



JOINT SUBMISSION BY

EQUAL EDUCATION AND EQUAL EDUCATION LAW CENTRE

ON

**AMENDMENTS TO THE REGULATIONS RELATING TO MINIMUM UNIFORM
NORMS AND STANDARDS FOR PUBLIC SCHOOL INFRASTRUCTURE**

(GG No. 46543 of 10 June 2022)

Submitted 29 July 2022

Prepared jointly by

The Equal Education Law Centre and Equal Education

A. INTRODUCTION

1. This is a joint submission made by Equal Education (EE) and Equal Education Law Centre (EELC) in response to the proposed amendments to the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, which were published by the Department of Basic Education (“**DBE**”) for public comment in Government Gazette 46543 of 10 June 2022 (“**2022 draft Amended Norms**”).
2. EE is a movement of learners, post-school youth, parents and community members, advocating for quality and equality in the South African education system. Our campaigns are informed by the experiences of EE members, policy analysis and research.
3. The EELC is a registered public interest law clinic specialising in education law. 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. EELC works closely with EE in pursuit of their mutual goals of an equal education system and quality education for all.
4. As early as 2011, EE embarked on an arduous and lengthy advocacy campaign calling for the first draft of the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure (the “**Norms**”). The Norms were subsequently promulgated on 29 November 2013, following an order made in the Bhisho High Court. Over the years, EE and the EELC have continued to advocate for the fulfilment of the Norms by the DBE and respective Provincial Education Departments (“**PEDs**”). To date, we continue to observe schools that remain without adequate and appropriate infrastructure which consequently limits and violates the right to quality education for millions of learners.
5. The draft amendments follow a 2018 Bhisho High Court judgment that confirmed the critical importance of the Norms in ensuring the rights of children to access basic education. Despite this, the 2022 draft Amended Norms fail to meet the spirit of the judgment and have the potential of eroding the crucial gains that have been made and seriously affecting the entitlements which learners have to adequate infrastructure in schools. EE and EELC call the constitutionality of the draft amendments into question, it is clearly regressive and goes against the immediately realisable nature of basic education. Given the far-reaching implications of the 2022 draft Amended Norms, both EE and EELC, therefore, share a deep concern that the public, and specifically those that will be affected by these amendments, are not adequately made aware of this vitally important document. Additionally, the manner in which the amendments are drafted makes it

difficult for ordinary citizens and in particular youth to engage properly with its content. Thus, robust, and meaningful public participation is being stifled.

6. EE and EELC welcome the process of legislative reform as it codifies the order obtained in the Bhisho High Court. We are, however, concerned that the proposed amendments go beyond the order in a manner that prejudices learners and their rights. Our submission is accordingly detailed and comprehensive, and proceeds as follows:

6.1 General concerns noting the following:

6.1.1 Vagueness in the wording in the draft

6.1.2 Regressive nature in the removal of timelines

6.1.3 The importance of the reporting criteria

6.2 We then proceed to tabulate provision-specific comments with our recommendations on the proposed amendments.

7. In the event that public hearings are held in consideration of these draft Amended Norms, EE and EELC would welcome the opportunity to present at these hearings.

Submission

Clause reference in 2022 amended Norms	Amended Regulation in the 2013 Norms	EE/EELC comments	EE/EELC recommendations
General Comments			
	<p>The wording of the 2022 draft Amended Norms is confusing and not user-friendly for the broader public in that it does not make it immediately clear what in the existing Norms and Standards is being amended or replaced. For example, the draft 2022 Amended Norms states “<i>by the substitution in sub-regulation (1) for paragraph (a) of the following paragraph...</i>” instead of “<i>by the substitution <u>of sub-regulation (1) paragraph (a) for the following paragraph...</u></i>”.</p>	<p>EE and EELC recommend that the wording of the 2022 draft Amended Norms be revised so as to make it clear which clauses are being substituted and which clauses are being removed. A suggestion of clearer wording could be: “<i>by the substitution <u>of sub-regulation (1) paragraph (a) for the following paragraph...</u></i>”.</p> <p>We further suggest that a revised user-friendly version be published in various languages allowing for further and more meaningful public participation and consultation.</p>	
Regulation 4(1)(b) of the existing 2013 Norms	<p>The 2022 draft Amended Norms remove all accountability and monitoring measures that were previously used to hold the DBE and provincial education departments accountable for the timeous delivery of school infrastructure. For example, the three-year, seven-year, ten-year, and December 2030 timelines have been removed, which amounts to a regression of the right to basic education.</p>	<p>EE and EELC strongly recommend that the specific timeframes not be removed. Attaching delivery of school infrastructure as per the existing Norms, to the National Development Plan (NDP), which itself does not contain specific timeframes, is sufficient.</p>	
4(6) – 4(8) of the existing 2013 Norms	<p>Worryingly, the required information that provincial education departments need to detail in their annual plans to the DBE regarding the implementation of the</p>	<p>EE and EELC recommend that the reporting guidance for provinces not be removed. Structuring and standardisation of this type of</p>	

		<p>Norms and Standards has also been removed in the 2022 draft Amended Norms.</p> <p>These provisions in the existing Norms provide much-needed guidance and require that these reports include information on district 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.</p>	<p>reporting are essential for assessing the progress being made by provincial education departments in implementing the Norms and Standards.</p>
Specific Comments			
2(a)	4(1)(a)	<p>EE and the EELC welcome the amendment insofar as it emphasises the enforcement of the Norms without excluding schools that fell within the 2013-2014, 2014-2015 and 2015-2016 MTEF cycle.</p>	
2(b)	4(1)(b)	<p>The proposed 4(1)(b) introduces a new priority mechanism in that it states <i>“as far as schools contemplated in sub-regulation 4(1)(a) are concerned, the following in order of priority must be prioritised for planning and implementation...”</i> [our emphasis]. There is, however, no guidance on this prioritisation as all references to infrastructure provisioning deadlines have been omitted in subsequently proposed clauses.</p> <p>Sub-regulations 4(1)(b)(i), (ii), and (iii) read with 4(3) of the current Norms provide deadlines by which the DBE must comply with each of the Norms and Standards, namely the three-year, seven-year, ten-year and 31 December 2030 deadlines. The effect of the proposed amendment is that all these timelines are done away with. The proposed amendment now merely notes and</p>	<p>EE and EELC recommend the following:</p> <p>That the timeframes under the current Norms and Standards remain in the draft Amended Norms.</p> <p>This can be achieved by the insertion of new sub-regulations 4(1)(b)(aa), 4(1)(b)(bb), 4(1)(b)(cc), and 4(1)(b)(dd) with the following wording:</p> <p><i>“(aa) with reference to the Norms and Standards mentioned in sub-regulation 4(1)(b)(i) and (ii), be completed within a period of three (3) years from the date of publication of the 2013 Norms and Standards Regulations.</i></p> <p><i>(bb) with reference to the Norms and Standards mentioned in sub-regulation 4(1)(b)(iii) be completed within a period of seven (7) years</i></p>

	<p>prioritises work that must be done in terms of the Norms and Standards, with no guidance in relation to what “prioritised” must look like.</p> <p>EE and the EELC reject this substitution in its entirety as it removes fundamental sub-regulations that provide guidance and ensure accountability on the part of the DBE and PEDs. We submit that the removal of the timelines is a retrogressive step as it erodes the progress made in getting Infrastructure norms published as well as removes the most important accountability measure for ensuring that the government complies with its obligations. An absence of timelines permits an indefinite pushing back of government’s obligations. Whilst we note that there is already failure to comply with the deadlines, this does not justify having no timelines at all. An immediately realisable right requires that duties owing in terms of the right, need to be discharged as soon as possible.</p> <p>The removal of the sub-regulation absolves the DBE and each PED of its legislative mandate in relation to when it ought to have met its mandate (in respect of the missed deadlines) and takes away its current responsibility to comply with upcoming deadlines. Furthermore, the proposed substitution introduces a new clause as regulation 4(1)(b)(v), namely “<i>all schools that do not have other minimum education areas for an enabling school environment</i>”. The effect of this substitution is that whilst electricity, water, sanitation, classrooms, and</p>	<p><i>from the date of publication of the 2013 Norms and Standards Regulations.</i></p> <p><i>(cc) with reference to the Norms and Standards mentioned in sub-regulation 4(1)(b)(iv), be completed within a period of ten (10) years from the date of publication of the 2013 Norms and Standards Regulations.</i></p> <p><i>(dd) with reference to the Norms and Standards mentioned in sub-regulation 4(1)(b)(v), be completed before 31 December 2030.”</i></p> <p>Furthermore, EE and EELC recommend the re-insertion of what is currently sub-regulation 4(3)(d) in the current Norms. This sub-regulation requires that “<i>a Member of the Executive Committee must...specifically focus on the norms and standards relating to libraries and laboratories for science, technology, and life sciences.</i>”</p>
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		<p>fencing are still specifically mentioned and thus prioritised, laboratories, and libraries are now broadly categorised under “<i>other minimum education areas</i>” effectively de-prioritising these spaces for provisioning. We note that according to the current Norms, infrastructure such as laboratories and libraries are meant to be provided by 2023. Relegating these necessities to “<i>other minimum education areas</i>” is concerning and is indicative of the DBE and PEDs attempting to shirk their responsibility to provide these critical resources.</p>	
2(c) – new insert	4(1)(c)	<p>This is a new section which is not contained in the current Norms. The new sub-regulation aligns the planning, prioritisation and phasing in of the Norms and Standards in line with the National Development Plan. EE and the EELC have concerns regarding the rationale of this alignment. The NDP, in comparison to the specifically mentioned date of 31 December 2030, by its nature holds no legislative power or protection and is, therefore, not binding and open to change.</p>	<p>EE and EELC recommend that the current wording of the clause remain. Therefore, “...before 31 December 2030.”</p>
2(e)	4(3)	<p>The proposed substitution seems to be an amalgamation of the current sub-regulation 4(5)(a) and (b).</p> <p>We are concerned that the retention of the words “as far as practicable” is a clear attempt to maintain an “escape clause”.</p> <p>We note that in the 2018 Bhisho judgment, EE argued that government must work together to deliver the</p>	<p>EE and EELC recommend the removal of the phrase “<i>as far as practicable</i>” from the provision so that sub-regulation 2(e) in the 2022 draft amended Norms read as follows, “<u><i>The Department of Basic Education must facilitate and coordinate the responsibilities of the government agencies and entities who have a role in the provision of infrastructure and related services.</i></u>”</p>

		rights to safety, equality, dignity and education. Therefore, the fixing of schools by the government should not be subject to other departments or government entities doing their part. The Bhisho High Court agreed and provided that such an “escape clause” is inconsistent with the Constitution. So, retaining the phrase " <i>as far as practicable</i> " in the 2022 draft Amended Norms does not fully address nor satisfy the court order and still leaves room for the department to evade its responsibilities.	
2(f)	4(4)	EE and the EELC welcome the proposed amendment insofar as it allows for the public availability of the annual reports on plans and progress on the implementation of the Norms prepared and submitted by PEDs to the Minister.	EE and EELC recommend that the 2022 draft Amended Norms qualify this addition with a timeframe of 30 days, and by the inclusion of the following wording “ <u>...within 30 days of being submitted to the Minister</u> ”.
2(g)	4(5)	<p>The proposed substitution is a reassignment of the current sub-regulation 4(8) from its current location in the Norms.</p> <p>EE and EELC argue that the provision is vague and broad. While we acknowledge that budget shrinkages are real and have advocated for increased budget allocations from National Treasury, the provision is becoming an escape clause for provincial education departments’ (PEDs) failure to deliver school infrastructure. This is in direct violation of the immediately realisable nature of the constitutional right to education.</p>	EE and EELC recommend the insertion of the phrase “ <i>national and provincial</i> ” into the clause to make explicit that infrastructure funding sources must not be limited to the current conditional grant allocations but through provincial equitable shares as well. As such, the amended clause should read: “ <i>Measures which are taken to comply with the norms and standards contained in these regulations must be funded through the relevant <u>national and provincial</u> budgetary sources and process for new facilities and the upgrading of existing facilities at schools</i> ”

		Currently, PEDs mostly rely on conditional grants to fund school infrastructure and assert that the funds are insufficient, yet there is consistent underspending and wasteful/irregular expenditures of said budgets. In order to ensure school infrastructure delivery, PEDs must not solely rely on national funding through conditional grants but utilise their budgets to supplement allocations from the national department.	
2(h)	4(6) (deleted)	This amendment relates to the deletion of sub-regulation 4(6)(a) and (b) of the Norms. Of importance and concern to EE and the EELC is the deletion of sub-regulation 6(b) without it being catered for anywhere else in the draft Amended Norms. Currently, 6(b) details the minimum core information that should be contained in the reports.	<p>EE and EELC recommend the insertion of sub-regulation 4(4)(a) and the following wording:</p> <p><i>“the plans referred to in paragraph 4(4) above are to make provision for, but not limited to, the following:</i></p> <p><i>(i) the backlogs at the district level that each province experiences in terms of the norms and standards;</i></p> <p><i>(ii) costed short, medium and long-term plans with targets;</i></p> <p><i>(iii) how new schools should be planned and maintained and how existing schools are to be upgraded and maintained; and</i></p> <p><i>(iv) proposals in respect to procurement, implementation and monitoring.”</i></p> <p>In addition, EE and EELC recommend that the DBE develop a template, containing, but not limited to, the provisions outlined above, which can be annexed to the Norms and Standards, which template could be used by the PEDs for purposes of standardised reporting.</p>

2(i)	18(15)	EE and the EELC note the proposed substitution introduces the signing off by a competent person as per the National Building Regulations.	
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