of Education, KwaZulu-Natal	Fifth Respondent
MEC of Education, Limpopo	Sixth Respondent
MEC of Education, Mpumalanga	Seventh Respondent
MEC of Education, Northern Cape	Eighth Respondent
MEC of Education, North West	Ninth Respondent
MEC of Education, Western Cape	Tenth Respondent

FILING NOTICE

1. Date on the roll: Not available
2. Document filed: Affidavit for Second Respondent
3. Filed by: Office of State Attorney: Pretoria

Signed and dated at Pretoria this 3rd day of August 2020.



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Gauteng Division
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And to: Attorneys for Applicants
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IN THE HIGH COURT OF SOUTH AFRICA
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Equal Education
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MEC of Education, Mpumalanga
MEC of Education, Northern Cape
MEC of Education, North West
MEC of Education, Western Cape

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent
Ninth Respondent
Tenth Respondent

AFFIDAVIT

I, the undersigned

THEMBA KOJANA

do hereby declare under oath as follows:

1. I am a major male, appointed as the Head of Department of the Eastern Cape Department of Education, with the address of my office and that of the Department situated at Steve Vukile Tshwete Complex, Zwelitsha.
2. The contents of this affidavit fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief and knowledge both

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true and correct. I am duly authorised by the MEC of Education, Eastern Cape to depose this affidavit and, by virtue of my office, I qualify as a witness.

3. The purpose of this affidavit is to comply with the order of the Honourable Court made on 17 July 2020 in paragraph 103.11 of the judgment delivered on the same date, namely, that the MEC must within 10 days file this affidavit this Court under oath, and provide a copy to the applicants, on the plan and programme which the MEC will implement without delay so as to comply with the duties of the MEC, and which address the following matters:
 - 3.1 in respect of each school under the jurisdiction of the MEC, when all of the qualifying learners will receive a daily meal under the NSNP, whether they are attending school or studying away from school as a result of the Covid-19 pandemic;
 - 3.2 what steps the MEC has have taken to achieve that;
 - 3.3 what further steps the MEC will take to implement that plan and programme; and
 - 3.4 when they will take each such step.
4. The Eastern Cape Provincial Department (*"the Department"*) is committed to providing a daily meal to all qualifying learners under the NSNP, whether they

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are attending school or studying away from school as a result of the COVID-19 pandemic. Currently, steps have been implemented to provide daily meals for all qualifying learners immediately.

5. The Department's experience has been that the most effective method to reach qualifying learners in the Province, is to make use of a decentralised method wherein schools are mandated to coordinate, facilitate, implement and report on the roll-out of the NSNP.

5.1 This ensures that schools address the specific needs of individual learners, which may not be possible through a centralised method.

5.2 As part of this decentralised process, Instruction Note 24 of 2 June 2020 was issued (see annexure 'EC 1'). These tranches were transferred to schools on 1 and 2 June 2020 for the first quarter. These tranches provided the finances for the feeding of qualifying learners and salaries for contracted volunteer food handlers. Although some delays were experienced with the transfer of the tranches for the second quarter, I have been assured that the tranches for the second quarter will be transferred on 5 August 2020. Steps are in place for the tranches to be transferred to schools for the third quarter in the first week of October 2020. These tranches provide finances for the feeding of all qualifying learners regardless of whether learners are in Grades attending classes at school or not.

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- 5.3 Schools were instructed by means of Instruction Note 32 on 17 June 2020 (see annexure 'EC 2') to put measures in place to ensure that all qualifying learners benefit from the NSNP.
- 5.4 On 22 July 2020, Instruction Note 38 (see annexure 'EC 3') was issued, instructing schools to report on the implementation and progress of the NSNP.
- 5.5 After the President announced on 23 July 2020 that public schools will be closed for 4 weeks, Instruction Note 40 of 27 July 2020 (see annexure 'EC 4') was issued providing further instructions on the implementation of feeding of all qualifying learners and the reporting mechanisms required. Instruction Note 40 furthermore provides that schools must provide food to any qualifying learners regardless of whether such learners are registered at the school or not. The only limitation to this allowance is that the school may not exceed its budget in doing so. Through the reporting and monitoring tool established, oversight will be provided where non-registered learners obtain meals through schools. The allowance was made to make the food even more accessible to learners, regardless of where such learners are registered, and regardless of whether the learners are attending classes or not.
- 5.6 In order to improve on our reporting system and to provide accurate statistics on the implementation of the programme for purposes of, *inter*

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alia, adherence to the court order, a system has been put in place for the electronic capturing of data at school and district level (see annexure 'EC 3' and annexure 'EC 4'). The transition from a manual capturing and reporting method to that of a direct electronic capturing and reporting method at school level has not been without its teething problems. However, the benefits of this system outweigh the challenges experienced. According to data obtained, the uptake of meals as at 30 July 2020 is 7037 over the period 27 June 2020 to 30 July 2020. An example of some of the learners currently receiving food through the NSNP is included (see annexure 'EC 5').

5.7 A draft business plan was submitted to the Department of Basic Education ("the DBE") on 9 July 2020 in order to provide for any amendments due to the impact of the COVID-19 pandemic. This business plan has not been finalised. We are in communication with the DBE in order to finalise this.

5.8 Where DBE held meetings, or issued instructions or requests, we have endeavoured to respond with inputs and implement decisions as speedily as possible.

6. In order to continuously monitor the implementation of the plans and programmes, steps have been taken to tighten the oversight of schools by the relevant district officials.

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- 6.1 Administrative and internal processes are under way to tighten controls in this regard.
- 6.2 Discussions are underway to determine whether scholar transport should or may legally be provided for learners who qualify for scholar transport and who qualify for feeding under the NSNP, who are not attending school. These discussions include the practical implications of the roll-out of such a system during school closures and non-phased in grades. This process requires interaction between the Eastern Cape Department of Transport and the Eastern Cape Department of Education. It is envisaged that decisions in this regard will be made within the next 15 work days.


Deponent: T Kojana .

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at _____ on this _____ day of August 2020 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

COMMISSIONER OF OATHS
FULL NAMES:
STREET ADDRESS:
CAPACITY:
AREA:


Commissioner of Oaths
Florence Mukoyi
Mase and Mukoyi Inc.
3 Suffolk Road
Berea, East London
Practising Attorney

" EC | "



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Tel No: 040 842 7016 " Fax No.: 086 8577 012 " " Enquiries: Nomandla Gobeni-Samela

TO : DISTRICT DIRECTORS
CHIEF EDUCATION SPECIALISTS, ESSS
NSNP CO-ORDINATORS
SCHOOL PRINCIPALS
SCHOOL GOVERNING BODIES

CC : CLUSTER CHIEF DIRECTORS
PROGRAMME 2 MANAGER
DIRECTOR DS&G

FROM : SUPERINTENDENT GENERAL

DATE : 2 JUNE 2020

SUBJECT : INSTRUCTION NOTE 24: NATIONAL SCHOOL NUTRITION PROGRAMME
TRANSFER OF FUNDS TO SCHOOLS

PURPOSE:

1. The purpose of the Instruction Note is to guide Education Districts and Schools on matters pertaining to the first NSNP tranche for 2020/21.

BACKGROUND:

2. The Division of Revenue Act (DORA) provides an annual statutory basis for the provisioning as well as the utilization of Conditional Grants, including the NSNP Conditional Grant. The stipulations of the DORA, as they relate to NSNP, are translated into an annual NSNP Conditional Grant Framework which becomes the basis for the development of an Annual NSNP Business Plan by each Provincial Department of Education.
3. The annual promulgation and formulation of the DORA and NSNP Conditional Grant Framework, respectively, naturally introduce amendments to NSNP implementation, year on year. Since the NSNP Business Plan is an Implementation Manifesto or Blueprint of the NSNP Conditional Grant and also for purposes of realizing a uniform and seamless implementation across the Province it is imperative that amendments or changes that have been made, even though they were consulted on, be reduced into a Circular, Instruction Notes or Memoranda.
4. The Honourable Minister of Basic Education announced the re-opening of schools on 1 June 2020 following the closure of all schools due to the implementation on the Disaster Management declaration in the context of the COVID-19 pandemic.
5. This document serves to standardize the system whereby Education Districts and specifically Schools respond to matters pertaining to utilization of funds received in the first transfer

OUTLINE OF FUNDS TRANSFERRED:

6. All schools that were included in the approved business plan for 2020/21 financial year, notwithstanding anything to the contrary, will receive an allocation of funds based on the approved Business Plan.
7. These funds are expended as follows:

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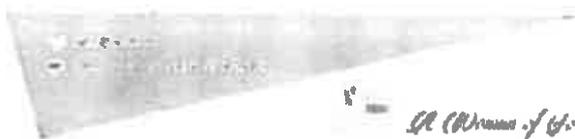
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4. With due consideration that the working hours of Volunteer Food Handlers are a maximum of 6 hours per day, all feeding shall have to start by 9:30 and be completed by 12:00

f Thank you for your support and co-operation in ensuring that we support our learners through this pandemic.

T. S. KUMAR
HEAD OF DEPARTMENT

17/06/2020
DATE



DR (Director of Studies)



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Tel No. 043 602 7016** Fax No.: 043 6577 012*** Enquiries: Nomandla Goben-Simani

TO : DISTRICT DIRECTORS
CHIEF EDUCATION SPECIALISTS, ESSS
NSNP CO-ORDINATORS
SCHOOL PRINCIPALS
SCHOOL GOVERNING BODIES

CC : CLUSTER CHIEF DIRECTORS
PROGRAMME 2 MANAGER
DIRECTOR ID&G

FROM : SUPERINTENDENT GENERAL

DATE : 17 JUNE 2020

SUBJECT : INSTRUCTION 32: NATIONAL SCHOOL NUTRITION PROGRAMME
FEEDING OF ALL LEARNERS AS OF 22 JUNE 2020

1. This instruction note aims to provide a directive to Principals on the feedings of all NSNP learners amid the phasing-in of grades during the COVID-19 Pandemic. Due to the nature of the pandemic, many directives issued will not remain static, resulting in amendments being made, as and when required.

2. Schools re-opened for Grades 7 & 12 on 08 June 2020 and these learners resumed the NSNP programme from the first day. A phased-in approach will be applied for the return of learners in other grades on 06 July and on 03 August 2020.

3. Due to the socio-economic challenges experienced in communities, the Eastern Cape Department of Education is promoting the provision of NSNP meals to all learners, including learners who are not yet back at school.

4. Schools are hereby requested to put measures in place to ensure that ALL qualifying learners' benefit from the NSNP. The proposed approach to be followed is as follows:

4.1. Schools are requested to implement a school specific plan for the provision of meals to learners not yet attending school and share the plan with Circuit Managers and District NSNP Co-ordinators.

4.2. The plan to include the learners at school as on 22 June 2020, as well as learners still at home.

4.3. Schools are to record the following information for learners that arrive at schools for meals should they present from a different school:

4.3.1. Name and Surname

4.3.2. Date of birth

4.3.3. Name of school where the child is enrolled current grade of the learner

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Volunteer food handler stipend, payable in line with the revised amendment to the 2020 School Calendar. As Food Handlers are assuming duty in June 2020 all Food Handlers contracted per the prescribed Food Handler Sliding Scale to be remunerated from June 2020.

- ii. Gas allocation as per the sliding scale for June 2020.
 - iii. Cooked meals for grade 7 and grade 12 learners. (Procurement for and disbursement to learners in grades not yet phased in will be detailed in due course.
8. The funds that have been transferred are inclusive of all learners (in all Grades) who qualify for the NSNP programmes. As a way of guiding Schools, a School Specific Document that is adaptive, has been developed and sent to all Districts and Schools
 9. Schools are advised that the database from SASAMS was not used due to a technical glitch with EMIS at the time of the transfer. Any differences in learner numbers will be corrected with the next NSNP payment.
 10. The first term NSNP payment has been processed to reach schools by 29 May 2020. Should there be any other disparities or challenges a two-way communication is highly recommended

FEEDING OF LEARNERS

11. Feeding of Learners should commence on the date the Minister of Basic Education pronounces for the resumption of learning, in line with the phased introduction of grades.
12. As alluded to above a separate memorandum detailing the modus operandi for feeding learners not yet phased in will follow in due course. Schools should thus be prudent in using feeding funds for the grades phased in so that they have funds to procure for the learners still at home when an instruction to that effect is issued.
13. Volunteer Food Handlers must be orientated on COVID-19 Health and Safety Protocols. NSNP-specific SOPs and related documents, circulated to Districts and Schools, should serve as reference.

GRAIN RECORD KEEPING AND GOVERNANCE:

14. Districts are required to monitor that all funds are aligned to beneficiaries. If any school should cease operations or not re-open the funds must follow the enrolment and placement of learners to ensure that the beneficiaries are the ultimate recipients of NSNP. A collaborative arrangement between the Circuit Management and District NSNP Office is essential in this regard.
15. All schools are expected to ensure that they comply with the NSNP guidelines for the Programme in respect of the procurement and provision of meals. Any offset required will be made in the transfer for Quarter 2, 2020/2021 save for omissions.
16. All schools must access the approved Menu as provided through the WIZARD together with their school specific budgets. Districts are to assist Schools with the revised calculation template which helps schools to determine the adjustment of food quantities as learner numbers increase with the phased in approach to the sector School Re-opening Documents for schools\EC SSif_school calc_v1.xlsx.
17. It has to be reiterated that any amendments or changes in the learner cohort phased in or otherwise will be addressed in a subsequent communique.


T. S. KUJANA
HEAD OF DEPARTMENT

03/03/20
DATE

ALESIRIRA SIBUKU
2020



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TO : DISTRICT DIRECTORS
CHIEF EDUCATION SPECIALIST, ESSS
NSNP CO-ORDINATORS
SCHOOL PRINCIPALS
SCHOOL GOVERNING BODIES

CC : DEPUTY-DIRECTOR'S GENERAL
CLUSTER CHIEF DIRECTORS

FROM : SUPERINTENDENT GENERAL

DATE : 22 JULY 2020

SUBJECT : INSTRUCTION NOTE 38/2020

1. The purpose of the document is to request all Districts to provide a report on the NSNP feeding of learners who have not phased in as yet. The reports are expected to provide a detailed account on the implementation of instruction note 32/2020.
2. A legal matter pertaining to the feeding of learners that have not returned to school has been initiated and in respect of the order issued, details of all schools that are currently not feeding learners must be issued with urgency to the Provincial Office for submission to legal services. This must be in an electronic table which can be manipulated.
3. Districts are to report on all school that are not feeding learners which includes the following:
 - a. EMIS number of the school
 - b. Name of School
 - c. District
 - d. Number of learners fetching cooked meals
 - e. Primary cause of learners not being fed.
 - f. Any steps that will be undertaken to increase uptake meals by learners not phased in.
 - g. Time frames for the implementation of these steps.
4. All reports must be signed by the District Director as per official and legal requirements.
5. This information will be required weekly in respect of the order issued:
 - a. 23 July 2020 (first submission)
 - b. 29 July 2020 (second submission)
 - c. 05 August 2020 (third submission)



building blocks for growth

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INSTRUCTION NOTE 38/2020

d. 12 August 2020 (final submission)

6. Non-compliance in respect of reporting the information will render the Department in violation of an officially issued order.
7. The subject matter must be judiciously shared to ensure that a rapid response is achieved. Failure to effect this instruction note will result in disciplinary steps undertaken in accordance with Departmental Policy.
8. All Education Districts should submit the required information by Friday, 24 July 2020 by 16:00.



R. M. TYWAKADI
ACTING SUPERINTENDENT GENERAL

23/07/2020

DATE

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TO : DISTRICT DIRECTORS
CHIEF EDUCATION SPECIALISTS, ESSS
NSNP CO-ORDINATORS
SCHOOL PRINCIPALS
SCHOOL GOVERNING BODIES

CC : CLUSTER CHIEF DIRECTORS
PROGRAMME 2 PROGRAMME MANAGER
DIRECTOR IDS and G

FROM : SUPERINTENDENT GENERAL

DATE : 27 JULY 2020

SUBJECT : INSTRUCTION NOTE 40: NATIONAL SCHOOL NUTRITION PROGRAMME
FEEDING OF ALL LEARNERS

1. This note aims to provide an instruction to Principals on the feeding of all NSNP benefitting learners amid the outcomes of the proclamation by the Honourable President in relation to the short period of reprieve for learners in relation to the peak of the COVID-19 pandemic.
2. Schools are hereby requested to put measures in place to ensure that ALL qualifying learners benefit from the NSNP starting the 27 July 2020 until the period declared as the completion of the phasing in of all grades. The proposed approach to be followed is as follows:
 - a. Schools are requested to implement and submit a school specific plan to Districts which addresses the following:
 - b. The list of officials delegated to implement, monitor and support feeding at the School
 - c. Inclusion of both School Support Teams and Volunteer Food Handlers for feeding
 - d. Determined Feeding times
 - e. Methodology of feeding such as rotation/ grade scheduling
 - f. Communication plan (local networks)
 - g. Weekly Reporting
 - h. Stakeholders: DSD, Social Partners, Community Safety etc
3. Schools are to record the following information for learners that arrive at schools for meals should they present from a different school:
 1. Name and Surname
 2. Date of birth
 3. Name of school where the child is enrolled
 4. Current grade of the learner
4. With due consideration that the working hours of Volunteer Food Handlers are a maximum of 6 hours per day, all feeding shall have to start by 07:00 and be completed by 13:00.

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5. In respect of funding, all benefitting schools should ensure that they align their feeding capacity to the number of beneficiaries whom have been transferred for as reflected in the enrolment data in EMIS e.g. if the school enrolment is 200 the school can only provide a maximum of 200 meals per day.
6. All COVID-19 safety protocols must be adhered to during the feeding of learners. Learners should also be encouraged to bring a container from home for the serving of their meal and must have the mouth and nose covered upon arrival at the school.
7. Thank you for your support and co-operation in ensuring that we support our learners through this pandemic.



MR T. K. KOJANA
SUPERINTENDENT GENERAL: EDUCATION

27/07/20
DATE



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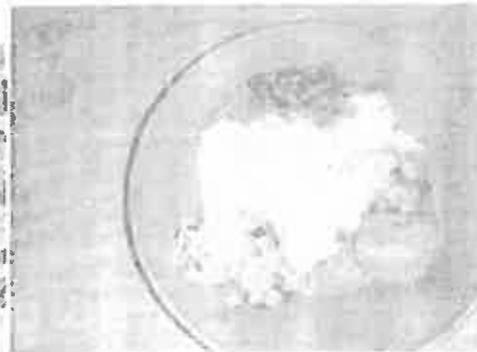
"EGS"

Feeding Examples from the following Districts:

Joe Qabi

Alfred Nzo East

Sara Baartman



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MEC of Education, Western Cape	Tenth Respondent

FILING NOTICE

1. Date on the roll: Not available
2. Document filed: Affidavit for Second Respondent
3. Filed by: Office of State Attorney: Pretoria

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Signed and dated at Pretoria this day of August 2020.

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Gauteng Division
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And to: Attorneys for Applicants
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