

To: Ms Debbie Schäfer
Minister for Education
Western Cape Government
By email: edumin.edumin@westerncape.gov.za

And

to: Mr Brian Schreuder
Superintendent-General (Head of Education)
Western Cape Education Department
By email: Eduhead.Eduhead@westerncape.gov.za

CC: Mr Lance Abrahams
Western Cape Education Department
By email: Lance.Abrahams@westerncape.gov.za

CC: Mrs Patricia van Niekerk
Western Cape Education Department
By email: Patricia.VanNiekerk@westerncape.gov.za

23 October 2020

Dear MEC Schäfer and HOD Schreuder,

**WESTERN CAPE EDUCATION DEPARTMENT PLANS' FOR LEARNER ADMISSIONS
FOR THE 2021 ACADEMIC YEAR**

1. Equal Education (“EE”) is a membership-based, democratic movement of learners, parents, teachers and community members advocating for the provision of both an equal and quality education in South Africa.
2. The Equal Education Law Centre (“EELC”) is a registered law clinic. Its staff of social justice lawyers specialise in education law and policy, through conducting legal research and advocacy, community lawyering and public interest litigation. EELC’s overriding goal

is to use the law to ensure the realisation of every learner's right to equitable, safe and quality basic education regardless of the learner's circumstances.

3. Over the years, the EE and EELC have observed a concerning trend of children being unplaced, especially for grades 1 (one) and 8 (eight). Year after year, concerned parents and communities approach our organisations requesting assistance with the placement of their children in grade appropriate schools. This year, the EELC has been approached by approximately 53 parents in the Western Cape who requested assistance with seeking placement for their children in grade appropriate schools.
4. The COVID-19 pandemic resulted in the closure of all public schools across the country. While most learners have since returned to school, many still remain at home due to comorbidities, or their parents / caregivers choosing to keep them at home. The pandemic has altered not only admission timelines for schools, but also the requirements for admission to a grade appropriate school, which could ultimately affect learner admissions for the 2021 academic year. Whilst the Department of Basic Education's COVID-19 Directions provide for the exemption of learners from physically attending school and require parents / caregivers to notify a school in writing on a prescribed form that a learner will not be physically present at school, we have noted that many parents have failed to do this, due to them being unaware of this requirement or being unable to access school for various reasons. This could then result in the learner being deregistered from school with no guarantee of being readmitted into school for the 2021 academic year.
5. For this reason, we are concerned that an increased amount of learners will be in need of placement for the 2021 academic year, which will require timeous and effective planning by the provinces, especially Western Cape, which has previously had one of the highest numbers of unplaced learners, notwithstanding the implications of COVID-19, due to in-migration. Given this pattern and the consequences of COVID-19, it is to be expected that there will be a larger influx of children in Western Cape next year seeking admission either into grade 1 or grade 8.

EELC's observations on existing problems with learner admissions

6. The approach of the EELC when consulting on admission matters has been to advise parents to apply to at least five schools close to their place of residence. In the event that their applications have been unsuccessful, we refer clients to the relevant Western

Cape Department of Education (“WCED”) district offices for assistance with placement. In a limited number of instances, the district offices have successfully assisted our clients with school placement, but most times matters are not resolved and learners have to wait for long periods of time without any access to basic education, while parents are being sent from pillar to post trying to secure placement for their children in a grade appropriate school.

7. Through our work, the EELC noted that there are various factors that contribute to learners not being placed in school, this includes, problems with the online admission system during the application process, parents not being able to complete an online application, schools being oversubscribed, the district officials not fulfilling their mandate, unworkable learner admissions systems at district level, and a disconnect between schools and districts.
8. For example, in January 2020, EELC was approached by a parent requesting assistance with the placement of her son, *Mila, for grade 8. The parent had made an online application timeously in 2019, however, all three schools rejected her application informing her that they had no more space to accept new learners. The parent was advised to visit the relevant district office to register *Mila on the unplaced learner’s database. At the end of February, the parent reached out to EELC again, explaining that *Mila was still out of school. The parent once again visited the district office and was instructed by an official to approach two local schools as these schools still had the capacity to admit him. However, both schools refused the learner admission, explaining that the schools were full and that they could only admit more learners on the circuit manager’s instruction and they had received no communication to that effect.
9. The EELC reached out to the relevant district to get clarity on the matter wherein a district official undertook to look into the matter. After not receiving feedback from the official, the EELC again reached out to the same official, who in turn could not recall the learner’s case nor was he able to retrieve the details provided to him by the EELC. The EELC enquired about this lack of coordination and the official revealed that the district office did not keep a database of unplaced learners, and that schools were the ones responsible for having such databases. This happened to several other clients who visited the district office to register unplaced children but could not be accounted for when EELC followed up on these cases.

10. The above case is only one of many that demonstrate the gaps in the handling of applications.
11. In another matter, EELC was approached by the Klappmuts community in January 2020. The community has a significant number of unplaced learners as there is only one primary school which is oversubscribed and has an exclusionary language policy that has left many learners destitute with no access to learning. EELC attended a community meeting in Klappmuts, where we were shown the deplorable conditions these learners are subjected to as the community has created a makeshift school in shacks in order to ensure that the learners have access to a learning environment. The EELC addressed communication to the District Director of the Cape Winelands Education District about the matter. Mr Benjamin communicated that this matter would be dealt with as soon as the national lockdown was relaxed, we have followed up numerous times, but to date no satisfactory response has been received.
12. The aforesaid factors, coupled with the added layer of complexities caused by the COVID-19 pandemic, will no doubt result in thousands of learners requiring placement in the 2021 academic year.

WCED's legal duty to ensure the placement of all the children in the province

13. Section 29(1) of the Constitution guarantees everyone the right to basic education. The right to basic education is an immediately, realisable right and its provision is not subject to the available resources of the state.
14. The South African Schools Act 84 of 1996 ("SASA") was enacted to give effect to this right and regulates the public schooling system. The Provincial Education Departments ("PED's") are crucial in ensuring the placement of all the children in their province in a grade appropriate school. Section 3(3) of SASA provides that every Member of the Executive Council ("MEC"), must ensure that there are enough school places so that every child who lives in their province may attend school. Furthermore, Regulation 5 of the National Admission Policy provides that the Head of Department ("HOD"), must determine a process of registration for the admission of learners to public schools, in a timely and an efficient manner. The HOD is responsible for the administration of learner admissions and must coordinate the provision of schools and the administration of admissions of learners to ordinary public schools, working with school governing bodies ("SGB's"), to ensure that all eligible public schools are suitably accommodated in

compliance with SASA. Furthermore, the District Directors, supported by the district officials, must service the group of schools allocated to the District.

15. The MEC, HOD and District officials therefore have a statutory and constitutional duty to ensure that all children in the province are placed in grade appropriate schools for each academic year and must thus take all necessary steps to ensure that this is done.

Request clear and detailed plans for 2021 learner admissions in Western Cape

16. In light of the above, we hereby request the WCED's clear and detailed plans for learner admissions for the 2021 academic year, including information on: -

- 16.1 The number of learners, aggregated according to respective grades, that did not return to school to complete the 2020 academic year.

- 16.2 An indication as to how many of the learners in paragraph 16.1 above have been exempted from completing the 2020 academic year.

- 16.3 Besides the publication of information on the WCED's website (and other online platforms), pertaining to learner admissions for the 2021 academic year and steps parents have to take to ensure their child's placement, what other means of communication is being used to engage parents and / or caregivers on these issues?

- 16.4 What steps, if any, have been taken to support parents in accessing and navigating online application systems?

- 16.5 What steps, if any, are being taken to ensure that education districts have adequate systems in place to facilitate learner admissions for the 2021 academic year? Where systems are in place in particular districts, we request details of these systems.

- 16.6 What contingencies have been made in order to support the influx of admissions next year bearing in mind current social distancing requirements; lack of adequate schools in the Western Cape and expected increases in numbers of admissions due to the impact of COVID-19?

16.7 The WCED's current learner transport policy does not allow for learner transport assistance to schools and learners in urban areas. This may put pressure on schools in high density areas where parents cannot afford to enroll their children in schools further away from their homes due to high transport costs. Will the WCED be taking steps to amend the learner transport policy to allow for transport assistance to learners? If not, please provide reasons.

17. We request that you provide us with your formal written response hereto by no later than **Friday, 06 November 2020.**

Yours faithfully,



EQUAL EDUCATION LAW CENTRE

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