

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

**Case No: 22588/2020**

In the matter between:

<b>Equal Education</b>	<b>First Applicant</b>
<b>School Governing Body of Vhulaudzi Secondary School</b>	<b>Second Applicant</b>
<b>School Governing Body of Mashao High School</b>	<b>Third Applicant</b>

and

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

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**FILING NOTICE**

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

Signed and dated at Pretoria this 3<sup>rd</sup> day of August 2020.



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**Ms P Khosa**  
**Attorney for Respondent**  
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**To:           The Registrar of the High Court**  
**Gauteng Division**  
**PRETORIA**

**And to:       Attorneys for Applicants**  
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IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No: 22588/2020

In the matter between:

Equal Education  
School Governing Body of Vhulaudzi Secondary School  
School Governing Body of Mashao High School

First Applicant  
Second Applicant  
Third Applicant

and

Minister of Basic Education  
MEC of Education, Eastern Cape  
MEC of Education, Free State  
MEC of Education, Gauteng  
MEC of Education, KwaZulu-Natal  
MEC of Education, Limpopo  
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

I, the undersigned

BAFANA NGWENYA

do hereby declare under oath as follows.

1. I am a major male, appointed as the Acting Director of Legal Services for the Free State Department of Education, with the address of my office and that of the Department situated at No 55, corner Miriam Makeba Street and Markgraaf Street, Bloemfontein.
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

*BCW Spr*

true and correct. I am duly authorised by the MEC of Education, Free State to depose to 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. I report that the Provincial Department has issued the following circulars:

*Ben Sp*

- 4.1 LTA 11:** Provision of meals for all NSNP learners amid phasing in of grades during Covid – 19 pandemic (annexure FS 1).
- 4.2 LTA 12:** Amendment to provision of NSNP meals for all NSNP learners amid the phasing in of grades during COVID – 19 pandemic (annexure FS 2).
- 4.3 LTA 13:** Reopening on school feeding for all NSNP learners amid the phasing in of Grades including learners who are not yet back at school during the Covid–19 pandemic (annexure FS 3).
- 4.4 LTA 14:** NSNP Management of Covid-19, wherein schools are encouraged to make interim arrangements that will ensure the continuation of the NSNP without incurring additional financial implications (annexure FS 4).
- 4.5 LTA 15:** Feeding for all eligible learners during the four-week school break from 27 July to 24 August 2020, requesting the School Management Teams to ensure that the NSNP continues during the school break and the safe and orderly conditions (annexure FS 5).
- 6.** Currently the Provincial Department is feeding learners under the NSNP as

*BCW* *SPN*

follows.

- 5.1 257 045 learners from Grades 3,6,7,10,11 and 12 learners who are phased in have been receiving cooled meals in schools
  - 5.2 29 816 learners who are not yet at back at school are estimated to have collected cooked meals from schools on a staggered basis
  - 5.3 All eligible learners are coming to school to fetch a cooked meal.
6. I report that the first tranche of funds for feeding learners were transferred to schools in June 2020.
  7. The funds are sufficient to sustain feeding of all eligible NSNP learners amid the phasing-in of grades, including learners who are not yet back at school until September 2020.
  8. The next tranche will be transferred to schools in August 2020.



Deponent: B Ngwenya

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 BLUDEM FONTEIN on this 3<sup>rd</sup> 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:

DIREKTEUR OPENBARE VERVOLGING DIRECTOR OF PUBLIC PROSECUTIONS	
JANET OSTEEN NISSENBERG	
Vols. Voorname/En Van / Full Names & Surname	
Amp/Rang/Designation (Rank) SEKRETARIS ASSISTENT	
Watersal Sentrum/Centre, Ground Floor	
Adwal Str./St., Bloemfontein	
BLOEMFONTEIN	3/1/2020
Plak/Place	Datum/Date

NATIONAL PROSECUTING AUTHORITY
DIRECTOR OF PUBLIC PROSECUTIONS FREE STATE DIVISION
2020 -08- 03
BLOEMFONTEIN DIREKTEUR OPENBARE VERVOLGING
NASIONALE VERVOLGINSGESAG

Enquiries  
Sl. Dunn: 051 409 8310



Education  
Department of  
Education  
FREE STATE PROVINCE

FS

17 JUNE 2020

LTA 11 (NSNP) 2020

TO: DEPUTY DIRECTORS-GENERAL  
CHIEF DIRECTORS  
DIRECTORS  
CIRCUIT MANAGERS  
PRINCIPALS OF ALL SCHOOLS

**PROVISION OF NSNP MEALS FOR ALL NSNP LEARNERS AMID THE PHASING-IN OF GRADES DURING THE COVID-19 PANDEMIC**

1. This circular 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 Free State Department is promoting the provision of NSNP meals to all learners, including learners who are not yet back at school.
4. In terms of LTA 10 (NSNP) 2020, schools have received NSNP funding for all learners as per the 10th day statistics. You are directed to use the NSNP menu calculator to determine quantities to cook daily and to adhere to the provisions in terms of the management of the NSNP budget, as indicated in LTA 10 (NSNP) 2020.
5. 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:
  - 5.1. Schools are requested to implement a school specific plan for the provision of meals to learners not yet attending school with the expected assumption date of 22 June 2020, with due consideration of the different circumstances of learners
  - 5.2. The plan to include the learners at school as on 22 June 2020, as well as learners still at home
  - 5.3. 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
  - 5.4. Schools are requested to put this Differentiated Feeding Plan in writing and to submit the signed-off plans to the Circuit Manager for ratification by 22 June 2020.
6. The Provincial Communication section will assist in communicating the message on the resumption of feeding to all learners through community radio stations and other forms of media.
7. Thank you for your support and co-operation in ensuring that we support our learners through this pandemic.

ADV TH MALAKOANE  
SUPERINTENDENT-GENERAL OF EDUCATION

18/06/2020  
DATE



Enquiries: SL Dunn  
Tel: 051 409 8310



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Department of  
Education  
FREE STATE PROVINCE

21 JUNE 2020

**LTA 12 (NSNP) 2020**

**TO: DEPUTY DIRECTORS-GENERAL  
CHIEF DIRECTORS  
DIRECTORS  
CIRCUIT MANAGERS  
PRINCIPALS OF ALL SCHOOLS**

**AMENDMENT TO PROVISION OF NSNP MEALS FOR ALL NSNP LEARNERS  
AMID THE PHASING-IN OF GRADES DURING THE COVID-19 PANDEMIC**

1. This circular should be read in conjunction with LTA 11 (NSNP) 2020.
2. This circular confirms the instruction issued in LTA 11 (NSNP) 2020, whilst acknowledging that some schools may require a longer lead time to implement the instruction.
3. However, after careful consideration of all the occupational, health and safety protocols, schools are afforded lead time to prepare themselves and attend to all the Hygiene and Health Protocols and develop a Staggered Plan to feed learners.
4. Schools are therefore given the week of the 22 June 2020 to finalize all the measures to feed learners as expected and inform parents accordingly. However, schools that may be ready to feed learners before end of the week should inform the office of the District Director via the DCES responsible for NSNP.
5. The deviation from feeding on the 22 June 2020 is given to allow schools to finalise and put all measures in place.
6. No deviation will be approved and or allowed beyond the 26 June 2020.
7. We thank you once again for your support and co-operation in ensuring that we support our learners through this pandemic.

Yours in Education

**ADV M MALAKOANE  
HOD: EDUCATION**

**DATE: 21 June 2020**

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BCW

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education  
Department of  
Education  
FREE STATE PROVINCE

21 JULY 2020

LTA 13 (NSNP) 2020

TO: DEPUTY DIRECTORS-GENERAL  
CHIEF DIRECTORS  
DIRECTORS  
DEPUTY DIRECTORS  
CIRCUIT MANAGERS  
DISTRICT COORDINATORS  
LEARNER SUPPORT MONITORS

**REPORTING ON SCHOOL FEEDING FOR ALL NSNP LEARNERS AMID THE PHASING-IN OF GRADES INCLUDING LEARNERS WHO ARE NOT YET BACK AT SCHOOL DURING THE COVID-19 PANDEMIC**

1. The NGO Equal Education went to court on an urgent basis to ask for a declaratory order forcing the Department of Basic Education to feed all eligible children irrelevant of whether they have returned to school or not.
2. The Gauteng High Court granted the order on Friday, 18 July 2020.
3. This letter aims to provide a directive to Districts on reporting of the feeding of all NSNP learners amid the phasing-in of grades including learners who are not yet back at school during the COVID-19 Pandemic. The letter must be read in conjunction with LTA 12.
4. The Department of Basic Education (DBE) has to roll out the NSNP to all eligible learners, regardless of whether they have returned to school or not without delay.
5. The Basic Education Minister, Mrs Angy Motshekga and the Provincial Education MECs have been ordered by the court to file the detailed plans and programmes for the resumption of the NSNP to all eligible learners within 10 days.
6. The Minister will be required to file updates with the court every 15 days to prove that the plans to provide meals to learners are actually being implemented.
7. Districts are hereby requested to ensure that signed off qualitative and quantitative reports are submitted to Head Office every Monday of the new week.
8. The template is also attached. Annexure A.
9. Thank you for your support and co-operation in ensuring that reports are submitted timeously.

.....  
**ADV TH MALAIGANE**  
**SUPERINTENDENT GENERAL OF EDUCATION**

22/7/2020  
.....  
DATE

Private Bag X20565, Bloemfontein, 9300  
Learner Support  
Trustfontein Building, St Andrew Street, Bloemfontein.  
Tel: 051 409 8316 Fax: 086 540 3922 Email: P.Leripa@education.gov.za

Ben  
SP



**24 JULY 2020**

**LTA 15 (NSNP) 2020**

**TO: DEPUTY DIRECTORS-GENERAL  
CHIEF DIRECTORS  
DIRECTORS  
DEPUTY DIRECTORS  
CIRCUIT MANAGERS  
PRINCIPALS  
DISTRICT COORDINATORS  
LEARNER SUPPORT MONITORS**

**FEEDING FOR ALL ELIGIBLE LEARNERS DURING THE 4 WEEK SCHOOL BREAK  
STARTING FROM 27 JULY TO 24 AUGUST 2020**

1. This letter aims to provide a directive to schools on feeding of all eligible learners during the 4-week school break starting from 27 July to 24 August 2020.
2. LTA 11-13 (NSNP) 2020 has relevance.
3. School Management Teams (SMTs) are requested to ensure that NSNP continues during the break under safe and orderly conditions.
4. Thank you for your support and co-operation in ensuring that all eligible learners receive the meals under safe and orderly conditions.

.....  
**ADV TH MALAKOANE**  
**SUPERINTENDENT-GENERAL OF EDUCATION**

.....  
**DATE**

*Ba*  
*SM*



