



Date: 23 June 2022

To: Mr ER Mafoko
Chief Director: Infrastructure Planning and Delivery
Department of Basic Education
Per email: Mafoko.r@dbe.gov.za

Adv. Charles Ledwaba
Legislative Services
Department of Basic Education
Per email: Ledwaba.C@dbe.gov.za

Dear Sirs

DRAFT AMENDMENTS TO THE REGULATIONS RELATING TO MINIMUM UNIFORM NORMS AND STANDARDS FOR PUBLIC SCHOOL INFRASTRUCTURE – GOVERNMENT GAZETTE NO.: 46543

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. On 3 February 2022, both EE and the EELC were part of a stakeholders’ discussion where the Department of Basic Education (“**DBE**”) presented on the progress they had made in formulating a draft amended Minimum Uniform Norms and Standards

for Public School Infrastructure (“**draft amended Norms**”), the contents of the draft amended Norms, and the proposed timeline for the finalisation of the amended Norms.

4. During the above mentioned meeting, the DBE undertook to keep both organisations updated on any developments and to share the draft amended Norms with us as soon as they were published for public comment.
5. However, despite this undertaking, neither organisation received any further updates from the DBE, nor was it brought to our attention that the draft amended Norms had been published for public comment. In fact, on 14 June 2022, EE was notified through a media outlet that the draft amended Norms had been published for public comment, with this media outlet then providing them with a copy of the draft amended Norms.
6. As of 20 June 2022 we have only been able to locate the draft amended Norms in two places, namely on the GCIS website and on the government gazette website, on page 139 of a general Government Notices gazette. Of great concern, despite the importance of the proposed amendments, there has been no mention of the publication of the draft amended Norms on any of the DBE social media sites, nor has the document been published on the DBE website.
7. The publication of the draft amended Norms has occurred as a result of a long campaign run by EE, which culminated in a court judgment that confirmed the critical importance of this document in ensuring the rights of children to access basic education. The amendments that are proposed in the draft amended Norms have the potential of eroding the crucial gains that have been made and it is, therefore, important that all affected stakeholders are adequately engaged. Both EE and EELC, therefore, share a deep concern that the public, and specifically those that will be affected by these amendments, are not being made aware of this vitally important document; and that robust and meaningful public participation is thus being stifled.
8. In addition to the above, the wording of the draft amended Norms is confusing and not user-friendly for the broader public in that it does not make it immediately clear what from the existing Norms and Standards document is being amended or replaced. For example, the draft amended Norms states “*by the substitution in sub-regulation (1) for paragraph (a) of the following paragraph...*” instead of “*by the substitution ~~in~~ of sub-regulation (1) ~~for~~ paragraph (a) ~~of~~ for the following*”

paragraph...". This proposed wording would make it clear exactly which clauses are being substituted, and which are being deleted.

9. Amongst some of the shortcomings we have identified (which we will elaborate upon in our submission), both EE and EELC are concerned that on an immediate reading of the draft amended Norms it seems as though all accountability and monitoring measures that were previously used to hold the DBE and provincial education departments accountable for efficient delivery of school infrastructure have been removed. Moreover, the 2018 High Court judgment was made within a context where specific timelines applied to the provision of infrastructure to schools, namely the three-year, seven-year, ten-year, and December 2030 timelines. As such, the removal of these timelines in the draft amended Norms amounts to a regression of the right to access basic education.
10. Furthermore, an important aspect of the existing Norms and Standards is the requirement on provincial education departments to report annually to the DBE on their plans regarding the implementation of the Norms and Standards. These provisions provide much needed guidance to the provincial education departments and require that these reports include information on district level backlogs, costed short-, medium-, and long-term plans, how new schools should be planned and maintained, and how existing schools are to be upgraded and maintained. Concerningly, it seems that the draft amended Norms now removes this guidance. Structure and standardisation of this type of reporting is essential for assessing progress being made by provincial education departments in implementing the Norms and Standards.
11. As a result of the above, we kindly request the following:
 - a. The draft amended Norms be published on the DBE website, as well as on the DBE social media platforms.
 - b. The DBE provides clarity in relation to the due date of submissions. We note that the draft amended Norms were published on 10 June 2022 with a 30 day comment period, this therefore means that the due date falls on 10 July 2022 which is a Sunday.
 - c. That the wording of the draft amended Norms be clarified in order to ensure certainty around what provisions are being amended.
 - d. As a result of the draft amended Norms not being widely published, and relevant stakeholders only now becoming aware of its publication, the timeline

within which comments are to be made has been significantly reduced. In order to allow for adequate and effective public participation, we request that the time period for comment be extended to 31 July 2022.

12. We kindly request that you confirm receipt of this letter and that you respond hereto by no later than Friday 24 June 2022.

Yours faithfully

EQUAL EDUCATION LAW CENTRE

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