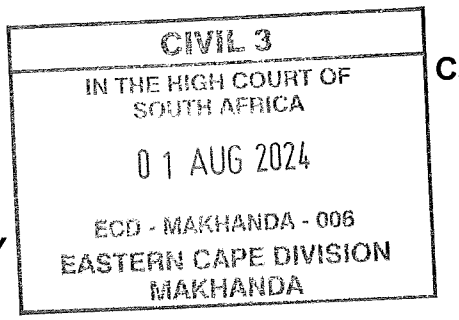
IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE HIGH DIVISION: MAKHANDA



Case No: 3830/2023

In the matter between:

MAKHANDA CIRCLE OF UNITY First Applicant

THE SCHOOL GOVERNING BODY OF NTSIKA SECONDARY SCHOOL Second Applicant

THE SCHOOL GOVERNING BODY OF HOËRSKOOL PJ OLVIER Third Applicant

THE SCHOOL GOVERNING BODY OF TYANTYI PRIMARY SCHOOL Fourth Applicant

and

THE HEAD OF DEPARTMENT EASTERN CAPE DEPARTMENT OF BASIC EDUCATION First Respondent

THE MEMBER OF THE EXECUTIVE COUNCIL EASTERN CAPE DEPARTMENT OF BASIC EDUCATION Second Respondent

THE GOVERNMENT OF THE EASTERN CAPE PROVINCE Third Respondent

THE MINISTER OF BASIC EDUCATION Fourth Respondent

THE MEMBER OF THE EXECUTIVE COUNCIL FOR FINANCE, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS: EASTERN CAPE Fifth Respondent

THE MINISTER OF FINANCE Sixth Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA Seventh Respondent

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DATED AT MAKHANDA ON THIS THE 1st **DAY OF** ~~APRIL~~ AUGUST **2024.**

LEGAL RESOURCES CENTRE

Applicants' Attorneys

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Tel: 046 622 9230
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Ref: Cecile Van Schalkwyk

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AND TO: THE STATE ATTORNEY, GQEBERHA
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AND TO: SECTION27
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C/o RHODES UNIVERSITY LAW CLINIC
49 New Street
Makhanda
Ref: S Bergover

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION: MAKHANDA

Case No: 3830/2023

In the matter between:

MAKHANDA CIRCLE OF UNITY	First Applicant
THE SCHOOL GOVERNING BODY OF NTSIKA SECONDARY SCHOOL	Second Applicant
THE SCHOOL GOVERNING BODY OF HOËRSKOO PJ OLIVIER	Third Applicant
THE SCHOOL GOVERNING BODY OF TYANTYI PRIMARY SCHOOL	Fourth Applicant

and

THE HEAD OF DEPARTMENT EASTERN CAPE DEPARTMENT OF BASIC EDUCATION	First Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL EASTERN CAPE DEPARTMENT OF BASIC EDUCATION	Second Respondent
THE GOVERNMENT OF THE EASTERN CAPE PROVINCE	Third Respondent
THE MINISTER OF BASIC EDUCATION	Fourth Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR FINANCE, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS: EASTERN CAPE	Fifth Respondent

CIVIL 3
IN THE HIGH COURT OF SOUTH AFRICA
28 MAY 2024
ECD - MAKHANDA - 007
EASTERN CAPE DIVISION
MAKHANDA

THE MINISTER OF FINANCE — Sixth Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA — Seventh Respondent

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AMENDED NOTICE OF MOTION

TAKE NOTICE THAT the applicants intend to apply to this Honourable Court for an order in the following terms:

1. Reviewing and setting aside, and declaring unconstitutional, unlawful and invalid, the decision of the first, second and third respondents, communicated to public schools in the Eastern Cape in May 2023, to withhold 33.75% of each school's funding allocation for 2023/2024.

1A. Reviewing and setting aside, and declaring unconstitutional, unlawful and invalid, the decision of the first, second and third respondents, communicated to public schools in the Eastern Cape in December 2023, to withhold 33.75% of each school's funding allocation for 2024/2025.

2. Substituting the decision referred to in paragraph 1 above with a decision that schools will be provided with their full school allocations for 2023/2024, calculated as the prevailing minimum per-learner target amount applicable to that school's quintile, multiplied by the total enrolment numbers of that school.

2A. Substituting the decision referred to in paragraph 1A above with a decision that schools will be provided with their full school allocations for 2024/2025, calculated as the prevailing minimum per-learner target amount applicable to that school's quintile, multiplied by the total enrolment numbers of that school.

3. Directing the first, second and third respondents within 10 days of the date of this order:

3.1. to issue a revised 2023/2024 paper budget to each ordinary public school in the Eastern Cape, in terms of which each school is allocated no less than the prevailing minimum per-learner target amount applicable to that school's quintile, multiplied by the total enrolment numbers of that school in the 2023/2024 financial year; and

3.2. to pay to each ordinary public school in the Eastern Cape 100% of such school's allocation for 2023/2024, as calculated in accordance with paragraph 3.1 above.

3A. Directing the first, second and third respondents within 10 days of the date of this order:

3A.1. to issue a revised 2024/2025 paper budget to each ordinary public school in the Eastern Cape, in terms of which each school is allocated no less than the prevailing minimum per-learner target amount applicable to that school's quintile, multiplied by

the total enrolment numbers of that school in the 2024/2025 financial year; and

3A.2. to pay to each ordinary public school in the Eastern Cape 100% of such school's allocation for 2024/2025, as calculated in accordance with paragraph 3A.1 above.

4. Declaring that the decision taken by the first, second and third respondents between 20 November and 2020 and November 2022, to reduce the per-learner funding allocations for public ordinary schools in the Eastern Cape to an amount less than the targets determined by the fourth respondent from time to time, are unconstitutional, unlawful, and invalid.

5. Declaring that paragraph 114(b) of the Amended National Norms and Standards for Public School Funding (published in Government Notice 869 of the Government Gazette 29179, 31 August 2006) ("the Norms and Standards"):

5.1. sets out the prerequisites with which a provincial education department must comply before it may unlawfully provide less than the target per learner allocations to schools in the province. In the absence of a joint plan for attaining the per-learner targets that complies with paragraph 114(b), a provincial education department is required to provide allocations in accordance with (or that exceed) the targets;

5.2. requires that, in the joint plan contemplated in paragraph 114(b), the provincial education department is required to demonstrate, in the first instance, that it is not financially possible to provide schools with at least the target per learner allocations in that financial year. In the event that it is possible to attain the targets later in the same financial year, then the joint plan must include the steps that will be taken, to the extent possible, to make up any shortfall at the earliest possible stage;

5.3. requires that, if the joint plan demonstrates that it is not financially possible to provide schools with at least the target per learner allocations in that financial year, then that joint plan must determine whether it is financially possible to meet the target in any subsequent year(s). The joint plan must in these circumstances include the steps that will be taken, to the extent possible, to make up any shortfall in prior years at the earliest possible stage;

5.4. requires that, if a provincial education department publishes a school allocation, whether provisional or final, where the target school allocation exceeds the actual school allocation, it must, simultaneously with the publication of the school allocation, provide every public school with access to the joint plan contemplated in paragraph 114(b).

5.5. creates an ordering of priorities, such that in any years when it is not possible for the provincial education department to fund at

least in accordance with the target, the provincial education department must prioritise quintile 1 and 2 schools and learners from grades 1 to 9.

6. *In the alternative* to prayer 5 above:

6.1. to the extent necessary, in terms of section 9(1) of PAJA, extending the time period referred to in section 7 of PAJA for the institution of proceedings to review the Norms and Standards, *alternatively* condoning the late institution of such review proceedings;

6.2. reviewing and setting aside, and declaring unconstitutional, unlawful and invalid, paragraphs 113 and 114(b) of the Norms and Standards, to the extent that they permit provincial departments of education to allocate amounts lower than the minimum per-learner target amount without limitation;

6.3. suspending the declaration of invalidity in prayer 6.2 for a period of 24 months from the date of this Court's order;

6.4. during the period of suspension set out in prayer 6.3, reading the following underlined words into paragraph 114(b) of the Norms and Standards:

"If the target amount exceeds the actual amount, the PED and the DoE, in collaboration with the National and Provincial Treasuries, must jointly devise a plan for attaining the targets in the earliest possible year, <u>including, if possible, the year in which</u>

the plan is issued. In the absence of such a plan, the target amount may not exceed the actual amount in any particular year. This plan must include details on how, in the interim, the actual budget will be distributed across the national quintiles, and must include the steps that will be taken, to the extent possible, to make up any shortfall at the earliest possible stage. Such a plan must prioritise the attainment of targets in quintiles 1 and 2, and for learners in grades 1 to 9. Simultaneously with the publication of the school allocation, the PED must provide every school with access to the joint plan."

6.5. directing that, in the event that the unconstitutionality of paragraphs 113 and 114 is not remedied within the 24 month period in prayer 6.3 above, the interim reading-in order in prayer 6.4 above shall become final.

7. Directing:

7.1. the first to fourth respondents to deliver written reports to this Court relating to compliance with its order, on affidavit, and once per 90 calendar period for a period of 360 calendar days following the date of this Court's order.

7.2. that such written reports must:

7.2.1. detail the first to third respondent's compliance with the orders sought in prayer 3, and

7.2.2. detail the first to third respondents' steps to ensure that every school is provided a school allocation for 2024/2025 calculated on the basis of at least the prevailing minimum per-learner target amount contemplated in paragraph 109 of the Norms and Standards as applicable to that school's quintile, multiplied by the total enrolment numbers of that school;

7.3. that any applicant and any *amicus curiae* shall be entitled to deliver affidavits in response to any affidavit delivered by a respondent pursuant to prayer 7.1, within 20 days of service of the respondent's affidavit, and shall be entitled thereafter to re-enrol the matter for such further just and equitable relief as may be necessary.

8. Directing any respondent that opposes the application to pay costs of this application, jointly and severally, including the costs of two counsel.

9. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavits of **SAKHE NTLABEZO**, together with the supporting affidavits from, **XOLISILE TYOTHA, EZRA SCHOOMBEE**, and **ZONGEZILE MANYATI** will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed the offices of the **LEGAL RESOURCES CENTRE,** 116 High Street, Makhanda, 6139 as the

address at which the applicants will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that in terms of Uniform Rule of Court 53(1)(a):

a. the first, second and third respondents are hereby called upon to show cause why the decision referred to in prayers 1 should not be reviewed, set aside and corrected;

b. the fourth respondent is hereby called upon to show cause why the decision referred to in prayer 6.2 should not be reviewed, set aside and corrected.

TAKE NOTICE FURTHER that in terms of Uniform Rule of Court 53(1)(b):

a. The first, second and third respondents are hereby called upon to dispatch within 15 days of receipt of this notice of motion, to the Registrar, the record of all documents and all electronic records (including any correspondence, contracts, memoranda, advices, recommendations, considerations, policies, evaluations and the like) that related to the making of the decision referred to in prayers 1, together with such reasons as those respondents are by law required or desire to give or make, and to notify the applicants' attorneys that they have done so;

b. the fourth respondent is hereby called upon to dispatch, within 15 days of receipt of this notice of motion, to the Registrar, the record of all documents and all electronic records (including correspondence, contracts, memoranda, advices, recommendations, considerations, policies, evaluations and the like) related to the making of the decision referred to

in prayer 6.2, together with such reasons as the fourth respondent is by law required or desires to give or make, and to notify the applicants' attorneys that it has done so.

TAKE NOTICE FURTHER that within 10 days of receipt of the records from the Registrar, the applicants may, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of their notice of motion and supplement their founding affidavit in accordance with Uniform Rule of Court 53(4).

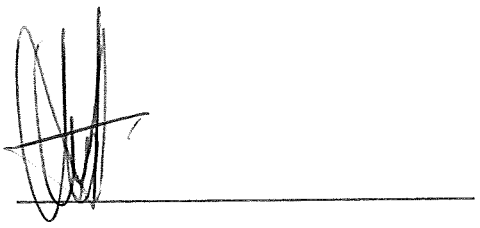
TAKE NOTICE FURTHER that if any respondent intends to oppose this application, it is required to:

a. notify the applicants' attorney in writing, within 15 days after service of this notice, or any amendment thereto as contemplated in Uniform Rule of Court 53(4), of its intention to oppose, and in such notice appoint an address within 15 kilometres of the office of the Registrar of this Honourable Court at which it will accept notice and service of all process in these proceeding;

b. within 30 days of the expiry of the time referred to in Uniform Rule of Court 53(4), deliver its answering affidavit.

TAKE NOTICE FURTHER that if no notice to oppose is delivered, this application will be set down on an unopposed basis and proceed on a date to be determined by the Registrar of the above Honourable Court.

Dated at Makhanda on 28th **MAY 2024**



LEGAL RESOURCES CENTRE

Attorneys for the Applicants

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Makhanda

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046 622 9230

TO: **THE REGISTRAR OF THE**

ABOVE HONORABLE COURT

AND TO: FIRST AND SECOND RESPONDENTS

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AND TO: SEVENTH RESPONDENT

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IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE HIGH DIVISION: MAKHANDA

Case No:

In the matter between:

MAKHANDA CIRCLE OF UNITY	First Applicant
THE SCHOOL GOVERNING BODY OF NTSIKA SECONDARY SCHOOL	Second Applicant
THE SCHOOL GOVERNING BODY OF HOËRSKOOL PJ OLVIER	Third Applicant
THE SCHOOL GOVERNING BODY OF TYANTYI PRIMARY SCHOOL	Fourth Applicant

and

THE HEAD OF DEPARTMENT EASTERN CAPE DEPARTMENT OF BASIC EDUCATION	First Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL EASTERN CAPE DEPARTMENT OF BASIC EDUCATION	Second Respondent
THE GOVERNMENT OF THE EASTERN CAPE PROVINCE	Third Respondent
THE MINISTER OF BASIC EDUCATION	Fourth Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR FINANCE, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS: EASTERN CAPE	Fifth Respondent

S.N

THE MINISTER OF FINANCE Sixth Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA Seventh Respondent

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I, the undersigned,

SISESAKHE NTLABEZO

do hereby make oath and state as follows:

1 I am an adult male and the programme manager of the Makhanda Circle of Unity, the first applicant in this matter.

2 I am duly authorised to depose to this affidavit on behalf of the first applicant. Minutes of the Makhanda Circle of Unity dated 25 January 2023 is annexed marked **SN1**. The Circle of Unity has duly resolved to institute these proceedings in furtherance of the objectives of the organisation. I am also authorised to depose to this affidavit on behalf of the second to fourth applicants. Confirmatory affidavits deposed to by duly authorised representatives of the second to fourth applicants will be filed together with this affidavit.

3 The contents of this affidavit fall within my personal knowledge, except where otherwise indicated by the context, and are to the best of my belief both true and correct. Where I make legal submissions, I do so on the advice of our legal representatives, which I believe is correct.

4 The supporting affidavits of the second to the fourth applicants will be filed alongside this affidavit and must be read in conjunction with this affidavit.

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INTRODUCTION

5 The South African education system suffers gravely from the legacy of discrimination and marginalisation that were at the core of apartheid. The inequitable and unequal distribution of education resources along racial lines before 1994, created two education systems – one that provided white learners with enough funding to receive a quality education, and another that underfunded black learners, making it near impossible for the majority to realise their educational potential.

6 Much of this inequality persists. In May 2023, the 2021 Progress in International Reading Literacy Study (PIRLS) was published. It found that 81% of South African grade 4 learners cannot read for meaning in any language. South Africa obtained the lowest score of the 57 participating countries and regions in the study and experienced the largest decline in test results between 2016, when the last PIRLS was undertaken, and 2021.

7 Overall, the South African basic education system is in an unacceptable state. Few provinces suffer from the effects of the apartheid system as gravely as the Eastern Cape. Some 27 years after the adoption of the Constitution, the Eastern Cape province is still regarded as one of the poorest and most under-resourced provinces in South Africa.

8 Despite the dire need in the province, the Eastern Cape Department of Education ("**ECDOE**") has, since 2020, drastically reduced the amount of funding allocated to ordinary public schools across the Eastern Cape province (including the second to fourth applicants). To be specific, the amount allocated to learners in

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the Eastern Cape's poorest schools (where the law prohibits the charging of fees to parents) has dropped from R1544 in 2020, to R815 for the 2022/2023 financial year. This is a nearly 50% reduction in the schools' budget allocation between 2020 and 2023.

9 The reduction in funding has resulted in schools in the province being funded at a far lower level than the per-learner minimum target set by the Minister at national level. This per-learner target is the amount that the Minister has determined is the "*minimally adequate*" amount necessary to fund education inputs for learners. While the poorest schools were allocated only **R815** in the 2022/2023 financial year, the minimum per learner target, determined by the Minister, was **R1536** in 2022/2023.

10 The reduction in funding has also meant that learners in the Eastern Cape have, for several years, been receiving far less money for the fundamental inputs into their education than their counterparts at schools in other provinces. Indeed, despite living in one of the poorest provinces, learners in the Eastern Cape will in 2023/2024, receive only 66.25%% of the money that provinces such as Western Cape, Northern Cape, Gauteng, and North West will be providing to schools for each learner. This entrenches established patterns of poverty and inequality and discriminates against learners based on their geographical location, race, and socio-economic status.

11 Without adequate funding, schools are unable to provide learners with adequate education resources such as textbooks, and stationery, pay for municipal services such as water and electricity, or maintain infrastructure. Effective

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teaching and learning simply cannot take place. It is of little surprise, in this context, that our educational outcomes are so poor.

12 At the heart of this application is the most recent decision by the ECDOE to reduce funding allocations to schools within the province.

13 The impugned decision arose, in broad terms, as follows:

13.1 In terms of the Norms and Standards for School Funding (**"the Norms and Standards"**), promulgated by the Minister of Basic Education, provincial education departments are provided with targets for the purpose of determining funding allocations to public schools. This establishes the target per-learner amounts for school allocations by provincial departments. These amounts are what the national Minister determines, from time to time, to be minimally adequate to provide learners at public schools with a basic education.

13.2 Since 2020, the ECDOE has drastically reduced per-learner funding allocations, even in nominal terms, year on year. The result is that thousands of poor learners, in under-resourced schools, who suffer from the legacy of structural inequality in the country, are being provided with less and less material resources essential for the realisation of their constitutional rights. Not only is the basic education system failing these children, it is failing them by a greater amount each year.

13.3 This culminated, in November 2022, in the ECDOE providing schools in the province with their 2023/2024 paper budgets in terms of which the per-

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learner amount that is allocated to schools for the 2023/2024 financial year was substantially reduced. Instead of the per-learner target of R1602 per learner, no-fee paying schools were advised that they would only be receiving R607.90, significantly less than half – only 38% - of the national per-learner minimum.

13.4 The November 2022 decision was met with understandable outrage by schools. On 9 May 2023, the ECDOE did an about-turn, by issuing schools with revised paper budgets informing them that they would now be funded in accordance with the national per-learner target for school allocations.

13.5 But the about-turn was illusory. While schools would, in theory, be awarded the full national per-learner target, the paper budgets informed schools that the ECDOE had taken the decision to split the schools' budgets into two parts:

13.5.1 "*Part A*", which accounted for 33,75% of the schools' budgets, would purportedly be retained by the ECDOE, and would be utilised to fund the provincial budget, for the benefit of all schools for purposes of what it terms the "Provincial NNSSF Budget".

13.5.2 "Part B", which accounted for the remaining 66,25%, would be allocated directly to the schools for textbooks, stationery, and the like.

13.6 The upshot is that although the Province now claims to be funding at the per-learner minimum of R1602 per learner for no-fee paying schools, it

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has in fact, at best, increased the per learner allocation to R1 061.30 per learner – still drastically less than the minimum.

14 The May 2023 funding decision is plainly unlawful and unconstitutional.

14.1 It is not authorised by the Norms and Standards, or by the South African Schools Act 84 of 1996 (**"the Schools Act"**), and is in fact in direct contravention of their provisions.

14.2 It is unreasonable and irrational, and without any justification.

14.3 Moreover, the decision was taken without consulting the affected school governing bodies **("SGBs"),** parents, and learners, and without any clear explanation, and is accordingly procedurally unfair.

14.4 The decision is also unconstitutional – it constitutes a regressive step in the realisation of the right to a basic education, fails to treat the best interests of children as paramount, flouts the right to just administrative action, and directly undermines the constitutional promise of equality and human dignity for learners attending public schools in the Eastern Cape province.

15 The applicants accordingly, ask, in the first instance, that the May 2023 funding decision be declared unlawful, unconstitutional and invalid, and that it be reviewed and set aside in terms of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**"), alternatively the principle of legality. They also ask that the

ECDOE be directed to provide each school with its full allocation, including the 33.75% portion that the ECDOE has purported to withhold.

16 Although the applicants accept that, at the level of remedy, there is little that can now be done about the ECDOE's unlawful and unconstitutional funding decisions in prior financial years, the applicants nevertheless ask that those decisions also be declared unconstitutional and unlawful.

17 It is not enough, however, to declare the ECDOE's past conduct unlawful and unconstitutional. It is crucial, for the sake of learners and teachers in the province, that this Court grants relief that provides direction for the manner in which such funding decisions are to be taken in future.

18 To this end, the applicants seek further relief:

18.1 The applicants seek a declaratory order regarding the proper interpretation of the Norms and Standards, particularly regarding the circumstances in which they permit provincial education departments to deviate from the national per-learner target as determined by the Minister of Basic Education ("**the Minister**");

18.2 *alternatively*, to the extent that such declaratory relief is not granted (i.e. to the extent that the Norms and Standards are held to permit the type of unchecked and significant under-funding that has taken place in the Eastern Cape over the last three years), the applicants seek an order declaring the Norms and Standards unconstitutional and invalid. To cure the unconstitutionality, the applications ask the Court to strike out a

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particular sentence of the Norms and Standards, and to read in an obligation designed the ensure that the State actually provides every school with the minimum amount that the Minister has determined as necessary for each learner.

19 The applicants' relief is modest.

19.1 The applicants do not ask this Court to determine what would constitute the minimum amount of money to fund the education of a learner in the province. That determination has already been made by the Minister, in accordance with the Norms and Standards.

19.2 The applicants also do not ask this Court to determine whether the national per-learner target as set by the Minister is sufficient to meet the educational needs of the learners in South Africa.

19.3 Instead, the applicants ask that the ECDOE be required to provide the minimum funding that the Executive has determined, from time to time, is needed.

20 In the remainder of this affidavit, I address the following in turn.

20.1 First, I describe the parties to this litigation;

20.2 Second, I detail the constitutional and legislative framework for the funding of public schools in South Africa;

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20.3 Third, I outline the school funding budgeting process, and detail the relevant framework of the Norms and Standards that informs per-learner school allocations;

20.4 Fourth, I provide more detail regarding the underfunding of public schools in the Eastern Cape in recent years, including the most recent funding decision;

20.5 Fifth, I highlight the impact of insufficient funding on learners, particularly at the second to fourth applicant schools;

20.6 Sixth, I demonstrate that the impugned funding decision is unconstitutional and unlawful on various grounds;

20.7 Seventh, I contend for a constitutionally compliant interpretation of the Norms and Standards;

20.8 Eighth, I explain that, to the extent that the Norms and Standards are not capable of the interpretation for which the applicants contend, then they are unconstitutional and invalid to the extent that they permit provincial departments to effectively disregard the minimum funding requirements determined by the Minister from time to time;

20.9 Ninth, I address the question of remedy; and

20.10 Lastly, I deal with condonation to the extent necessary.

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THE PARTIES

The applicants

21 The first applicant, the **MAKHANDA CIRCLE OF UNITY** (**"Circle of Unity"**), was established in 2021 as a registered non-profit organisation with NPO Number: 258-810 NPO.

21.1 The Circle of Unity is a collaborative forum established for the fulfilment of an inclusive and purposeful approach for the socio-economic development of Makhanda in the Eastern Cape.

21.2 The first applicant operates through various clusters that focus on specific socio-economic rights, including education. The education cluster consists of a collective of education activists and practitioners in Makhanda in the Eastern Cape. Its primary objective is to ensure that the right to education for every child in Makhanda is realised. The Circle of Unity works closely with schools in the town, as well as with Rhodes University, other nonprofit organisations, and education practitioners to address challenges faced by schools in the town and provide resources and support to schools to equip them to address all their learners' educational needs.

21.3 The Circle of Unity also undertakes research on the role of the education sector in Makhanda, and in particular the importance of education to the sustainability of the town. In this respect, the Circle of Unity undertook an impact study in 2022, to determine the economic impact of Makhanda's

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education sector. The study is annexed marked **SN2**, and will be used by the Circle of Unity as part of its ongoing efforts to sustain the education sector in town, and improve upon its current reach.

21.4 The Circle of Unity seeks to ensure that the schools and other educational institutions in Makhanda become a beacon of excellence in the province. It is through its work with schools that the Circle of Unity became aware of the crippling underfunding of the province's public schools by the respondents.

21.5 The Circle of Unity has the necessary standing to litigate this matter in terms of sections 38(a), (b), (c) and (d) of the Constitution. It brings this application:

21.5.1 In its own interest, as an organisation that concerns itself with the right of learners to access to a basic education;

21.5.2 On behalf of school children in the Eastern Cape who are not receiving adequate funding by the respondents to ensure a quality education;

21.5.3 In the interests of all school children in the Eastern Cape whose rights to basic education, dignity and equality have been violated, as well as educators and parents of those learners in the province; and

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21.5.4 In the public interest, including in the interest of all learners in public schools, whose rights are compromised by the unconstitutional provisions of the Norms and Standards, and of educators and parents around the country.

22 The second applicant is the **SGB OF NTSIKA SECONDARY SCHOOL**.

22.1 The SGB is tasked with the governance and professional management of Ntsika Secondary in terms of section 16 of the Schools Act. The supplementary affidavit of the SGB is attached to this affidavit.

22.2 Ntsika Secondary School provides education to 828 learners from grades 8 to 12. The school is situated in Joza Location on the outskirts of Makhanda in the Eastern Cape. The majority of the schools' learners come from households that rely on social grants for survival. As a result of the socio-economic circumstances of the parents and the larger community, the school is a quintile 3 school and parents of learners enrolled at the school cannot be compelled to pay school fees.

23 The third applicant is the **SGB OF HOËRSKOOL PJ OLIVIER**, a quintile 4 public school in Makhanda.

23.1 It provides education to 426 learners between grades R and 12. While the parents of the learners in PJ Olivier are asked to pay minimal school fees, 42% of the learners receive fee alleviation and their parents do not pay any fees at all.

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23.2 The school used to be a quintile 5 school, but in 2018 it was reclassified as quintile 4, to reflect the financial situation of the parent community more accurately.

23.3 The supplementary affidavit of the SGB is attached to this affidavit.

24 The fourth applicant is the **SGB OF TANTYI PRIMARY SCHOOL.**

24.1 The SGB is tasked with the governance and professional management of the school in terms of section 16 of the Schools Act. The supplementary affidavit of the SGB is attached to this affidavit.

24.2 Tyantyi Primary School is a quintile 3, no-fee paying school located in Tyantyi Location on the outskirts of Makhanda. It provides education to 189 learners from grades R to 7. The school is located in one of the poorest areas of Makhanda and is entirely dependent on the respondents for its funding. More than 80% of the learners' parents are unemployed and the main source of household income for the learners are social grants.

25 The second to fourth applicants, like the first applicant, also bring this application:

25.1 In their own interest, as public schools in the Eastern Cape who have been unable to provide the fundamental inputs, in respect of each learner, necessary to ensure each learner can realise their right to basic education;

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25.2 On behalf of school children in their schools, as well as school children in the Eastern Cape who are not receiving adequate funding by the respondents to ensure a quality education;

25.3 In the interests of all school children in the Eastern Cape whose rights to basic education, dignity and equality have been violated, as well as the educators and parents of those learners in the province; and

25.4 In the public interest, including in the interest of all learners in public schools, whose rights are compromised by the unconstitutional provisions of the Norms and Standards, and of educators and parents around the country.

The Respondents

26 The first respondent is **THE HEAD OF DEPARTMENT OF THE EASTERN CAPE DEPARTMENT OF EDUCATION** ("**the HOD**"). The HOD is cited as the administrative head of the Eastern Cape Provincial Department of Education (**"the ECDOE"**). This application will be served on her office at Steve Vukile Tshwete Education Complex, Zone 6, Zwelitsha. The application will also be served on the offices of the State Attorney in Port Elizabeth, and Shared Legal Services, Qonce.

27 The second respondent is **THE MEMBER OF THE EXECUTIVE COUNCIL, DEPARTMENT OF EDUCATION, EASTERN CAPE PROVINCE** ("**the MEC**"). The second respondent is cited as the nominal respondent on behalf of the Eastern Cape Government as a whole, and of the ECDOE, as well as the bearer

of the constitutional and statutory powers and duties of the MEC of Education of the Eastern Cape. The application will be served at Steve Vukile Tshwete Education Complex, Zone 6, Zwelitsha.

28 The third respondent is **THE GOVERNMENT OF THE EASTERN CAPE PROVINCE**. It bears statutory and constitutional responsibilities in respect of the provision, administration, and funding of public schools in the Eastern Cape. These include the responsibilities of the MEC for Education in the Eastern Cape and the Provincial Department of Education arising from the Schools Act and education policies adopted by provincial and national government. The Government of the Eastern Cape Province is cited in case the relief sought in this application has implications for any Eastern Cape provincial governmental departments beyond those specifically cited. This application will be served at the Office of the Premier Building, Independence Avenue, Bhisho.

29 The fourth respondent is **THE MINISTER OF BASIC EDUCATION** ("**the Minister**") cited herein in her official capacity as the political head of the Department of Basic Education ("**the National Department**") and the person responsible for the acts and omissions of officials within the National Department with her offices situated at the Union Buildings, Sol Plaatjie House, 222 Struben Street, Pretoria, where these papers will be served. The Minister is responsible, in terms of the National Education Policy Act 27 of 1996, for determining and implementing national education policy, as well as monitoring and evaluating all levels of basic education. The Minister is also responsible for promulgating the Norms and Standards.

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30 The fifth respondent is **THE MEMBER OF THE EXECUTIVE COUNCIL FOR FINANCE, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL AFFAIRS: EASTERN CAPE** ("**MEC for Finance, Eastern Cape**"). The sixth respondent is cited herein in his official capacity as the political head of the Eastern Cape Provincial Department of Finance Economic Development and Environmental Affairs and the person responsible for the acts and omissions of officials within this department. He is also responsible for the administration of financial legislation in the Eastern Cape. The fifth respondent is cited on the basis of his interest in the relief sought in this matter, and no relief is sought directly against the him. The application will be served at the office of the department at Beacon Hill, Hockley Close, King William's Town, 560.

31 The sixth respondent is **THE MINISTER OF FINANCE ("Minister of Finance")** cited herein in his official capacity as the political head of the National Treasury and the person responsible for the acts and omissions of officials within National Treasury. The Minister of Finance is also responsible for the financial management, governance, budgeting processes, and development of economic policy within National Treasury. The sixth respondent is cited on the basis of his interest in the relief sought in this matter, and no relief is sought directly against the him. His offices are situated at 40 Church Square, Old Reserve Bank Building, 2nd Floor, Pretoria, where these papers will be served.

32 The seventh respondent is **THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA.** It bears statutory and constitutional responsibilities in respect of the provision, administration and funding of public schools in the Eastern Cape. These include the responsibilities of the Minister and the National

Department, arising from the Schools Act and the National Education Policy Act 27 of 1996 as well as the responsibilities of the MECs and National Department of Finance. The fifth responded it cited in case the relief sought in this application has implications for any governmental departments beyond those specifically cited. The fifth respondent will be served at the Office of the Presidency, Union Buildings, Government Avenue, Pretoria.

33 In this application, relief is primarily sought against the first, second, third and fourth respondents (though, insofar as the Court may be inclined to grant the alternative relief outlined later in this affidavit, that relief also implicates the sixth respondent). Accordingly, in what follows, and unless the context demonstrates otherwise, I refer to the first to fourth respondents collectively as "**the respondents**". The remaining respondents are cited for the interest they may have in the outcome of this application, and no specific relief is sought against them.

CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

34 The process of education funding is informed by the Constitution and mainly determined by legislation and policies that provide a framework for budgeting purposes and for determining how money must be allocated to schools.

35 Whilst I have been advised that affidavits are not the place to traverse legal arguments, it is necessary to set out the broad legal framework. Accordingly, in this part of the affidavit, I provide an overview of the most salient legal instruments that govern education funding in South Africa.

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The Constitution

36 Section 7(2) of the Constitution places an obligation on the state to respect, protect, promote, and fulfil the rights in the Bill of Rights.

37 The right to basic education is enshrined in section 29(1) of the Constitution, which states that "*everyone has the right to a basic education*". I am advised that our courts have explained that the right is unique and distinct from other socio-economic rights, in that it is immediately realisable. This means that a lack of resources cannot be used by the state as an excuse for a failure to provide basic education.

38 The right to education of course entails that education must be physically and economically accessible. However, the right extends beyond mere access to schools. It also entails learners being provided with the necessary textbooks, stationery, furniture, school infrastructure and educators, so that the right has meaningful content.

39 The right to education in section 29 of the Constitution must be read together with other provisions of the Bill of Rights, particularly:

39.1 Section 9, which guarantees the right to equality.

39.2 Section 10, which provides that everyone has inherent dignity and the right to have their dignity respected and protected.

39.3 Section 28(2), which provides that a child's best interests are of paramount importance in every matter concerning the child.

40 Schedule 4 of the Constitution lists functional areas of concurrent national and provincial legislative competence. Basic education is a Schedule 4 function, which means that both national and provincial governments can pass legislation with respect to the function; however, it is a function that is assigned to provinces to implement.

41 Section 195 of the Constitution also requires the state to ensure that public administration is governed according to principles of efficiency, effective use of resources, transparency, and accountability.

The Schools Act

42 The Schools Act was promulgated in 1996.

43 The Preamble to the Schools Act notes, among other things, that our country requires a new national system for schools which will "*redress past injustice in educational provision*" ... "*contribute to the eradication of poverty and economic well-being of society*" ... "*and uphold the rights of all learners, parents and educators*". The preamble also highlights the necessity of setting uniform norms and standards for the education of learners, and for the organisation, governance, and funding of schools throughout South Africa.

44 Section 12 of the Schools Act provides that "*[t]he Member of the Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature.*"

45 The provisions of sections 34 and 35 of the Schools Act are of particular importance in this matter, and so I quote them in full.

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"**34 Responsibility of State**

(1) The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.

(2) The State must, on an annual basis, provide sufficient information to public schools regarding the funding referred to in subsection (1) to enable public schools to prepare their budgets for the next financial year.

35 Norms and standards for school funding

(1) Subject to the Constitution and this Act, the Minister must determine national quintiles for public schools and national norms and standards for school funding after consultation with the Council of Education Ministers and the Minister of Finance.

(2) The norms and standards for school funding contemplated in subsection (1) must-

(a) set out criteria for the distribution of state funding to all public schools in a fair and equitable manner;

(b) provide for a system in terms of which learners at all public schools can be placed into quintiles, referred to as national quintiles for learners, according to financial means;

(c) provide for a system in terms of which all public schools in the Republic can be placed into quintiles referred to as national quintiles for public schools, according to the distribution of learners in the national quintiles for learners; and

(d) determine the procedure in terms of which the Member of the Executive Council must apply the criteria contemplated in paragraph (a)." (my emphasis)

46 In light of the Schools Act's preamble, and the provisions I have set out above, certain points bear emphasising.

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47 **First**, the Schools Act obliges the State to fund public schools, and to do so on an equitable basis. Moreover, the Schools Act obliges the State's funding to schools to "ensure" the proper exercise of the rights of learners to education and the redress of past inequalities in education provision. The mechanism for equitable funding of schools must, therefore, be concrete and binding, so that it is designed to ensure what it seeks to achieve.

48 **Second**, the Schools Act compels the Minister, after consultation with the Minister of Finance and the Council of Education Ministers, to determine national norms and standards. In light of the Preamble and the overall objectives of the Schools Act, those national norms and standards must seek to ensure uniformity and equality.

49 **Third**, and relatedly, the Norms and Standards must, among other things, set out criteria for the distribution of state funding to all public schools in a "*fair and equitable manner*".

50 Pursuant to section 35 of the Schools Act, on 31 August 2006, the Minister promulgated the Norms and Standards. The Norms and Standards determine how provincial education departments should allocate resources to schools. The original Norms and Standards were promulgated in 1998 (Notice 2362 of 1998), with effect commencing in 2000. The Norms and Standards were amended in 2003 (Notice 20 of 2003) and again in 2006 (Notice 1357 of 2004). I attach the Norms and Standards, as amended, marked **SN3**.

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THE EDUCATION BUDGETING PROCESS AND SCHOOL ALLOCATION

51 It is important, for background and context, to understand how the school budgeting process operates, and the manner in which the respondents are required, in law, to determine the school allocations set out in paper budgets for schools in the Eastern Cape.

52 School paper budgets are published pursuant to three earlier processes, namely (i) the division of revenue process, (ii) the national budget process, and (iii) the provincial budget process.

Division of revenue and the provincial equitable share

53 The division of revenue process is the process by which the total national budget available is divided into the national, provincial, and local government equitable shares, as well as conditional grants.

54 The equitable share is the primary source of revenue, through which provincial spending responsibilities are intended to be met. To ensure that allocations are fair, the equitable share is allocated through a formula that uses data on demand and need in each of the nine provinces. The six components of the provincial equitable share formula are as follows:

54.1 An education component (48 per cent), based on the size of the school-age population (ages 5 to 17) and the number of learners (Grades R to 12) enrolled in public ordinary schools.

54.2 A health component (27 per cent), based on each province's risk profile and health system case load.

54.3 A basic component (16 per cent), derived from each province's share of the national population.

54.4 An institutional component (5 per cent), divided equally between the provinces.

54.5 A poverty component (3 per cent), based on income data. This component reinforces the redistributive bias of the formula.

54.6 An economic output component (1 per cent), based on regional gross domestic product (GDP-R, measured by Statistics South Africa).

55 The amounts calculated for each province, in respect each component, are added together to arrive at one figure for each province, which is that province's "equitable share".

The provincial budgeting process

56 Provinces start their budget process during the division of revenue process, so that the two processes run concurrently.

57 Provinces receive their provincial equitable share and conditional grants, and also raise a small amount of their own revenue. These resources combined are the total provincial revenues.

58 While conditional grants can only be allocated from national government to specific programmers or projects, the remainder of provincial revenues are discretionary (within the constraints imposed by national legislation and the associated norms and standards).

59 The discretionary funds available to the provinces are then allocated according to provincial priorities that are reflected in the provincial budget. It is during the provincial budget process that provinces decide how much they will allocate in respect of education.

Funding at the school-level

60 When it comes to the funding of public schools, there are two main categories of schools, namely:

60.1 **No-fee public ordinary schools:** for these schools, the province takes full responsibility for funding personnel and operating costs, including infrastructure maintenance and learner-teacher support material. The SGB may fundraise to supplement the provincial funding, but the SGB may not charge school fees. These schools are classified as quintile 1 to 3 schools. I turn shortly to explain these classifications.

60.2 **Fee-paying public ordinary schools:** for these schools, the province takes responsibility for funding the departmental staff employed at the school and part-funds textbooks, other learner support material, municipality services and infrastructure maintenance costs. The province may also compensate the school for any fee exemptions granted to

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learners. The SGB may also charge school fees and fundraise to supplement the provincial funding. These are the quintile 4 and 5 schools. Quintile 4 schools receive more funding from the state and usually charge lower school fees than their quintile 5 counterparts.

61 Funding for schools from provinces takes several forms.

62 In the first place, funding takes the form of the school allocations, which are set out in paper budgets provided to public schools. The school allocation is calculated as a per-learner allocation to each public school. In the case of no-fee public schools, these allocations are intended to fully cover learning and teacher support material ("**LTSM**"), services and school maintenance. For these schools, the school allocation constitutes its entire budget for the provision of textbooks, stationery, learning materials, and maintenance. Without an adequate school allocation, a no-fee public school has no hope of ensuring that learners are provided with equal and quality basic education.

63 In respect of fee-paying schools, the school allocations partly cover these inputs, with the remainder made up by school fees.

64 As I explain below, the Minister determines, from time to time, the thresholds of school allocations for different quintile-category schools.

65 In addition to school allocations, education funding takes place in different forms. These include:

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65.1 remuneration of personnel employed by a provincial education department, as all such staff are paid by the Department directly;

65.2 school fees charged to parents of learners attending fee-paying public schools, and determined by the parent body and managed by the SGB;

65.3 school fee exemption allocations, which are allocations provincial education departments may give fee-paying schools based on the number of learners granted school-fee exemptions to compensate the school for the loss of school fees; and

65.4 infrastructure and other conditional grants from national government, which would be ringfenced for specified education related projects.

66 This application is concerned specifically with the ECDOE's decisions in relation to school allocations, and with the proper interpretation and constitutionality of the Norms and Standards insofar as they allow unremedied and significant deviation from the minimum amounts determined by the Minister for those allocations.

67 I now turn to detail the framework for school allocations under the Norms and Standards.

School allocations under the National Norms and Standard for School Funding

68 The Norms and Standards are the regulations made under section 35 of the Schools Act. They deal with the manner in which individual public schools are to be funded.

69 As paragraphs 16 and 17 of the Norms and Standards make clear, they are expressly designed to advance the constitutional and statutory requirements of funding schools equitably and to redress past inequalities.

70 Paragraphs 88 to 124 of the Norms and Standards deal specifically with school allocations.

71 Paragraph 88 recognises that school allocations are indispensable, if educators are to perform their functions properly, and in order to fulfil the state's obligation to provide basic education. It provides, in particular, that the school allocation is "*intended to finance key inputs other than personnel and buildings in the education process. Key examples of inputs for which the school allocation is intended are textbooks, stationery and non-educational items such as cleaning materials and electricity. Such inputs are necessary if educators and other personnel in schools are to perform their functions properly. The school allocation is therefore an important instrument supporting Government's commitment to fulfilling the State's Constitutional obligation to provide education*". (my emphasis)

72 Paragraph 89 of the Norms and Standards goes on to recognise the particular importance of school allocations for the poor, as follows:

> "As there is a history within South Africa and in other countries of school fees being used to cover the items targeted by the school allocation, Government regards a school allocation that is adequate for at least the poor, as a key lever for ensuring that households suffering the effects of poverty enjoy schooling that is adequately funded by the state. A distributional approach that favours the poor in this regard is in keeping not

only with the Government's Constitutional obligation to redress the imbalances of the past, but also with South Africa's commitment to various regional and international instrument to combat poverty through increased access to quality education." (my emphasis)

73 The first step in determining the school allocation is to determine each school's poverty score. The relevant provincial education department must assign a poverty score to each school that will enable the department to sort all schools from poorest to least poor. In terms of this process, a school is first linked to a specific geographical area (the area in which it is located), then variables relating to households or individuals that inform different indicators of poverty are selected. These indicators include data relating to the income levels, dependency ratio (or unemployment rate), and the level of education of the community. The National Department determines the weights that must be attached to the different variables for the purposes of arriving at the final poverty score for each geographic area, and therefore for each school in that area.

74 As poverty is unevenly distributed across the provinces, the National Department must publish a province-specific poverty distribution table. This table must then be utilized by provincial education departments when calculating their allocation. Schools are designated into quintiles, ranging from 1 to 5, with quintile 1 representing a school in the poorest communities, and quintile 5 representing a school in the wealthiest. Quintile 1 to 3 schools may not demand school fees from parents.

75 The prevailing poverty distribution table, published on 15 December 2022 is indicated below:

National Poverty Distribution Table						
	Quintiles					
%	1 poorest	2	3	4	5	Total
EC	27.3	24.7	19.6	17	11.4	100%
FS	20.5	20.9	22.4	20.8	15.4	100%
GP	14.1	14.7	17.9	21.9	31.4	100%
KZN	22.1	23.2	20.2	18.7	15.8	100%
LP	28.2	24.6	24.2	14.9	8	100%
MP	23.1	24.1	21.5	17.7	13.5	100%
NC	21.5	19.3	20.7	21.4	17.1	100%
NW	25.6	22.3	20.8	17.6	13.7	100%
WC	8.6	13.3	18.4	28	31.7	100%
SA	20	20	20	20	20	100%

76 Once a provincial education department has determined a list of schools ranked from most poor to least poor, it must apply the above table to the list when calculating the school allocation. For instance, the Eastern Cape must apply the national quintile 1 target to as many schools on the resource targeting list as it takes to cover 27.3 per cent of learners, starting from the poorest school.

77 As is clear from the table above, 27.3% of the schools in the Eastern Cape are quintile 1 schools, while 24.7% are in quintile 2, and 19.6% are in quintile 3. 17% of schools form part of quintile 4.

78 This means that 71.6% of the schools in the Eastern Cape are no fee-paying schools and are entirely reliant on state funding to provide the essential inputs necessary to ensure the realisation of the rights of the learners at those schools.

79 Following the poverty score determination, provincial education departments are provided with a national table of targets for the purpose of determining allocations

to schools. This table establishes the target per-learner amounts for school allocations by provincial departments.

80 Paragraph 108 to 114 of the Norms and Standards are at the core of this application, and so I recite them in this affidavit in full.

81 I begin with the provisions of paragraphs 108 to 112 of the Norms and Standards, which provide as follows:

> "108. This sub-section describes how PEDs should use the resource targeting list, the table of targets for the school allocation (the 'targets tabled and the national poverty distribution table (the 'poverty table') to determine the school allocation for each school.
>
> 109. The following 'table of targets for the school allocation' or 'targets table' establishes target per learner amounts for the school allocation. Column A provides the percentages that underlie the proper funding approach. For example, the first national quintile (or one-fifth) of learners should receive 30% of funding, which is six times more than the 5% of funding which should go towards the least poor quintile. Column B specifies the target per learner school allocation amount in rands for each of the years 2007, 2008 and 2009. Column B furthermore specifies what the average per learner target value would be for the country as a whole. The 'no fee threshold' amount appearing in column B indicates the per learner amount that Government considers minimally adequate for each year. For 2007, the no fee threshold is set at R554, and for the following two years inflationary increments have been calculated to give R581 and R605. Column C indicates the maximum percentage of learners in each national quintile that could be funded to the no fee threshold level. Column C provides an indication of both the possibility of adequate resourcing without school fees, and the percentage of learners which could be exempted from the payment of school fees, given the existence of

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fees. For example, in 2007 in national quintile 5, if school fees were used to finance the needs of 78% of learners, then 22% of learners could be financed through the state's school allocation, in other words 22% of learners could be fully exempt from the payment of school fees.

Figure 2. The targets table

National table of targets for the school allocation (2007 – 2009)

		2007		2008		2009	
	A	B	C	B	C	B	C
NQ1	30.0	R738	100%	R775	100%	R807	100%
NQ2	27.5	R677	100%	R711	100%	R740	100%
NQ3	22.5	R554	100%	R581	100%	R605	100%
NQ4	15.0	R369	67%	R388	67%	R404	67%
NQ5	5.0	R123	22%	R129	22%	R134	22%
Overall	100%	R492	89%	R517	89%	R538	89%
No fee threshold		R554		R581		R605	

110. The table appearing in paragraph 109 covers the school allocation targets to the year 2009 only. The Minister, in consultation with the Minister of Finance, will release targets relating to years beyond 2009, and may change previously released targets, depending on circumstances. The Minister would publish in the Government Gazette, on an annual basis, the new column B targets for the new outer year. For instance, in 2007 the Minister would publish the column B targets applicable to 2010. This is to promote predictability and better medium term planning in the schooling system. Changes to previously released targets could be made to deal with factors such as unexpected changes in the inflation rate. The Minister may revise the distribution between national quintiles contained in column A. The

Minister may revise the no fee threshold amounts, after consultation with the Minister of Finance. Revisions should occur on the basis of emerging research into the costs of schooling in different socio-economic contexts, changes in the socio-economic profile of the country and the overall budget of Government. The Minister will release for public comment a report on the methodology employed whenever the no fee threshold is altered, and will take into consideration the ensuing comments. The Department of Education must actively promote research that can inform optimal school allocation budgets, and an optimal distribution of this budget. Should research into costs, in combination with imperatives around equity, efficiency and compulsory schooling, indicate a need for a no fee threshold that is differentiated by grade, the Minister may implement such differentiation in the targets table.

111. Considering that poverty is unevenly spread across South Africa, and that it is Government's intention to establish targets that treat equally poor learners equally, regardless of the province they find themselves in, province-specific poverty data should be taken into account. The following 'national poverty distribution table' or 'poverty table' should be used by PEDs in determining how the target table in paragraph 109 finds expression in each province. For example. Eastern Cape must consider the national quintile 1 target to be applicable to as many schools on the resource targeting list as it takes to cover 34% of learners, starting from the poorest school. The national quintile 2 target would be applicable to the following schools on the resource targeting list, up to the point at which the next 26% of learners would be covered. The national quintile 5 target would be applicable to only as many schools on the non-poor end of the resource targeting list as it takes to cover 11% of learners. The data in this table is based on household income data supplied by National Treasury.

Figure 3. The poverty table

National poverty distribution table

	National quintiles					
	1 (poorest)	*2*	*3*	*4*	*5 (least poor)*	*Total*
Eastern cape	*34.8%*	*21.6%*	*21.0%*	*11.6%*	*10.9%*	*100%*
Free State	*30.8%*	*14.9%*	*20.1%*	*18.8%*	*15.4%*	*100%*
Gauteng	*10.5%*	*11.4%*	*27.4%*	*27.2%*	*23.6%*	*100%*
KwaZulu-Natal	*24.2%*	*18.8%*	*25.6%*	*17.3%*	*14.1%*	*100%*
Limpopo	*34.0%*	*22.3%*	*24.9%*	*11.6%*	*7.2%*	*100%*
Mpumalanga	*16.7%*	*20.2%*	*29.8%*	*19.9%*	*13.5%*	*100%*
Northern cape	*26.3%*	*17.7%*	*21.6%*	*14.8%*	*19.6%*	*100%*
North West	*22.7%*	*15.2%*	*30.5%*	*20.5%*	*11.0%*	*100%*
Western Cape	*6.5%*	*8.0%*	*23.1%*	*27.7%*	*34.6%*	*100%*
South Africa	*20.0%*	*20.0%*	*20.0%*	*20.0%*	*20.0%*	*100%*

112. The Minister, in consultation with the Minister of Finance, will review the national poverty distribution table on an annual basis and, when necessary, will publish updated versions of this table in the Government Gazette." (My emphasis).

84 I draw particular attention to the fact that paragraph 109 provides that the per-learner target amount for each school quintile (which it terms the "no-fee threshold"), "*indicates the per learner amount that Government considers minimally adequate in each year*".

85 Paragraph 110 of the Norms and Standards provides that the determination of the minimum per-learner target is made by the Minister, after the Minister has consulted with the sixth respondent, the Minister of Finance. The determination is made from time to time, "*depending on the circumstances*", and the Minister may prescribe different minimum per-learner targets for each grade, if research indicates that this is necessary.

86 This minimum per-learner target thus constitutes the minimum amount of funding, as determined by the National Minister, that schools require to deliver basic education.

87 To promote equity-based funding, the target funding per learner may differ across quintiles, with schools in the lower quintiles being allocated higher targets. This is sensible, particularly in respect of quintiles 4 and 5, where schools are able to call upon parents to supplement the school's funding.

88 The most recent version of the table setting out per-learner targets was published on 15 December 2022, in Government Gazette No. 47756. I annex a copy of the Gazetted Notice marked **SN4**. The national table of targets for school allocation (2022 – 2024) is as follows:

	2023	**2024**	**2025**
NQ1 – NQ2	R1602	R1672	R1748
NQ4	R803	R838	R876
NQ5	R277	R289	R302
No fee threshold	R1602	R1672	R1748

89 Paragraph 113 of the Norms and Standard explains how this table must be used to calculate the target school allocation for each individual school for the following year. It provides as follows:

> "In order to calculate the target school allocation for each individual school in the following year, the PED must multiply the relevant per learner target from the targets table by the enrolment of the school in the current year.

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For example, a school serving 100 quintile 2 learners (defined as such according to the criteria laid out in paragraph 111) in 2007, would have a target school allocation of 100 multiplied by R711 or R71,100, in 2008."

90 Therefore, in order to calculate target school allocations, provincial education departments must multiply the relevant per-learner target from the above table, by the number of enrolled learners in the current year. For instance, a quintile 3 school serving 100 learners would have its school allocation for 2023/2024 calculated as follows:

"*100 (learners) x R1602 (target allocation for quintile 4) = R160 200*"

91 Paragraph 114 provides as follows:

"114. Each PED must, as part of its ongoing MTEF budgeting process, calculate the school allocation budget implied by the national targets, and compare this amount to the actual school allocation budget amount available in the MTEF budgets. If the target amount is not equal to the actual amount, one of the following sets of procedures should be followed:

(a) If the actual amount exceeds the target amount, the PED must ensure that, as a minimum, each school receives the school allocation implied by the national targets. A PED may use the difference between the actual amount and the target amount to create a smoother distribution, or a continuous curve, so that less abrupt per learner funding shifts occur between one school on the resource targeting list and the next. However, such smoothing should not result in any school receiving less than the target per learner amount applicable to that school.

(b) If the target amount exceeds the actual amount, the PED and the DoE, in collaboration with the National and Provincial

Treasuries, must jointly devise a plan for attaining the targets in the earliest possible year. This plan must include details on how, in the interim, the actual budget will be distributed across the national quintiles. Such a plan must prioritise the attainment of targets in quintiles 1 and 2, and for learners In Grades 1 to 9."

92 Therefore, in short, paragraph 114 contemplates two scenarios in which actual school allocation budgets may be different to the target amount.

92.1 Paragraph 114(a) contemplates a scenario in which the actual budget exceeds the target. In that event, the province must ensure that every school receives at least its minimum allocation implied by the national targets, and may then use the "excess" to create a smoother distribution.

92.2 Paragraph 114(b) contemplates a scenario in which the actual budget is less than the target, then the provincial education department and the national Department of Basic Education, in collaboration with national and provincial Treasuries, must jointly devise a plan for attaining the targets in the earliest possible year, which details how, in the interim, the actual budget will be distributed across the national quintiles, and which must prioritise the attainment of targets in quintiles 1 and 2, and for learners in grades 1 to 9.

93 I will explain later in this affidavit that, in accordance with established canons of interpretation, paragraph 114(b) must be interpreted in a manner that carefully circumscribes the ability of provincial departments merely to deviate from the

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targets. In the event that paragraph 114(b) is not capable of such a reading, then it is to that extent unconstitutional and invalid.

THE UNDERFUNDING OF EASTERN CAPE SCHOOLS

94 To understand the most recent funding decision, which the applicants ask the Court to review and set aside, it is important to provide the factual background leading up to the decision. The historical background – and particularly the manner in which the ECDOE has routinely deviated, without justification, from the per-learner minimum targets for school allocation – is particularly relevant for purposes of the declaratory relief in respect of the Norms and Standards detailed below.

95 In sum, between 2016 and 2019, the ECDOE consistently funded learners in public schools in line with the per-learner minimum targets for school allocations. Any deviations from the targets in those years appears to have been minor.

96 However, since 2020, per-learner funding has been significantly reduced, to levels far below the per-learner minimum targets for school allocations, with dire consequences for learners in the province.

The underfunding of the Province's schools since 2020

2020 reduction in school allocations

97 Schools in the Eastern Cape usually receive their paper budgets between October and November in the preceding financial year. The ECDOE provides schools with a suggested breakdown of the budget, in order to guide the schools'

spending. This may differ from year to year, but usually covers the following line items:

97.1 Learner-teacher support material;

97.2 Maintenance;

97.3 Municipal services;

97.4 Education consumables;

97.5 Cash Payment;

97.6 Additional line items can be added depending on the type of school, and the subjects that it provides.

98 Given the importance of these items to the provision of basic education, there is no question that this budget must be adequate, or there is no hope of schools being able to ensure the realisation of the fundamental rights of learners attending them.

99 Despite this, the ECDOE has consistently reduced funding to public schools, providing school allocations that significantly undercut the minimum required funding determined by the National Department under the Norms and Standards.

100 On 20 November 2020, the then-Superintendent-General of the ECDOE, Mr Temba Kojana, sent a memorandum to school principals and other stakeholders

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in the province, to advise them of an intended review of the Norms and Standards. The memorandum is annexed marked **SN5**.

101 The memorandum stated that the fiscal situation in the country had been influenced by the Covid-19 pandemic, and that this had also affected the ECDOE. According to the memorandum, the ECDOE's budget was cut by R1.3 billion in order to fund Covid-19 procurement activities, and a portion of the budget that had been allocated had been used to provide personal protective equipment to schools.

102 In addition, the ECDOE indicated that the Norms and Standards were already impacted by the following factors:

102.1 Honouring arrear transfers in respect of municipal services for section 21 schools outside municipalities for previous financial years;

102.2 Accruals paid for LTSM;

102.3 Tablets for matriculants;

102.4 Clearing outstanding municipal bills for schools within municipalities; and

102.5 Improvement of communication in schools through laptops and data.

103 These reasons were stated in broad and general terms, without any substantiation or detail, and without any clarity as to the real financial impact that each of these factors had on the ECDOE's ability to pay schools their allocations in terms of the paper budgets.

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104 Despite the lack of detail or justification, the ECDOE indicated that it was only going to pay 45% of the second tranche for the 2020/2021 financial year, which meant that only 78% of the overall school allocations would be paid to schools in the province. In real terms, this meant that, while no-fee paying schools were entitled to receive R1544 per learner, such schools only received R1204,32.

105 By this stage, however, paper budgets had already been sent to schools. I am advised that the paper budgets constituted what our courts have described as a publicly promulgated promise to pay, *alternatively* created a legitimate expectation amongst schools as to how much they would receive for the financial year. The ECDOE reneged on its promise to pay the full school allocation to the province's schools. This influenced schools' own planning and budgeting processes, which were thrown into disarray when they were suddenly given less than had been promised to them.

106 The decision was, moreover, taken without any consultation with the schools or affected stakeholders. The first time schools were informed of the decision was when they received the communication on 20 November 2020.

Further reductions in school allocations (2021 to 2023)

107 Having been paid only 78% of their allocations for the 2020/2021 financial year, schools in the province received an even greater shock when they received their 2021/2022 paper budgets.

108 While the Norms and Standards determined the minimum target for that financial year to be R1466 per learner, quintile 1 to 3 schools in the Eastern Cape province

only received R766,32. Simply put, the poorest schools in the province were allocated approximately half of what the National Department determined to be the minimum amount necessary to ensure they had access to the textbooks, stationery, cleaning products, toilet paper, maintenance upkeep, municipal and basic services, and the other necessities without which their right to basic education, and their rights to dignity and equality, could not be realised. Quintile 4 schools were meant to receive a minimum of R735 per learner, but the ECDOE allocated only R384,20 per learner.

109 The ECDOE never provided any explanation for this massive reduction. Nor were schools or other stakeholders ever consulted.

110 The following year, while the 2022/2023 paper budgets represented a small nominal increase, actual allocations remained about half of the minimum target determined by government.

111 In terms of the 2022/2023 paper budgets, which were sent to schools in October 2021, schools in quintiles 1 to 3 only received R815 for the financial year, despite the Norms and Standards target for 2022 being R1536 per learner. Quintile 4 schools were meant to receive a minimum of R770 per learner, but only received R431 per learner.

112 Again, no explanation was provided, and no consultation process was followed.

113 On 31 May 2022, the applicants' legal representatives, the Legal Resources Centre (**"LRC"**) sent a letter to the respondents, a copy of which is annexed marked **SN6**. The letter outlined the respondents' obligation to comply with the

Norms and Standards, and described the challenges that schools encounter in providing proper education in the face of funding shortfalls. In particular, the letter asked the ECDOE to do the following:

113.1 Provide detailed written reasons for:

113.1.1 the reduction in the payment of the amount allocated to schools in the Province for the 2020/2021 financial year.

113.1.2 the reduction in the allocation of funds per learner to schools in the Province for the 2021/2022 and 2022/2023 financial year, and the drastic failure to meet the targets set in the Norms and Standards.

113.2 Provide evidence of the consultations, if any, that ECDOE had with stakeholders, including schools, before reducing the per learner funding and the per learner allocation in the following financial years 2020/2021, 2022/2022 and 2022/2023.

113.3 Provide the plans that the ECDOE, together with the National Department of Basic Education and National and Provincial Treasuries, has devised in compliance with paragraph 114(b) of the Norms and Standards, for attaining the targets in the earliest possible year.

113.4 Provide full details and evidence of the steps that the ECDOE is taking to support schools for the 2022/2023 year that are unable to provide education to learners due to a lack of funding, including steps to:

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113.4.1 Address the non-payment of municipal service accounts by schools;

113.4.2 Address the non-payment of electricity bills by schools, or the inability to afford to purchase electricity due to a lack of funding;

113.4.3 Address the inability of schools to do maintenance to the school buildings due to a lack of funding;

113.4.4 Address the inability of schools to purchase critical education consumables and pay for services such as photocopying.

114 The purpose of this letter was to afford the ECDOE an opportunity to account for the underfunding, to explain how and to what extent it had complied with the Norms and Standards, and to detail the steps that it had taken, and intended to take, to address and correct the underfunding.

115 The ECDOE simply never responded to the letter.

The 2023/2024 school allocations in the Eastern Cape

116 On 7 November 2022, schools received their paper budgets for the 2023/2024 financial year.

117 Again, the budget was far below the per-learner minimum targets contained in the Norms and Standards. In fact, despite inflation, schools in the Province were now to receive less per learner than they had even for 2021/2022. The no-fee paying schools in the province were allocated R607.90 per learner for the

2023/2024 financial year. The Norms and Standards target for no fee schools for 2023/2024 was R1602.00 per learner.

118 This meant that learners in no-fee-paying schools in the Eastern Cape would, quite astonishingly, be receiving only 38% of the minimum amount, and, even in nominal terms, R207.10 less than they had been allocated for the 2022/2023 financial year.

119 On 9 November 2022, the LRC again addressed a letter to the ECDOE, as well as the National Department, advising that the reduction in funding was unlawful and unconstitutional, and requesting that the paper budgets be reviewed and reissued. The letter is annexed marked **SN7**.

120 Again, the respondents did not respond to this letter.

121 On 13 December 2022, the LRC sent an email to the legal advisor of the ECDOE to request an update as to when a response to the letter of 9 November 2022 could be expected. The legal adviser responded by email, advising that the matter had been referred to the office of the state attorney for a legal opinion. These emails are annexed marked **SN8**.

122 There was no further response from the ECDOE.

The memorandum on the reduced 2023/2024 school allocations

123 On 25 January 2023, the applicant schools received an ECDOE memorandum (dated 13 December 2022) from the DDG: EDC & IOM, with the subject "*2nd Tranche Transfers to Qualifying Schools*". It is annexed marked **SN9.**

124 The memorandum was addressed to all cluster managers, district directors, principals, SGBs, SGB associations, and union officials. Its ostensible purpose was to explain that there had been a "*recalculation*" of tranche payments to public ordinary schools in the province. In the memorandum, the ECDOE admitted that it had been funding schools below the national minimum per-learner target in terms of the Norms and Standards (what it described as "the National Norm"), and it attempted to explain the factors that impacted on the amount of funding made available to schools.

125 In particular, the ECDOE sought to rely on the following factors:

125.1 Budget cuts from the 2019/20 to the 2023/2024 Medium Term Expenditure Framework, which, according to the memorandum, necessitated the reduction in per-learner allocations to schools.

125.2 A R1.054 reduction in the overall indicative budget baseline for public ordinary schools since 2019/2020, which, according to the memorandum, resulted in a reduction in the amount allocated to schools for items listed on the paper budget.

125.3 The fact that the Department's head office was called upon to bail out "*a few section 21 schools*" that experienced challenges in paying their municipal accounts. Section 21 schools are schools that have successfully applied, in terms of section 21 of the Schools Act, to take over some of the otherwise centralised functions of school management.

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125.4 The fact that the ECDOE had centralised contractual obligations, e.g. E-Learning, Data Communication, Textbooks, Stationery, MTBBE, School Specialisation, such as Agriculture, Technical, Maritime Studies, and Full Service, LIAS, and school furniture.

126 According to the memorandum, the ECDOE needed an additional R872.5 million in order to fund public schools at the national per-learner target for 2023/2024. The memorandum included a table setting out the alleged impact of the per-learner increase scenarios on public ordinary schools. The table purported to show (i) the number of learners per quintile in the province as at 10 August 2022, (ii) the national per-learner target in the Norms and Standards and (iii) a comparison of the target with what is termed "*per learner Eastern Cape affordable*". I assume that the latter column refers to the amount that the ECDOE says that it can afford to pay to schools, in each of the quintiles, at the target per-learner amount. Based on this, the shortfall in funding is determined as R872.5 million.

127 There are a number of things to note about the manner in which the ECDOE sought to justify its failure to fund schools at the national per-learner target, and its reduction, even in nominal terms, of the actual amounts allocated per learner compared with previous years.

128 **Firstly,** schools were only informed of the purported reasons for the reduction in the per-learner funding more than two months after receiving their final paper budgets for the 2023/2024 financial year.

128.1 Schools had already received their paper budgets on 7 November 2022. The memorandum was only sent on 25 January 2023. This was the first time that schools were informed of the alleged reasons behind the reduction.

128.2 The ECDOE did not engage with schools on the underfunding, and did not seek to understand the impact of the underfunding on schools and their learners. It simply conveyed the decision, together with purported reasons for the reduction.

129 **Secondly,** the memorandum did not indicate any alternative options that the ECDOE considered before reducing the per-learner target.

129.1 The memorandum was silent on which, if any, stakeholders were consulted when the proposed measures were adopted, and which alternatives were considered.

129.2 It did not address the impact on schools and learners, how the allocation would affect the right to education, and the steps that the ECDOE intended to take to alleviate that impact. It simply stated that there were budget cuts that amounted to R1.054 billion since 2019/2020, and that this meant that the ECDOE could not fund at the per-learner target.

130 **Thirdly,** and perhaps most concerningly, there was a discrepancy between the justification provided by the ECDOE in its memorandum, and its earlier decision on the 2023/2024 paper budgets.

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130.1 According to the memorandum, the "*per learner Eastern Cape affordable*" – that is, the amount that the ECDOE was, on its own version, able to afford – was R1 066 per learner for no-fee schools, and R534 for quintile 4 schools.

130.2 However, we know from the paper budgets distributed in November 2022 that no-fee schools were told that they would only receive R607.90 per-learner, and quintile 4 schools would receive R378,42 per-learner. The ECDOE has never explained why it purported to allocate so little funding to public schools, in circumstances when it was, on its own version, able to afford to allocate more.

131 **Fourthly**, the ECDOE sought to suggest that, of the allocated per learner funding, not all goes to school transfers, and that it is also faced with centralised contractual obligations. For reasons that I will set out more fully later in this affidavit, this approach is unlawful; I am advised that the entire allocation is required to be paid to schools.

132 In the memorandum, the ECDOE also set out the options that it was apparently considering in 2023/2024 to increase the amount allocated and transferred to schools in coming years. These included:

132.1 transferring all municipal services funds to section 21 schools, and not accommodating any centralisation of this function;

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132.2 significantly reducing the amount earmarked for centralisation so that more funds are available for transfers and, to this end, requiring schools to voluntarily opt in or out of central procurement;

132.3 continuing to lobby Treasury for funding, in the hope of restoring the baseline and being able to fund at the national per-learner target as before. The memorandum indicated that the ECDOE had been assisted with R441 million additional funding from Treasury, which would assist in increasing the NSF over the 2023 MTEF funding baseline, and that R100.016 million had been identified to improve the 2023/2024 NSF baseline to schools.

133 Again, it is important that I point out a number of key flaws in the ECDOE's proposed options.

134 **Firstly,** they are vague considerations, with no clear plan as to how the ECDOE's under-funding would be addressed and improved.

134.1 In particular, the memorandum provided no indication of a joint plan, developed in collaboration with provincial and national treasury, as required by the Norms and Standards, to attain the per-learner targets in the earliest possible year. Nor did it provide any indication of how the actual budget would be distributed across quintiles, how the attainment of targets in quintiles 1 and 2 would be prioritised, or how the funding of learners in grades 1 to 9 would be prioritised.

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134.2 Importantly, there is also no indication in the memorandum of the timeframes in which the under-funding would be addressed, and how long it would be before public schools are funded at the per-learner target again.

135 **Secondly,** the actual options proposed were entirely irrational, and could never solve the problems of underfunding.

135.1 For example, whether the ECDOE retains the centralised function of paying for municipal services for section 21 schools, or decentralises the function to schools, would make no difference at all. It would merely mean that, instead of the ECDOE paying the little money earmarked in the paper budget to the municipalities, the schools would receive that amount and pay it to the municipalities.

135.2 Schools are bound by the paper budget allocations, and the percentage of the budget that is earmarked for municipal services. Whether the payment of municipal services is centralised or not, a school will, in effect, have to pay this expense from its budget either way. Given the cost of these services, none of the applicant schools, nor any of the other affected schools in the province, would be able to cover their municipal services account when the per-learner funding is so drastically below the minimum target. The ECDOE's proposed step therefore does not increase the amount of money for municipal services.

135.3 Similarly, the proposed reduction in the amount earmarked for centralisation is equally irrational. In the Eastern Cape, the procurement

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of LTSM for no-fee schools is centralised, and schools order textbooks and stationery through the ECDOE. Transferring the money to schools would make no difference to the circumstances of the schools. It would merely mean, as with municipal services, that the schools themselves must now buy the LTSM, without the benefit of relying on any volume-based discounts that the ECDOE is able to negotiate with publishers and service providers. It makes no difference to the financial situation of the schools – it merely shifts the onus to the schools to buy the LTSM themselves.

136 **Thirdly,** while the memorandum referred to lobbying Treasury for funding, it provided no detail as to how and when the minimum target per-learner would be restored, and it made plain that the ECDOE had not formulated a joint plan with the national and provincial treasuries in this regard.

136.1 Apart from R441 million that the ECDOE had "*provisionally*" been assisted with, and R100.016 that had been "*identified*" to improve the 2023/2024 baseline to schools, the memorandum did not set out any solutions to the under-funding crisis in which public schools in the Eastern Cape find themselves.

136.2 Indeed, it is not clear what is meant by "*provisionally*", or what conditions still needed to be fulfilled in order for the amount actually to be provided to the ECDOE by Treasury. It is also not clear if the R100.016 that had been "*identified*" formed part of the R441 million, or if it is an additional amount and if so, when it would be made available.

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136.3 This paragraph was no more than a few unsubstantiated statements that provided no clear plan for the actual improvement in the per-learner funding to the Province's schools. The schools were left none the wiser as to the plans of the ECDOE, and what will happen in case these hopes don't transpire. This is simply not good enough.

The revised 2023/2024 school allocations (the May 2023 funding decision)

137 Following the announcement of the Eastern Cape's school allocations in November 2022, the applicant schools were deeply concerned about the reduction in their budgets, and the ECDOE's ongoing abject failure even to come close to the minimum target per-learner amounts.

138 Indeed, as I discuss more fully below, the trend of routine under-funding has made it difficult for the applicant schools, and all schools in the Province, to fulfil their financial obligations and to facilitate the realisation of their learners' right to basic education and related constitutional rights.

139 On 31 March 2023, a principals' meeting was held in Gqeberha. It was attended by the principal of Tyantyi Primary School, Ms Priscilla Glover. At the meeting, which was also attended by the second respondent, the MEC for Education in the Eastern Cape, Mr Fundile Gade, it was announced that schools would be issued with revised paper budgets in the week of 3 April 2023. The principals were informed at that meeting that the school allocations would be based on the National Department's prevailing per-learner targets for 2023/2024. This was simply mentioned in the meeting, and no formal communication was sent to

schools to relay the information. A confirmatory affidavit of Ms Priscilla Glover will be filed together with this affidavit.

140 As far as the applicants are aware, apart from the principals who attended this meeting, nobody else was aware, at that stage, that revised budgets may be forthcoming.

141 Despite the announcement at the meeting, no budgets were issued during the week of 3 April 2023.

142 On 12 April 2023, the LRC wrote to the respondents and requested clarity as to when the revised budgets would be issued. The letter is annexed marked **SN10**. The respondents did not respond to this letter.

143 On 19 April 2023, The Select Committee on Education and Technology, Sport, Arts and Culture of the National Council of Provinces was briefed in a virtual meeting by the Eastern Cape, Free State and Gauteng provincial education departments on their 2022/23 annual performance plans and budgets. The presentation is annexed marked **SN11**. At this meeting, the ECDOE presented its budget for the 2023/2024 financial year. During the presentation, it indicated the following:

> "The province also added an amount of R772.484 million in 2023/24 is allocated to augment norms and standards for funding in Public Ordinary and Early Childhood Development in order to meet the required national norm per learner funding for all qualifying quintile school categories." (slide 10) (my emphasis)

144 On 21 April 2023, a further presentation, titled "*Norms and Standards for Funding Public Ordinary Schools for the 2023/24*", came to the attention of our legal

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representatives at the LRC. The presentation is annexed marked **SN12**. I draw particular attention to the following features of this presentation.

144.1 The ECDOE indicated that it would commence the issuing of paper budgets which would confirm the funding per learner in accordance with the "*National Norm*" to the ordinary public schools on Monday, 24 April 2023.

144.2 The ECDOE stated that an additional budget injection of R872.5 million had been made in 2023/24 for funding both ordinary public schools and early childhood development. Of that amount, R772.484 million was in respect of the final allocation letter, and R100,016 million was during the second budget submission.

144.3 The ECDOE confirmed that the affordable rate per learner (i.e. the rate per learner that the ECDOE was able to afford) was at the national per-learner target, and that the ECDOE's affordable funding was therefore "*at 100% of [the] gazetted National Norm per learner value*".

145 On or about 9 May 2023, more than a month into the 2023/2024 financial year, the ECDOE issued revised paper budgets (**"the May 2023 funding decision"**).

146 The revised paper budgets issued to the three applicant schools as part of the May 2023 funding decision are annexed marked **SN13**, **SN14** and **SN15**.

147 At paragraph 3 of the revised paper budgets, the ECDOE informed the schools that:

"[t]he department is funding at the National per learner norm of R1,602 per learner for quintiles 1-3 schools, R803 for quintile 4 and R278 per learner for quintile 5 schools."

148 In other words, the revised paper budgets informed schools that they would receive allocations in accordance with the national per-learner targets.

149 However, the revised paper budgets went on to explain that schools would not, in fact, receive their full allocation, but that a significant portion would be retained by the Department. The paper budgets indicated that the allocations would be divided in two parts, as follows:

"PART A: R834.177 million or 33.75% of the budget is utilised to fund Provincial NNSSF Budget, benefitting all schools. This allocation makes provision for the resourcing of curriculum and other teaching and learning related needs for all schools.

PART B: The balance of the budget is allocated directly to Textbooks, Stationery and Tranche Payments to schools."

150 To the best of my knowledge, this allocation was reflected in all revised paper budgets sent to public ordinary schools in the Eastern Cape, and this was a province-wide decision.

151 The upshot is that that quintile 1 to 3 no-fee paying schools will receive only 66.25% of the per-learner target, amounting to R1061.30 per learner. Quintile 4 schools, such as Hoërskool PJ Olivier, will receive only R532, despite being entitled to R803 per learner.

152 In other words, despite the revised paper budgets purporting to fund Eastern Cape schools at the National Department's minimum per-learner targe, and

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despite the ECDOE's own presentations indicating that it is able to afford to fund Eastern Cape schools at these targets, the retention by the Province of 33.75% of the required allocation means that, in reality, the ECDOE continues to drastically underfund schools in the province.

153 It is notable that the amounts that public schools will, in fact, receive in terms of the revised paper budgets corresponds almost exactly to the amounts that the ECDOE indicated it could afford in its 25 January 2023 memorandum. In this regard:

153.1 As I have explained, the 25 January 2023 memorandum indicated that the amount that the ECDOE could afford was R1066 for no-fee paying schools, and R534 for quintile 4 schools.

153.2 I have also explained that, although the revised paper budgets issued in May 2023 purport to fund schools at 100% of the minimum per-learner target, they actually reflect a decision to fund public schools at 66.25% of the minimum per-learner target.

153.3 The result is that, in terms of the revised paper budgets, no-fee paying schools will receive R1061.30 per-learner, and quintile 4 schools will receive R532 per learner. This is nearly identical situation to the amounts that the ECDOE indicated it could afford in the January 2023 memorandum.

153.4 Similarly, the remaining 33.75% of the budget, which amounts to R834.177 million, will, in terms of the revised paper budgets, be retained

by the ECDOE. This amount is similar to the R872.5 million that the ECDOE contended, at paragraph 3 the January 2023 memorandum, that it needed to fund schools at the national per-learner norm.

154 It is unlikely that this is mere coincidence. It appears instead that the Part A / Part B division in the revised paper budget is a fiction. It allows the ECDOE to say that it is funding 100% of the per-learner targets, when it is in fact merely providing funding in precisely the amount that it always said it would – that is, in an amount substantially less than the per-learner targets.

155 On 16 May 2023, the LRC sent a letter to the respondents, on the applicants' behalf. The letter advised the respondents that the May 2023 funding decision was unlawful, and demanded that the allocation for each school be calculated on the basis of the full per-learner target; that no percentage of the school allocation be withheld; and that the notification that schools would only be directly allocated 66.25% of their total school allocation be withdrawn. The letter is annexed marked **SN16.**

156 To date, the respondents have not responded to this letter.

A summary of the under-funding of Eastern Cape schools

157 Before I turn to demonstrate the unlawfulness of the May 2023 funding decision, I set out below a summary of under-funding in the Eastern Cape in recent years. I do so by setting out the per-learner target, alongside the actual funding allocation given to quintile 1 to 3 no-fee paying schools in the Eastern Cape from 2016 to 2024. The purpose of doing so is to provide a clear illustration of the

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extent to which funding has been reduced, and the degree to which the ECDOE has routinely been funding well below the national per-learner target.

Year	**National Per-Learner Target**	**Money per-learner allocated to schools in the Eastern Cape**
2016/2017	R1175	R1177
2017/2018	R1243	R1177
2018/2019	R1316	R1316
2019/2020	R1390	R1390
2020/2021	R1544	R1319,40 (schools only received 78% of this allocation = R1029,13)
2021/2022	**R1466**	**R766,32**
2022/2023	**R1536**	**R815**
2023/2024	**R1602**	**R1061.30 (originally announced at R607.90, but revised upward)**

158 As the table above illustrates, in 2021, schools received only about 52% of the national target amount, and in 2022, they receive 53% of the national target amount. Before the revised school allocations for 2023/2024 (i.e. in terms of the November 2022 paper budgets), they would only have received 38% of the per-learner target. Following the ECDOE's about-turn (i.e. in terms of the May 2023 revised paper budgets), they will now be receiving 66.25% of the per-learner

allocation, with the remaining 33.75% being retained by the province for the unexplained "*Provincial NNSSF Budget*".

159 The same trend is evident in quintile 4 schools, such as the third applicant. The table below sets out the difference between the per-learner target and the actual amount paid to schools between 2018/2019 till 2023/2024.

Year	**National Target**	**Money allocated to schools in the Eastern Cape**
2018/2019	R660	R660
2019/2020	R697	R697
2020/2021	R735	R630 (schools only received 78% of this allocation = R491,40)
2021/2022	**R735**	**R384,20**
2022/2023	**R770**	**R431**
2023/2024	**R803**	**R532**

160 As I have mentioned above, the drastic reductions in funding that have taken place since 2020 have been implemented without consulting affected schools. Schools were also not consulted prior to the funding decision in respect of the revised 2023/2024 paper budgets.

161 Repeated attempts by the LRC to gain clarity on the reduction in the budgets and measures that will be used to support the schools considering the reductions has been met with silence. Indeed, to date, the respondents have ignored every one

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of the letters that the LRC has sent them, and have refused to engage with the issue at all.

162 This has left the applicants with no choice other than to approach this Court for appropriate relief.

THE IMPACT OF INSUFFICIENT FUNDING

163 The devastating impact of the reduction in the paper budgets of the applicants schools will be detailed in the supporting affidavits filed on their behalf. Below, I merely provide a brief overview of the impact on each of the applicant schools. This section should, however, be read in conjunction with the additional supporting affidavits.

Ntsika Secondary School

164 This table shows an overview of the amount of money that was allocated to Ntsika Secondary School between 2016/2017 and 2023/2024:

Financial Year	Number of learners	Per-learner allocation on the paper budget	Total allocation in paper budget
2016/2017	571	R1177	R672 067.00
2017/2018	658	R1177	R774 466.00
2018/2019	700	R1316	R921 200.00
2019/2020	678	R1390	R942 420.00

2020/2021	759	R1319.40	R1001424.70 (schools only received 78% of this allocation)
2021/2022	789	R766.32	R604 625
2022/2023	816	R815	R665 437.00
2023/2024	851	R1602 **(only R1061.30 to be paid to schools)**	R903 188 **(school is entitled to R1 363 302, but R460 114 of the budget is retained by the ECDOE)**

165 The table illustrates the reduction, year on year, in the budget of the school. For example, in 2023/2024, the school will receive less money than in 2018/2019, despite having 151 more learners in the school. This reduction has not been accompanied by any other support from the ECDOE, and the ECDOE has provided no indication as to how the school should mitigate the impact of such a drastic reduction in budget.

166 To understand the real impact of this under-funding, it is necessary to consider the rising expenses that the school has faced, and is expected to face in the coming financial year. This will be detailed more fully in the supporting affidavit

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of Mr Xolisile Tyotha, the chairperson of the SGB, but I highlight a few critical expenses here.

167 The municipal services of the school are among its most significant expenses.

167.1 The school must pay the municipal accounts, as well as the account to Eskom, to ensure that water, electricity, and other basic municipal services are provided to the school.

167.2 The school spent R130 410.95 on municipal services and electricity during 2021, and R259 037.32 during 2022.

167.3 In 2023/2024, the school will only receive R231 761 to spend on municipal services and electricity. That is less than the actual amount that the school spent on those services in 2022. Put simply, the school will not receive enough funding to pay for the most basic services.

167.4 The school will simply continue to fall behind on payments, and will inevitably be cut off from electricity and water supply.

168 For quintile 1 to 3 schools, the procurement of LTSM is centralised, and each school orders its LTSM through the ECDOE.

168.1 The majority of the learners at Ntsika Secondary School do not have a textbook for every subject, despite the school having a book retrieval rate of over 95% for its textbooks.

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168.2 In order for the school to ensure that every learner in the school has a textbook for each of their subjects (which, I am advised, our Constitution demands), the school requires an additional R637 500.00 for 2023/2024. This amount is in addition to what has been allocated in the paper budget.

169 Ntsika Secondary School is located in Joza Location, which is one of the poorest areas in Makhanda. While the school does try to fundraise, and has received some donations from surrounding businesses, parents at the school simply do not have the financial means to support the school, to make up the shortfall in funding, or to cover its running costs. Nor are they legally required to.

Tyantyi Primary School

170 Tyantyi Primary School has 189 learners and provides education from grades 1 to 7. Like the other applicant schools, the paper budget of the school has reduced significantly since 2020, making it effectively impossible for the school to provide all its learners' basic educational needs.

171 Even before the steady reduction of the paper budget began in 2020, the school reported struggling to make ends meet. During the 2022/2023 financial year, the situation has deteriorated significantly.

172 As will be detailed fully by Ms Boniwe Tyota, the chairperson of the school's SGB, the 2023/2024 paper budget will devastate the school financially. The funding from the ECDOE is simply insufficient to meet the financial needs of the school, and, the decision to retain 33.75% of the budget for 2023/2024 will compound an already unteniable situation.

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173 Despite the school already struggling with underfunding, its 2023/2024 paper budget has been reduced in the same manner as the other applicant schools.

174 The table below demonstrates the real-term reduction in the amount of money that the school receives from the ECDOE. As with the other schools that form part of this application, and schools around the Province, the amount of money has reduced compared to the number of learners at the school.

Financial Year	**Number of learners**	**Per-learner allocation on the paper budget**	**Total allocation in paper budget**
2020/2021	159	R1466	R233 094 (schools only received 78% of this allocation)
2021/2022	173	R766.32	R132 573
2022/2023	174	R815	R158 052
2023/2024	189	R1602 **(only R1061.30 to be paid to schools)**	R200 590 **(school is entitled to R302 778, but R102 188 of the budget is retained by the ECDOE)**

175 The school is located in a very poor area of Makhanda, where the community is mostly dependent on social grants for their livelihood. Around 80% of the parents are unemployed. The school attempts to fundraise to supplement its income from

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the state, but, in general, its fundraising efforts are only able generate about R10 000 per year.

176 Despite the school being situated in a poor community and being compelled by law not to require fees from parents, the school has no choice but to rely on poor parents to buy copying paper and toilet paper for the learners. It cannot afford to buy these items itself.

177 The school's Nashua account for its copying machines is in arrears, and has not been paid since October 2022. The school simply does not have enough money to pay for it. The principal of the school also pays some of the schools' expenses out of her own pocket. Since 2021, the principal has paid R8 560 towards expenses at the school, including for copying paper, red pens for the teachers to be able to mark the learners' work, blue pens for the learners, and padlocks and keys to secure the school.

178 This is an untenable position. A principal is an employee of the ECDOE and cannot be expected to foot the bill for their employer's failure to provide proper resources to schools.

179 At present, the school's municipal rates and taxes bill is in arrears in the amount of approximately R181 000. In addition, the school does not have enough money to pay for basic maintenance, such as the replacement of door locks, window handles, the cutting of the grass on the school premises, or the fixing of toilets, leaking roofs, and classroom floors. Not all the classrooms have electricity as the school cannot afford to have it installed.

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180 In addition to this, the school is expected to cover the costs of financial management, including banking and auditing costs, which amounts to approximately R7000 per year. No provision is made in the school's paper budget for these specific expenses. The continued underfunding for 2023/2024 will have an impact on the SGBs ability to fulfil its fiduciary duties, as it is not able to pay for the auditing costs of the financial statements of the school.

181 One of the other expenses that the school is expected to cover is stipends to educators who fill vacant substantive posts. Because the ECDOE takes so long to fill vacant posts, the SGB is forced to employ educators in those positions and pay them a stipend, while they await departmental appointments. These posts can stay vacant for months, which places a significant financial burden on the school. However, if the school did not take this step, the result would be that certain classes would not be taught for months, to the substantial detriment of learners.

182 The school relies on donations for certain critical maintenance expenses. It has received water tanks from Rotary International, while other NGOs have assisted with some of the renovations of the classrooms. The school tries to fundraise to supplement its income, but, in general, the fundraising efforts only generate about R10 000 per year, as the parent community is simply not financially able to assist with the financial needs of the school.

183 As will be detailed in the supporting affidavit of Ms Tyota, the school has raised the issue of the reduction in funding with the district office in Makhanda. Specifically, the school has informed the circuit manager that the school cannot

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meet its financial needs, and will not be able to do so given the reduction of the budget for 2023/2024.

Hoërskool PJ Olivier

184 As I have explained, PJ Olivier is a quintile 4 school in Makhanda that provides education to learners from grades R to 12. As a quintile 4 school, it is entitled to ask parents of learners to pay a school fee.

185 The school used to be classified as a quintile 5 school, but in 2018 it was reclassified as quintile 4 as a result of the change in the school community's financial profile. The school used to provide education to predominantly higher income learners, but now primarily provides education to learners from the township areas of Makhanda.

186 The school charges a small school fee, but 53% of the learners in the school qualify for fee-alleviation, and do not pay school fees at all. I am advised that, as a matter of law, the ECDOE is required to compensate the school for the fee-alleviation. But according to the SGB, the school does not receive the rebate, and the school cannot rely on this as a source of income.

187 While the school is considered a fee-paying school, it is heavily reliant on the funding from the ECDOE to support its running costs. As more and more learners have been unable to afford the school fees, and the financial circumstances of the school community have deteriorated, the school has become more dependent on its school allocation than ever before.

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188 The school's paper budget allocation between 2018/2019 and 2023/2024 is set out below. It shows the income of the school since it became a quintile 4 school.

Financial Year	Number of learners	Per-learner allocation on the paper budget	Total allocation in paper budget
2018/2019	382	R660	R252 120
2019/2020	376	R697	R262 072
2020/2021	388	R630.81	R244 754.50 (schools only received 78% of this allocation) = R190 908.51
2021/2022	386	R384,20	R148 303
2022/2023	398	R431	R171 607
2023/2024	426	R531,99	R226 748

189 The 2023/2024 paper budget provides the school with less money, even in nominal terms, than in the 2018/2019 financial year, despite the cost of inputs increasing across the board, and the school now having 44 more learners for 2023 than it had in 2018. The allocation remains substantially below in the minimum per-learner amount determined by the National Department.

190 This has had a significantly negative impact on the school's financial position.

190.1 The school's municipal account is in arrears by around R137 322.42 as at August 2023. As will be detailed in the supporting affidavit filed on its behalf, the school has written to the municipality on a number of occasions

over the years to try and address the municipal account, but the issue remains, placing the school at risk of having its water supply disconnected.

190.2 In 2023/2024, the school will receive only R68,452 for municipal services from the ECDOE.

190.3 Rates and taxes have increased significantly since 2018, making it almost impossible for the school to settle the full account.

190.4 The school is also in dire need of a fence to replace the old fence that was damaged due to veld fires. Multiple requests for a new fence to the ECDOE has gone unanswered, and the school continues to be targeted by thieves, causing further damage that the school needs to pay to repair. This includes multiple break-ins and the theft of copper piping at the hostel, as well as the theft of the water pump that pumps water to the school when the municipal water supply fails. The school has tried to erect a fence itself, but it simply does not have the money to pay for this.

190.5 The roof of the school's hostel, as well as the school itself, needs work as it suffers from water damage. But the school cannot afford these expenses, and in 2023/2024 only R36 451 will be paid by the ECDOE for maintenance at the school. The reality is that the school will simply continue to deteriorate, as its income from the ECDOE and school fees decline. This creates an unsafe and undignified schooling environment for learners, and one in which their ability to learn is severely compromised.

190.6 In addition to this, the school also carries the salaries of ten non-teaching staff at the school, whose posts should be filled, and salaries paid by the department as they occupy vacant departmental posts, but who are not appointed or paid. In the absence of this staff the school cannot function, and the school is forced to carry these costs.

191 In short, the funding provided to schools in the Eastern Cape has been drastically reduced for a number of years and, since 2020, the ECDOE has not come close to funding schools at the minimum per-learner amount determined from time to time by the national Minister. This has had severely damaging effects on the financial position of schools and, most importantly, on their ability to provide a basic education to their learners.

192 I now turn to demonstrate that the May 2023 funding decision is patently unlawful and falls to be reviewed and set aside.

THE MAY 2023 FUNDING DECISION IS UNLAWFUL

193 In this section of the affidavit, I set out the bases on which the applicants contend that the May 2023 funding decision is unlawful and falls to be reviewed and set aside. Further legal argument on these matters will be advanced at the hearing of this application.

194 The applicants have brought this application in terms of Uniform Rule 53. I expressly reserve the applicants' right, in due course, to amend the notice of motion and supplement this affidavit, including the grounds of review, in light of the record of the decision which the respondents are required to file.

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195 I am advised that the May 2023 funding decision is an administrative decision for purposes of PAJA. Alternatively, and in the event that it were to be held that PAJA does not apply, it is in any event plainly a decision subject to the principle of legality.

196 I note that the preceding funding decisions, for the 2020/2021, 2021/2022, and 2022/2023 and the initial decision on the 2023/2024 paper budgets are, like the May 2023 funding decision, patently unlawful and unconstitutional.

197 In particular, for the same reasons that the May 2023 decision is unlawful and unconstitutional (as set out below), the earlier decisions, since 2020, to drastically underfund schools in the Eastern Cape were:

197.1 not authorised by, and in conflict with, the Norms and Standards and the Schools Act;

197.2 irrational and unreasonable;

197.3 taken without consultation and in a manner that was procedurally unfair;

197.4 taken in ignorance of relevant considerations pertaining to the impact of such decisions on public schools and the learners attending them; and

197.5 unconstitutional on the various grounds set out below, including because they constituted an impermissible and unconstitutional retrogressive step.

198 The applicants accordingly ask the Court to declare these decisions unlawful, unconstitutional and invalid. I appreciate that it would not be just and equitable

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to set those decisions aside, given that they occurred some time ago, and given the practical difficulty of undoing them The applicants thus accept that, in its remedial discretion, the Court will not set these historical decisions aside.

199 I now turn to the bases on which the May 2023 funding decision should be reviewed and set aside.

The May 2023 funding decision is not authorised by an empowering provision

200 The May 2023 funding decision is not authorised by any empowering provisions in the Norms and Standards or in the Schools Act.

201 As I have noted above, section 35 of the Schools Act makes provision for the Norms and Standards.

201.1 Section 35(1) provides that "*[s]ubject to the Constitution and this Act, the Minister must determine national quintiles for public schools and national norms and standards for school funding after consultation with the Council of Education Ministers and the Minister of Finance.*"

201.2 Section 35(2)(a) of the Schools Act then provides that "*[t]he norms and standards for school funding contemplated in subsection (1) must set out criteria for the distribution of state funding to all public schools in a fair and equitable manner.*"

202 Section 35(2)(a) therefore makes clear that the Norms and Standards are required to prescribe criteria for the distribution of state funding <u>to</u> all public

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schools. The purpose of the Norms and Standards is not to prescribe criteria for the province to retain funding that it has purported to allocate to public schools.

203 This purpose is indeed reflected in the Norms and Standards themselves. "*School allocation*" is defined in paragraph 87 of the Norms and Standards as "*[a]n amount allocated by the state to each public ordinary school in the country on an annual basis in order to finance non-personnel non capital expenditure items.*" (my emphasis)

204 Paragraphs 94 to 97 of the Norms and Standards set out what inputs may be covered by the school allocation. These paragraphs provide as follows:

> "94. This sub-section describes which items may be covered by the school allocation. The description is not intended to be unnecessarily restrictive or prescriptive. Nor does the description exclude the use of state funds other than the school allocation for the items mentioned. Instead, this description should guide the state in determining the level and distribution of the school allocation, and schools in determining the utilisation of the allocation. This sub-section does not in any way place the state under the obligation of ensuring that the cost of all the items listed here should be fully covered by the school allocation, given that the list covers the range of possibilities, and not a set of core items.
>
> 95. In general, the school allocations are intended to cover non-personnel recurrent items and small capital items required by the school as well as normal repairs and maintenance to all the physical infrastructure of the school. Moreover, the school allocation is primarily and exclusively intended for the promotion of efficient and quality education in public ordinary schools.
>
> 96. The following list provides examples of items that the school allocation may cover, and a categorisation of these items. It should be noted that

the items are mentioned serve as examples, and do not constitute all the possible items. The definition of a capital item is as per Treasury regulations (currently, any item exceeding a value of R5,000 per item is defined as a capital item).

(i) Learning support materials (L5Ms), including textbooks, library books, charts, models, computer hardware and software, televisions, video recorders, video tapes, home economics equipment, science laboratory equipment, musical instruments, learner desks, chairs. (These items, and the ones under (ii) to (iv) below, would typically support the SASA Section 21(c) function.) This category is subdivided into capital items and non-capital items.

(ii) Non-LSM equipment, including furniture other than learner desks and chairs, paper copier machines, telephone sets, fax machines, intercom systems, equipment for connectivity within the school and to the Internet, hardware tools, cleaning equipment, first aid kits, overalls for cleaners and ground staff, sporting equipment, electrical accessories. This category is subdivided into capital items and non-capital items.

(iii) Consumable items of an educational nature, including stationery for learners.

(iv) Consumable items of a non-educational nature, including stationery for office use, paper, cleaning materials, petrol, lubricants, food.

(v) Services relating to repairs and maintenance, including building repair work, equipment repairs and maintenance, light bulbs. (These items would typically support the SASA Section 21(a) function.)

(vi) Other services, including workshop fees, TV licences, Internet service providers, school membership of educational associations, postage, telephone calls, electricity, water, rates and taxes, rental of equipment, audit fees, bank charges, legal

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services, advertising, security services, public or scholar transport, vehicle hire, insurance, copying services. (These items would typically support the SASA Section 21(d) function.)"

205 The Norms and Standards are therefore clear. They provide for allocations to be provided by the provincial department to public schools. The purpose of the allocations is to cover expenses incurred by the schools. They make no mention of the provincial government retaining an amount of the allocation, and they make no mention of any "*Provincial NNSSF Budget*", which the May 2023 funding decision refers to as the basis for withholding "Part A" of the school allocation.

206 In addition, no mention is made in the Norms and Standards that the school allocation may be used for the "*resourcing of curriculum*" or "*other teaching and learning related needs for all schools*" – the other vague and unsubstantiated bases on which the May 2023 funding decision purports to withhold 33.75% of the school allocation.

207 On the contrary, and as I have noted, the Norms and Standards are clear that the school allocation funds the inputs that are "*necessary if educators and other personnel in schools are to perform their functions properly*".

208 The school allocation is an amount that is specifically linked to the number of learners of each school and is determined by the Minister as the minimum amount that is necessary to provide a learner with education for the year. A provincial education department is simply not empowered to withhold part of the allocation to schools to fund part of an unexplained "Provincial NNSSF Budget".

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209 Moreover, and in any event, the May 2023 funding decision (which, in substance, constitutes a deviation from the per-learner target funding allocation) does not comply with the prerequisites for a deviation from the per-learner target funding allocations as set out in paragraph 114 of the Norms and Standards, in that:

209.1 the ECDOE has not jointly devised a plan for attaining the targets in the earliest year possible;

209.2 the ECDOE has not provided any detail as to how, in the interim, the actual budget will be distributed across the national quintiles; and

209.3 the ECDOE has not indicated how it will prioritise the attainment of targets in quintiles 1 and 2 and for learners in Grades 1 to 9.

210 For all these reasons, the May 2023 funding decision is not authorised by an empowering provision, and is in direct conflict with the Norms and Standards and SASA. The May 2023 funding decision accordingly falls to be reviewed and set aside in terms of sections 6(2)(f)(i) and 6(2)(d) of PAJA, and the principle of legality.

The May 2023 funding decision is irrational and unreasonable

211 I am advised that every exercise of public power must be rational, and that rationality concerns the relationship between the exercise of a power and the purpose for which the power was granted. It requires, in essence, that decisions must be rationally related to the purpose for which the power was given.

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212 I am also advised that administrative action is required to be reasonable, that reasonableness entails more intense scrutiny than rationality, and that reasonableness is concerned with striking an appropriate balance between adverse and beneficial effects.

213 The decision to withhold a significant portion of the school allocation from all schools in the Eastern Cape is self-evidently irrational. It is not linked to the purpose of per-learner school funding allocations.

214 The purpose of such allocations is to ensure that public schools are able to provide learners, and particularly poor learners, with what they need for the realisation of their right to basic education (and related rights). It is also to ensure equity and fairness in the funding of schools. The school allocation attaches to each of the learners in the province. In terms of the Norms and Standards, the number of learners in a school is used to calculate the funding allocated to a particular school. The purpose of this system is to ensure that each school receives what the Minister has determined to be the minimum amount necessary to fund a learner's education for the financial year.

215 The May 2023 funding decision bears no relation to this objective. It takes away 33.75% of the budget from the schools, prevents that amount from directly funding the provision of basic education to learners, and instead purports to allocate the amount to unexplained expenses that the ECDOE will allegedly use for the benefit of all schools. This is directly at odds with the ECDOE's power to make allocation decisions.

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216 Moreover, it is entirely unclear what the ECDOE intends to do with the money that it will retain. It is not clear, for example, if the ECDOE will use the money to fund expenses that apply to and will benefit specific learners within the province and not others. What is clear is that the ECDOE intends to retain 33.75% of the budget for unexplained expenses, without any clarity as to how the money will be used and how it will benefit learners, and without any suggestion that each of the learners in the province will receive the minimum amount as determined by the Minister.

217 For these reasons, the May 2023 funding decision is irrational. Equally, a decision to retain 33.75% of the budget, and therefore to provide funding to poor schools at a level significantly lower than that determined by the Minister as the minimum necessary, is a decision that no reasonable decision-maker could have made.

218 The decision accordingly falls to be reviewed and set aside in terms of sections 6(2)*(e)*(i), 6(2)*(e)*(vi) and 6(2)*(h)* of PAJA, and in terms of the principle of legality.

The May 2023 funding decision is procedurally unfair

219 The May 2023 funding decision materially and adversely affects the rights of the learners, parents and educators at the applicant schools and throughout the Eastern Cape. As a result, I am advised that the decision was required to be taken in a procedurally fair manner. At a minimum, and in the event that it were to be held that PAJA does not apply, the decision was in any event required to be taken in a procedurally rational manner.

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220 As I explained above, the first time that schools were advised of the funding decision was on the day that they received their revised 2023/2024 paper budgets. There was no prior notice that the decision would be taken, and no opportunity for representations. In fact, to date, the ECDOE has not consulted with SGBs, school principals, learners, parents, or any other education stakeholders about the funding decision.

221 The result is that utter confusion reigns. Schools in the province have no idea what precisely constitutes the purported "*Part A*" amount being withheld from their school allocation, what will be done with that amount, and why it is not being provided to schools. There was also no clear statement of the funding decision. Public schools do now know what the "*Provincial NNSSF Budget*" is, or precisely what funding for "*resourcing of curriculum*" or "*other teaching and learning related needs*" entails.

222 On the whole, the decision was taken in a procedurally unfair and procedurally irrational manner. It falls to be reviewed and set aside on the basis of section 6(2)*(c)* of PAJA, an in terms of the principle of legality.

The May 2023 funding decision ignores relevant considerations

223 In taking the May 2023 funding decision, the ECDOE ignored relevant considerations that should have been taken into account when making the decision. In particular, it ignored the impact of the decision on schools, principals, educators, SGBs, parents and learners and their constitutional rights.

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224 These considerations are particularly important when viewed against the backdrop of three years of funding reductions since 2020; the rotational schooling system occasioned by the Covid-19 pandemic and the learning time lost as a result; and the immense impact of these reductions and rotations on the ability of schools to meet learners' educational needs.

225 As stated throughout in this affidavit, the funding reductions over the last three years and the current funding decision were all taken without any consultation with schools, parents, learners, or SGBs. The ECDOE did not, at any stage, attempt to engage these stakeholders on how the decisions would affect them. It did not provide the schools, SGBs, parents, learners, or other stakeholders with any opportunity to respond to the decisions and provide details as to the impact they may have on the constitutional rights of the learners or on the ability of the SGBs, principals, and teachers, to meet the educational needs of the learners.

226 The failure to consult on these issues had an important implication. It meant that the ECDOE effectively ignored the immense impact that underfunding has on learners' constitutional rights to education, equality, human dignity, and best interests as children.

227 This is despite the fact that the LRC, as well as some of the applicant schools, regularly wrote to the ECDOE to advise it that schools were struggling financially and were simply not able to meet learners' needs.

228 If it had considered the impact on schools and learners, the ECDOE would have recognised that three years of chronic under-funding had devastated schools, had left them financially crippled, and had made it almost impossible for them to

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meet the educational needs of learners. The ECDOE would, in those circumstances, have appreciated that a decision to retain 33.75% of the budget would only deepen and entrench the financial hardship suffered by public schools in the province.

229 In the circumstances, the May 2023 funding decision falls to be reviewed and set aside in accordance with section 6(2)*(e)*(iii) of PAJA.

The May 2023 funding decision is unconstitutional

230 The May 2023 funding decision is also unconstitutional. It infringes the rights of learners in the Eastern Cap to basic education, to human dignity, to equality, and to have their best interests treated as paramount. I address each of these constitutional infringements in turn.

231 **First**, the May 2023 funding decision infringes learners' rights to basic education as well as their right to have their best interests treated as paramount.

231.1 The lack of funding for schools has crippled ordinary public schools in the province. It is below what the Minister has determined is necessary to meet the <u>minimum</u> educational needs of learners. Despite this, the ECDOE has reduced the per-learner target since 2020, and has now decided to retain 33.75% of school allocations.

231.2 I am advised that our courts have held that section 29(1) of the Constitution includes an entitlement to textbooks and stationery, scholar transport, educators, a safe and adequate learning environment, desks,

and chairs, as well as school nutrition. However, none of these resources can be provided in the absence of adequate funding.

231.3 The funding provided by way of the paper budget is aimed at funding learner-teacher support materials (textbooks and stationery), maintenance of schools, municipal services such as water and electricity, as well as other resources that are necessary to run a school, such as cleaning products, toilet paper, copying machines, copying paper, ink for the copying machines, telephone lines, internet connections, and any other expenses that the school must undertake in a financial year.

231.4 Without sufficient funding, schools do not have enough textbooks and stationery for their learners, cannot keep their infrastructure in an adequate physical condition, pay for water and electricity, or pay for the resources that are necessary to run and maintain a school.

231.5 Without enough stationery and textbooks, learners cannot learn, and teachers cannot teach. Without water, the health of the learners is compromised as the school cannot maintain adequate levels of hygiene. Without electricity, classrooms do not have lighting, photocopy machines, computers, telephones do not work, and education resources that are dependent on electricity such as projectors, whiteboards, or televisions cannot operate. Without enough money for maintenance, schools are unable to attend to critical maintenance projects like painting, replacement of windows, fixing of roofs, or other maintenance that are essential for the upkeep of the school.

231.6 When 33.75% of the minimum sufficient budget for a schools is withheld, this impacts on the ability of schools to provide these resources and services.

231.7 In addition, withholding more than a third of the school allocation, taken together with the drastic underfunding of preceding years, breaches the injunction in section 28(2) to give paramount consideration to the best interests of children in every matter concerning them. Children across the province are suffering as a result of the respondents' unjustifiable failure to provide what is needed for their education. Without this Court's intervention, they are poised to continue to suffer.

231.8 Worse still, the 2023 funding decision (as with each funding decision dating back to 2020) is a *retrogressive* step. I am advised that such steps can only be taken where the state can demonstrate that the measure is temporary, necessary, proportional, and non-discriminatory .However, in a province such as the Eastern Cape, where education is often the primary mechanism through which people can hope to lift themselves out of poverty, a decision to reduce the per-learner allocation to schools could never be regarded as necessary, proportional, or non-discriminatory. It is also not temporary; it has been an ongoing trend for three years, without any concrete plan to make up the shortfall in funding in future years.

231.9 In sum, the May 2023 funding decision violates the rights of the province's learners to basic education and to have their best interests given

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paramount importance. For that reason, it falls to be reviewed and set aside on the basis of the principle of legality and section 6(2)*(i)* of PAJA.

232 **Second,** the failure to provide minimum funding violates the rights of learners and children to human dignity.

232.1 A learner's right to basic education, including the right to adequate funding, is closely linked to the right to dignity, which is protected in terms of section 10 of the Constitution.

232.2 Without the adequate resources, and without access to a quality basic education, a child's underlying and inherent value as a human being is undermined. This is why, I am advised, our courts have repeatedly linked the realisation of the right to basic education with the constitutional right to human dignity.

232.3 I have shown that the underfunding of schools means that they cannot afford to maintain the safety of learners, purchased essential hygienic items like toilet paper, and fix and maintain infrastructure such as roofing. These consequences, as well as the lack of access to essential learning tools such as LTSM, all violate the rights of children and learners to dignity.

232.4 For that reason, the funding decision is a violation of the section 10 rights of learners in the province, and it falls to be reviewed and set aside on the basis of the principle of legality and section 6(2)*(i)* of PAJA.

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233 **Third,** the May 2023 funding decision (as with the prior decisions to reduce funding) violates the right to equality in section 9 of the Constitution.

233.1 The right to education is an "equalising" right. One of its purposes in a province such as the Eastern Cape is to guarantee access to opportunities to persons who were previously denied such opportunities by reason of their race. The class, geographical location, and socio-economic status of the affected learners in this matter means that they do not have independent means to supplement the lack of school funding, and are dependent on the state for funding.

233.2 The learners in the applicant schools are mostly black learners from poor families. This reflects much of the learner demographic of the Eastern Cape, which according to the amendment to the Norms and Standards of 15 December 2022, has the second most no-fee paying schools in the country, with 71.6% of the schools being no-fee paying.

233.3 These learners are situated in some of the most impoverished areas in the Eastern Cape. A lack of funding for their education has a knock-on effect for the future of their education and their lives, as it affects their ability to learn.

233.4 Importantly, the failure to fund Eastern Cape schools at the same, or at least a comparable level as schools in other provinces, perpetuates existing patterns of inequality between the provinces. It creates a situation where, depending on the province in which a learner lives, they will receive

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only 66.25% of the funding that their counterparts in other provinces are receiving.

233.5 The May 2023 funding decision and the ongoing reduction in funding that has preceded it (i) create an arbitrary and irrational differentiation between learners in the Eastern Cape and learners in the rest of the country (in contravention of section 9(1) of the Constitution), and (ii) unfairly discriminates against learners in the Eastern Cape (in contravention of section 9(3) of the Constitution read with the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

233.6 As will be illustrated below, the radical reduction in the per-learner allocation since 2020, as well as the May 2023 funding decision, is unique to the Eastern Cape, with most other provinces in the country funding learners on par with the per-learner target and allocating the full amount to schools.

233.7 In addition, the respondents' decision to reduce funding is disproportionately harmful to the children who are most marginalised as a result of the oppressive legacy of apartheid. The burden of inadequate funding is shouldered by poor and predominantly black children and their parents. Unlike wealthy families, and well-resourced schools, poor communities cannot readily supplement the state's failure to protect, promote and fulfil their children's right to education.

233.8 The table below details the amount of funding that the other eight provinces will be providing to learners for the 2023/2024 financial year.

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This table was compiled with the assistance of our attorneys of record and reflects the most up-to-date information available to us at the time of the institution of these proceedings.

PROVINCES	**PROVINCIAL PER-LEARNER ALLOCATION FOR 2023/2024 (NO FEE SCHOOLS)**
National per learner target	**R1 602**
Gauteng	R1602
Eastern Cape	R1 061,30
Free State	R1 212,40
Limpopo	1602
Northern Cape	R1 602
North West	R1 602
Western Cape	R1 602
Kwazulu-Natal	R955
Mpumalanga	1602

233.9 As this table illustrates, the only other provinces that deviate from the per-learner target are the Free State and KwaZulu-Natal. However, in none of

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the provinces is an amount simply retained by the provincial education department for "*Provincial NNSSF Budget*" or some other

233.10 The differentiation between the provinces leaves vulnerable, mostly poor black learners in the Eastern Cape to continue to suffer the indignity of discrimination. It perpetuates existing patterns of poverty and inequality between the provinces, with one of the poorest provinces in the country, for providing among the least amount of funding to its learners for three consecutive years. Indeed, if funding was being distributed on an equitable basis, the ECDOE should be providing its schools with much more funding than most of the other provinces to address the inequalities of the past. But it is doing the opposite.

233.11 This not only violates the constitutional rights of affected learners, but also section 34(1) of the Schools Act, which provides that the state must fund public schools from public revenue on an equitable basis to ensure that learners' right to education can be exercised and past inequalities in education provision can be redressed.

233.12 For these reasons, the May 2023 funding decision falls to be reviewed and set aside on the basis of the principle of legality and section 6(2)*(i)* of PAJA.

THE PROPER INTERPRETATION OF THE NORMS AND STANDARDS

234 I have demonstrated above that the May 2023 funding decision is unlawful and unconstitutional and falls to be reviewed and set aside. I have also demonstrated

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that the earlier decisions to drastically reduce school allocations in the Eastern Cape were unconstitutional and fall to be declared unlawful and invalid.

235 While the correction of the May 2023 decision will have an impact on the current financial year, the relief is largely backward-looking in that it seeks to correct aspects of the ECDOE's past conduct.

236 For that reason, more is required. The ECDOE has acted with flagrant disregard for the minimum per-learner target value prescribed in terms of the Norms and Standards. It has begun to treat deviations from the minimum allocation as the norm. Its conduct requires correction in a forward-looking manner.

237 I am advised that, in these circumstances, it would be manifestly appropriate for this Court to grant declaratory relief as to the proper interpretation of the Norms and Standards, in order to guide the future conduct of the ECDOE in relation to the determination and provision of school allocations.

238 I am advised and respectfully submit that:

238.1 The approach to interpretation is well-established, and requires that consideration must be given to the language used, in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production. The process is objective, not subjective.

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238.2 Moreover, arising from the supremacy of the Constitution, and the provisions of section 39(2) of the Constitution, courts must read regulations, so far as is possible, in conformity not only with their empowering legislation, but also with the Constitution.

239 The central interpretive question in this case concerns the proper meaning of paragraph 114(b) of the Norms and Standards, and the requirements it imposes when provincial education departments deviate from the target school allocation implied by the national targets. Paragraph 114 provides as follows:

> "114. Each PED must, as part of its ongoing MTEF budgeting process, calculate the school allocation budget implied by the national targets, and compare this amount to the actual school allocation budget amount available in the MTEF budgets. If the target amount is not equal to the actual amount, one of the following sets of procedures should be followed:
>
> (a) If the actual amount exceeds the target amount, the PED must ensure that, as a minimum, each school receives the school allocation implied by the national targets. A PED may use the difference between the actual amount and the target amount to create a smoother distribution, or a continuous curve, so that less abrupt per learner funding shifts occur between one school on the resource targeting list and the next. However, such smoothing should not result in any school receiving less than the target per learner amount applicable to that school.
>
> (b) <u>If the target amount exceeds the actual amount, the PED and the DoE, in collaboration with the National and Provincial Treasuries, must jointly devise a plan for attaining the targets in the earliest possible year. This plan must include details on how, in the interim, the actual budget will be distributed across the national quintiles. Such a plan must prioritise the</u>

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attainment of targets in quintiles 1 and 2, and for learners In Grades 1 to 9."

240 The proper interpretation of paragraph 114(b) of the Norms and Standards is a matter for legal argument, and will be addressed at the hearing of the matter. For present purposes, I merely note that the language, purpose, and context of paragraph 114(b) of the Norms and Standards, on the one hand, and of the provisions of SASA, on the other, all support an interpretation that permits deviations from the target amount only in the narrowest of circumstances.

241 Read as a whole, the Norms and Standards emphasise the importance of the targets, especially for poor schools.

241.1 Paragraph 88 recognises that school allocations are indispensable, if educators are to perform their functions properly, and in order to fulfil the state's obligation to provide basic education.

241.2 Paragraph 89 recognises the particular importance of school allocations for the poor.

241.3 Paragraph 109 describes the per-learner target as the amount that government considers minimally adequate for the realisation of the right to basic education in each year.

241.4 Paragraph 110 allows the national executive to adjust the minimum target, as circumstances may change, thus ensuring that it is a realistic and attainable target across the country, and one that can cater for, as an example, escalating costs of necessary inputs in the education system.

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241.5 All of these provisions, and others, suggests that that the per-learner target allocation may be departed from only exceptionally.

242 These provisions are reinforced by the empowering provisions of the Schools Act. I am advised that the provisions of the Norms and Standards must, to the extent possible, be read in conformity with the Schools Act. Section 35(2)(a) of the Schools Act provides that the Norms and Standards must set out the criteria for the distribution of state funding to all public schools "in a fair and equitable manner". The objectives of fairness and equitability could never be achieved if provincial education departments were at large to deviate from the prescribed per-learner target allocation as they please.

243 Relatedly, the purpose of per-learner targets under the Norms and Standards is clear. Their purpose is to ensure, in a manner that is equitable and fair, that public schools are able to provide learners, and particularly poor learners, with what they need for the realisation of their right to basic education. The purpose of the system is to ensure that each school receives what the Minister has determined to be the minimum amount necessary to fund a learner's education for the financial year. Again, that purpose would be directly undermined if provincial education departments were at large to deviate from the prescribed per-learner target allocation as they please.

244 Lastly, constitutional considerations plainly militate in favour of an interpretation of paragraph 114 of the Norms and Standards that restricts deviations from the prescribed minimum per-learner targets. An interpretation that allowed provincial education departments to allocate amounts lower than the targets as they please

would, for the reasons set out earlier in this affidavit, undermine the rights to basic education, to human dignity, to equality, and for children to have their best interests treated as paramount. The protection of these rights requires that the minimum per-learner targets should, in the ordinary course, be complied with.

245 Simply put, an interpretation of paragraph 114 of the Norms and Standards which allows a provincial education department readily to provide less than the target allocation per learner, without ever making up the shortfall, and therefore to provide schools with less than they require in order to provide each learner with the inputs needed to ensure the realisation of the right to basic education, would undermine the central purposes of the Norms and Standards, and would render paragraph 114 unconstitutional.

246 In addition, paragraph 114(b) would be devoid of effective meaning if the plan detailing the reasons for the provincial department's failure to meet the target, and the steps to remedy the deficiency, were not made known to schools and parents for their consideration and scrutiny.

247 I am advised that this is a function of:

247.1 The constitutional principle that public administration must be transparent and accountable, to which I have already referred;

247.2 The provisions of paragraph 117 of the Norms and Standards, which commences as follows:

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"The effective implementation and monitoring of the school allocation requires timely provision of accurate information by the DoE, PEDs and schools."

247.3 The express importance of accountability and openness in relation to the funding of public schools. Notably, paragraph 110 of the Norms and Standards requires the Minister to release for public comment a report on the methodology employed whenever the 'no fee threshold is altered' and to take into consideration the ensuing comments. It would be absurd for PEDs not to be required, when funding under that threshold, to account for the reasons that meeting the minimum is impossible and the plan for remedying its failure.

248 Against this backdrop, and having regard to the plain wording, the context and the purpose of the provision, I respectfully submit that, properly interpreted, paragraph 114(b) of the Norms and Standards means the following:

248.1 Paragraph 114(b) sets out the prerequisites with which a provincial education must comply before it may lawfully provide less than the target per learner allocations to schools in the province. Therefore, in the absence of a joint plan for attaining the per-learner targets that complies with paragraph 114(b), a provincial department is required to provide allocations in accordance with (or that exceed) the targets.

248.2 In its joint plan, the provincial education department is required to demonstrate, in the first instance, that it is not financially possible to attain the targets in that financial year. In the event that it is possible to attain the targets later in the same financial year, then the joint plan must include

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the steps that will be taken, to the extent possible, to make up any shortfall at the earliest possible stage.

248.3 If the joint plan demonstrates that it is not financially possible to attain the targets in that financial year, then the joint plan must demonstrate whether it is financially possible to meet the target in any subsequent year(s). Again, the joint plan must include the steps that will be taken, to the extent possible, to make up any shortfall in prior years at the earliest possible stage.

248.4 If a provincial education department publishes a school allocation, whether provisional or final, where the target school allocation exceeds the actual school allocation, it must, simultaneously with the publication of the school allocation, provide every school with access to the joint plan contemplated in paragraph 114(b).

248.5 Paragraph 114 creates an ordering of priorities, such that in any years when it is not possible for the provincial education department to fund in accordance with the target, the provincial education department must prioritise quintile 1 and 2 schools and learners from grades 1 to 9.

ALTERNATIVELY, THE NORMS AND STANDARDS ARE UNLAWFUL AND UNCONSTITUTIONAL

249 If this Court were to determine (contrary to what I have submitted above) that provincial education departments are at large to provide per-learner school allocations that are lower than the targets determined by the Minister, then the

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applicants submit that paragraphs 113 and 114 are *ultra vires* the Schools Act, and are unconstitutional and invalid.

250 Thus, for purposes of this section of the affidavit, I assume that:

250.1 by describing the minimum per-learner amount required to realise the right to basic education, multiplied by the number of learners enrolled in a public school, as a "target" school allocation, paragraph 113 allows deviations from the minimum per-learner target without limitation; and

250.2 paragraph 114 exacerbates this, by permitting provincial education departments to fund under that target, without any tangible and enforceable limitation.

251 On this interpretation – that is, where a joint plan is not a prerequisite for a deviation from the minimum target; where a joint plan need not address the provision of the target allocation in the specific year in which it is issued; and where a joint plan need not provide for any shortfall to be made up – the requirement of a joint plan is of little solace to learners. For example, it does not help this year's Grade 11 learner, or matric learner, that a plan might be devised to adequately fund the learners of 2025, or 2030. Today's learners require access to textbooks, writing materials, and stationery in the current school year. A vague plan to meet a target in some later year cannot undo the harm which will be done to underfunded learners, and particularly those in poor and marginalised communities.

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252 Therefore, the applicants contend that on this interpretation, paragraphs 113 and 114 fall far short of what is required, both in terms of the Schools Act and the Constitution. While these are matters for argument, and will be addressed as such, I make the following three submissions for present purposes:

253 **First**, to the extent that the Norms and Standard contemplate provinces being at large to fail to meet the minimum funding target set by the Minister, with only a vague plan to reach the target at some future point, they violate the rights of learners to basic education, dignity and equality. Equally, they violate the best interests of the child principle enshrined in section 28 of the Constitution. I have already demonstrated that underfunding – which would, on this interpretation, be permissible as the norm – violates these rights.

254 **Second**, paragraphs 113 and 114 are, to this extent, *ultra vires* the Schools Act and unlawful.

254.1 Section 34 of the Schools Act requires the state to fund public schools from public revenue on an equitable basis to ensure the proper exercise of the rights of learners to education, and to redress past inequalities in education.

254.2 Section 35 of the Schools Act requires the Minister to promulgate Norms and Standards that determine criteria for the distribution of state funding to public schools in a fair and equitable manner.

254.3 To the extent that paragraphs 113 and 114 permit provincial education departments to disregard the minimum target per-learner allocations, they

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fail to do what section 34 and 35(2)(a) of the Schools Act requires – namely, to fund public schools on an equitable basis; to ensure the proper exercise of the rights of learners to education; to redress past inequalities; and set out the criteria for the distribution of state funding to all public schools "*in a fair and equitable manner*".

254.4 These provisions of the Schools Act, especially when understood in light of the constitutional goals they serve, do not permit of a regulatory framework which allows provincial education departments to depart from the prescribed bare minimum funding at will, without any form of assurance that learners ultimately will get what they need.

255 **Third**, on this interpretation, the Norms and Standards are irrational.

255.1 The purpose of the Norms and Standards is to ensure that learners realise their right to basic education, and that funding of schools takes place in a fair and equitable manner.

255.2 To the extent that paragraph 113 and 114*(b)* of the Norms and Standards allow provincial education departments to depart from the minimum necessary amount at will, and never to be required make it up to the learners enrolled in that year, the paragraphs bear no relation to that purpose.

255.3 The reality of this irrationality has played out in the past three years in the Eastern Cape, and in the impacts on the applicant schools (which serve as a microcosm of the Province). Despite the purpose of the Norms and

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Standards being the advancement of the promises of the Constitution and the Schools Act, its provisions permit the achievement of the opposite – the entrenchment and acceleration of inequality and inequities in education provisioning.

256 For all these reasons, the Norms and Standards are:

256.1 *ultra vires* their empowering statute and so fall to be reviewed and set aside on the basis of the principle of legality and section 6(2)(f)(i) of PAJA;

256.2 unconstitutional and invalid, and fall to be reviewed and set aside on the basis of the principle of legality and section 6(2)(i) of PAJA; and

256.3 irrational, and fall to be reviewed and set aside on the basis of the principle of legality and sections 6(2)(f)(ii)(aa) 6(2)(f)(ii)(bb) and 6(2)(f)(ii)(dd) of PAJA.

RELIEF

257 I now turn to address the appropriate relief in this matter. I do so in accordance with the prayers in the notice of motion to which this affidavit is attached. The applicants expressly reserve their right to amend this relief following the receipt of the Rule 53 record.

Prayers 1 to 3 – review relief regarding the May 2023 funding decision

258 I have set out above the grounds upon which the applicants contend that the May 2023 funding decision is self-evidently unlawful and invalid. It stands to reason

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that the decision must, as a consequence, be reviewed and set aside. This is the relief that the applicants seek in prayer 1 of their notice of motion.

259 In prayer 2 of the notice of motion, the applicants seek an order substituting the May 2023 funding decision with a decision that schools will be provided their full school allocations for 2023/2024, calculated as the per-learner target for each school's quintile multiplied by its enrolment, and directing the ECDOE to issue schools with revised paper budgets on this basis.

260 I am advised that a Court may, in exceptional circumstances, substitute an unlawful administrative decision, or correct a default arising from the administrative action. I am further advised that such relief is appropriate where the Court is in as good a position as the administrator to take the decision, and particularly where the outcome of that decision is a foregone conclusion.

261 This is precisely the kind of case in which the exercise of the power of substitution is manifestly appropriate. The circumstances of the present case are truly exceptional and plainly justify such a remedy:

261.1 I have, in this affidavit, provided this Court with all the necessary information to determine that the only lawful decision to replace the May 2023 funding decision is a decision to provide schools in the Eastern Cape with 100% of the per-learner target.

261.2 The Court is well placed to make this determination in light of the fact that:

261.2.1 national Minister has already determined the per-learner target;

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261.2.2 On the ECDOE's own version, it has, in fact, allocated 100% of the per-learner target to public schools in the province, but has taken the unlawful step of retaining 33.75% of that funding;

261.2.3 this Court is merely called upon to require the ECDOE to allocate to schools that portion that it purported to retain; it is not called upon to require the ECDOE to reallocate its budget

261.3 Remittal is an impractical remedy in the present case. By the time that this matter is heard, public schools in the province will be well into the 2023/2024 financial year. It would accordingly be most sensible for this Court to avoid any delay occasioned by remittal, and instead to substitute the ECDOE's unlawful decision with a lawful one.

261.4 Moreover, the ECDOE has shown itself to be incapable of taking a lawful and competent decision in this regard. I have detailed the history of the ECDOE's unlawful funding decisions since 2020, and its wholesale failure to remedy those decisions or to take into account the dire impacts on the Province's learners and the efforts to redress education inequality. I have also shown that the ECDOE has effectively ignored the many letters sent by the LRC, on behalf of the applicants, to try to engage.

261.5 For this reason too, it would be inappropriate to remit the funding decision for the current financial year to the ECDOE.

262 The mandatory relief in prayer 3 flows as a necessary consequence of the relief in prayers 1 and 2. It simply requires the ECDOE to issue revised paper budgets

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giving effect to the decision that schools will be provided their full school allocations for 2023/2024, and to pay the schools in accordance with that decision.

Prayer 4 – declaratory relief regarding the historical funding decisions

263 The applicants ask that this Court declare the earlier funding decisions (between 2020 and 2023) unconstitutional and unlawful, in that they were retrogressive and deviated, without justification, from the minimum per learner amount which ought to have informed school allocations.

264 However, as I have explained, conscious of the disruptive effect that it may have, the applicants do not ask this Court to set these historical decisions aside,

Prayer 5 – declaratory relief regarding the Norms and Standards

265 I understand that this Court has the power, under section 21(1)(c) of the Superior Courts Act 10 of 2013, to determine any existing, future, or contingent right or obligation, and to grant declaratory relief in respect thereof.

266 In prayer 5 of the notice of motion, the applicants seek an order declaring that paragraph 114(b) of the Norms and Standards bears the following meaning:

266.1 Paragraph 114(b) sets out the prerequisites with which a provincial education department must comply before it may lawfully provide less than the target per learner allocations to schools in the province. Therefore, in the absence of a joint plan for attaining the per-learner targets that complies with paragraph 114(b), a provincial department is

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required to provide allocations in accordance with (or that exceed) the targets.

266.2 In its joint plan, the provincial education department is required to demonstrate, in the first instance, that it is not financially possible to attain the targets in that financial year. In the event that it is possible to attain the targets later in the same financial year, then the joint plan must include the steps that will be taken, to the extent possible, to make up any shortfall at the earliest possible stage.

266.3 If the joint plan demonstrates that it is not financially possible to attain the targets in that financial year, then the joint plan must determine whether it is financially possible to meet the target in any subsequent year(s). Again, the joint plan must include the steps that will be taken, to the extent possible, to make up any shortfall in prior years at the earliest possible stage.

266.4 If a provincial education department publishes a school allocation, whether provisional or final, where the target school allocation exceeds the actual school allocation, it must, simultaneously with the publication of the school allocation, provide every public school with access to the joint plan contemplated in paragraph 114(b).

266.5 Paragraph 114 creates an ordering of priorities, such that in any years when it is not possible for the provincial department to fund in accordance with the target, the provincial department must prioritise quintile 1 and 2 schools and learners from grades 1 to 9.

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267 I submit that this is an appropriate case for the grant of such declaratory relief.

267.1 Clearly, there is a live, *bona fide* dispute between the parties that requires resolution and that justifies a declaratory order. This is evident from the fact that the ECDOE has, for a number of years, regarded itself completely at large to allocate funding to public schools at levels well below the minimum per-learner target. It is also evident from the fact that the ECDOE has resolutely and obdurately ignored any attempts by the applicants to engage on these issues.

267.2 Simply put, the ECDOE misunderstands the obligations that it bears under the Norms and Standards. In particular, it fails to recognise that, in the absence of a joint plan, it is required to allocate funding to public schools in accordance with the minimum targets prescribed by the Minister under the Norms and Standards. It also fails to recognise that such a plan must, in the first instance, seek to provide such funding in the year that it is issued, and that it must set out immediate steps to make up any shortfall.

267.3 A declaratory order to that effect would be binding on the ECDOE, and would provide important guidance – not only to the applicant schools, but to all schools in the province – as to the proper interpretation of the Norms and Standards.

267.4 I respectfully submit that a declaratory order is manifestly appropriate in the circumstances.

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Prayer 6 – alternative relief: unconstitutionality of the Norms and Standards

268 As I have explained, the applicants seek, in the alternative, an order declaring paragraphs 113 and 114 of the Norms and Standards unconstitutional and invalid, to the extent that these paragraphs leave provincial departments at large to deviate from the minimum target school allocation.

269 I am advised that, in the face of a finding of constitutional invalidity, a Court has the widest possible remedial powers to determine just and equitable relief.

270 The applicants recognise that the Norms and Standards are ultimately for the Minister to draft and promulgate. At the same time, it is incumbent on this court to craft a remedy that is just and equitable, and that affords the applicants effective relief.

271 The applicants accordingly seek an order:

271.1 Declaring paragraphs 113 and 114(b) of the Norms and Standards unconstitutional, unlawful and invalid, to the extent that they permit provincial departments of education to allocate amounts lower than the minimum, without limitation.

271.2 Suspending the declaration of invalidity for 24 months from the date of this order.

271.3 During the period of suspension, reading the <u>underlined</u> words into paragraph 114(b) of the Norms and Standards:

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"If the target amount exceeds the actual amount, the PED and the DoE, in collaboration with the National and Provincial Treasuries, must jointly devise a plan for attaining the targets in the earliest possible year, including, if possible, the year in which the plan is issued. In the absence of such a plan, the target amount may not exceed the actual amount in any particular year. This plan must include details on how, in the interim, the actual budget will be distributed across the national quintiles, and must include the steps that will be taken, to the extent possible, to make up any shortfall at the earliest possible stage. Such a plan must prioritise the attainment of targets in quintiles 1 and 2, and for learners in grades 1 to 9. Simultaneously with the publication of the school allocation, the PED must provide every school with access to the joint plan.

271.4 Directing that, if the defect is not remedied within the period of suspension, the interim reading-in order shall become final.

Prayer 7 – supervisory relief

272 In prayer 5 of the notice of motion, the applicants seek an order requiring the respondents to account to this Court as to the steps they have taken to comply with their obligations to provide lawful funding allocations to public schools in the province.

273 I am advised and respectfully submit that such an order is appropriate in the present circumstances for the following reasons:

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273.1 The ECDOE has obdurately refused to engage with schools on the reduction in the paper budget, or to provide any tangible plan on how it seeks to remedy the reduction in the budget.

273.2 Repeated requests by the applicants' attorneys to provide a plan to remedy the reduction in funding has been met with silence. When the ECDOE eventually informed schools of the reasons for the reduction, the reasons were vague and non-sensical. In any event, it did an about-turn after providing those reasons, but then unlawfully sought to retain a significant percentage of the allocation for the province.

273.3 Public schools in the Eastern Cape have now seen four consecutive years of budget reductions, and of being funded at an amount significantly lower than the national per-learner target. Put differently, over the course of four years, the respondents have failed to implement a plan of any kind that will see the per-learner allocation restored to the national target. There is simply no reason to believe that, if left to their own devices, they will remedy the constitutional breach and devise a plan to address it.

274 It is therefore critical that this court provides structural relief, in terms of which it continues to monitor the implementation of its order, as well as the respondents' progress in ensuring that the reduction in the paper budget is not repeated during the 2024/2025 financial year.

275 To this end, the applicants seek an order directing the first to fourth respondents to file reports with the Court, once every 90 calendar days after the date of this order, detailing its compliance with this order, and in particular, its progress in

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rolling out the revised 2023/2024 paper budgets. Those reports should continue until the paper budgets for the 2024/2025 financial years have been sent to schools, and the last of those reports must inform the Court of the details of those paper budgets and the Province's compliance with the requirement of funding schools in respect of their full minimum school allocations (or fully justifying any deviations).

CONDONATION

276 I am advised that challenges to the exercises of public power must be brought within a reasonable time, and that the promulgation of the Norms and Standards, to the extent that it constitutes administrative action, ought to be challenged within 180 days of the applicants being informed of the decision, or coming to know of the decision and reasons for it, or the date that they might reasonably have been expected to have become aware of the decision and reasons.

277 While I recognise that the Norms and Standards were promulgated a long time ago, I am advised that this Court is empowered to extend the period within which a challenge of this sort could be brought and to condone any delay.

278 Accordingly, to the extent necessary, I ask for the Court to condone any delay in seeking to challenge the Norms and Standards.

279 The import of the wording of paragraph 113 (together with paragraph 114) only came to the fore in 2020, when the applicant schools were informed that they would be funded far below the per-learner target.

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280 At that stage, the applicants had not taken legal advice on the basis for this deviation, or whether it was lawful.

281 It was only in the process of taking that legal advice, which commenced in May 2022, that the applicants interrogated the legality of the Norms and Standards.

282 Prior to that, while the applicants knew of the *existence* of the Norms and Standards, they did not know of the extent of complex and extensive legal provisions contained therein, and, in particular, of the meaning and import of paragraphs 113 and 114.

283 In addition, the meaning and effect of the Norms and Standards, in their current form and by virtue of paragraphs 113 and 114, is patently unconstitutional and unlawful. I am advised that the Court's will not permit a clear constitutional invalidity, even in the face of a delay.

284 I am also advised that condonation for delays in challenging regulatory frameworks is generally more readily granted, because the impact of such frameworks is necessarily ongoing. There is no greater example than in this case. The impact of the unconstitutional provisions in the Norms and Standards has had regular and dire consequences for South African children, and, without the Court's intervention, is likely to continue to do so.

285 For these reasons, the applicants ask that the delay in challenging the constitutionality of the Norms and Standards be condoned.

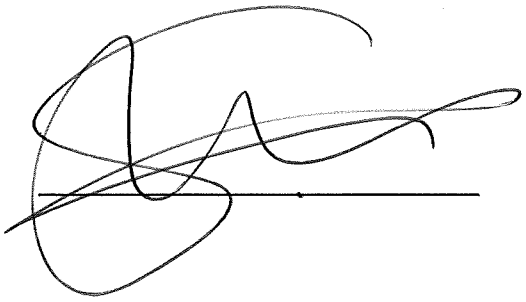
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CONCLUSION

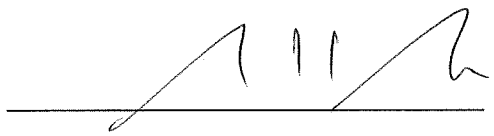
286 In the circumstances, I ask for an order in terms of the Notice of Motion to which this affidavit is attached.

287 If the Court is not inclined to grant the applicants relief, I note that the applicants are manifestly making a *bona fide* effort to realise and vindicate constitutional rights in litigation against the state, and ought not to be ordered to pay any of the respondents' costs.



SISESAKHE NTLABEZO

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Makhanda on this the 13 day of October 2023, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names: Roy Tresco Horatio Hart

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Commissioner of Oaths
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Makhanda
Circle of UNITY

Makhanda Circle of Unity: Education Cluster

Minutes of Monthly meeting 25th of January 2023

Present: Warren Schmidt (VG), Sakhe Ntlabezo (McoU), Joubert Retief (PJ Olivier), Nicci Hayes (Holy Cross), Zolani Gosani (DD Siwisa), Kjetil Torp (Awarenet), Leon Grove (Kingswood College), Madeleine Schoeman (Ntsika), Cathy Gush (Lebone Centre), Kelly Long (GADRA Education), Lucien Bartis (Grahamstown primary), Sizwe Mabizela (Rhodes University), Nompumelelo Jack, Cecile Van Schalkwyk (LRC), Mzwandile Kleyi (Nyaluza), Rod Amner (Grocotts), Di Hornby (RUCE), Cameron McConnachie (LRC), Kary McConnachie (Holy Cross).

1. Apologies: Tom Hamilton (St Andrew's College), Nhlanhla Mpofu (Faculty of Education),- Jonathan Helleman (Andrew Moyake).

2. Confirmation of Agenda: The agenda was confirmed.

3. Confirmation of Minutes: Minutes were confirmed.

4. Other MCoU cluster feedback & open government partnership (SN):

- Makana East community development: Kagiso Trust and the ADC work with a youth-led group of Makana East community members. There were 25 people in the initial meeting - one of the issues raised was the significant problem of drug abuse in the community. There was a strong call of action for preventative drug abuse programs to be developed.
- Laptops and PCs from Rhodes: Schools which are interested in getting this must contact Sakhe.

5. Makhanda School Principals' Forum and Parliamentary Portfolio Committee: Questions about water tanks from the department were raised – schools in urgent need of these due to the water supply situation in Makana.

6. Vandalism of schools: There was a break-in at DD Siwisa in the beginning of January – allegedly a former member of the SGB might have been involved. Electricity is no longer working as wiring has been destroyed at the computer centre. Thieves were probably after the copper. This incident adds to the anecdotal evidence that vandalism and theft at schools in Makana are on the rise.

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7. Economic Impact Study (SN): The draft report of this was submitted to all present at the meeting. Among other things the report estimates that the economy-wide impact of the education industry in Makhanda is 31.2 % of the GDP of the town's total GDP. There were questions raised whether educational NGOs were included or not, Sakhe to find out if this is the case or not after consulting with the authors of the draft report.

8. LRC feedback:

- Funding per learner in the Eastern Cape, comparative perspective: As part of the litigation against the provincial department of education the LRC has visited a sample of schools in all provinces to compare the funding per learner in other provinces against that of the Eastern Cape. Preliminary results is that funding per learner in the Eastern Cape is by far the lowest among the provinces. In the Eastern Cape it is around R 600 per learner, the next-lowest on the list is KwaZulu Natal with around 970 rand per learner. Most of the other provinces fund their learners around the expected levels per learner of around R 1500.
- Litigation against the department: This has taken much longer than anticipated. The coming financial year it looks like the department will fund schools even less which makes the litigation even more urgent. The LRC has written to the department about this but has not received a response but been referred to the State Attorney's Office.
- Circle of Unity in the litigation: It was decided by the meeting that the Circle of Unity will act as an institutional client in the litigation Sakhe Ntlabezo to depose to affidavit.

9. Makhanda High Court proposed move – feedback (SN): A High Court Action committee has been formed. An economic assessment has been commissioned by the committee, preliminary estimates is that with a move of the High Court Makhanda might loose 300-400 million rand in revenue each year. Sakhe will put in a submission on behalf of the Makana Circle of Unity.

10. Connectivity of schools – way forward: Prior to the next meeting there should be contact with Albany Schools Network. It was also pointed out that KhulaTech is an additional player which should be consulted as the company install internet for free at schools.

11. ECD & Grade R: The switch of ECD centres from the department of Social Development to the department of Education should be monitored – so far it has not been very successful. If anyone has input on this issue they should raise this in coming meetings.

12. RU Mentoring Programme for first years: This will allow local students to have organised support from mentors when entering university.

13. ADC Counselling Centre (DH): Will continue in 2023.

14. Schools access knowledge generated by the University: The publication Makhanda Education matters could be a way for schools to get access to relevant knowledge produced by the university. The Rhodes website will soon feature a link with public access to knowledge generated by the university.

15. Any other business

- Thanks to Zolani Gusani for his time in serving on this cluster, he is changing jobs and therefore leaving town.
- Convenor and secretary of the Makhanda Circle of Unity: Warren was re-elected as convenor for another year and Kjetil was re-elected as secretary.
- Rhodes Department of Education: It was decided that a closer relationship to the department at Rhodes with all its research and knowledge about education need to be built.
- Re-deployment of teachers: The announced re-deployment of teachers by the department has been drawn out and not been implemented yet. The reason for the re-deployment is that some

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schools have too many teachers per learner and some have too few. The drawn-out process creates insecurity among schools.

- Literacy benchmark test grade 8s: This could be done by Social Employment Fund participants working under the umbrella of Awarenet. Nicci, Cathy and Kjetil will sit down to start the process.

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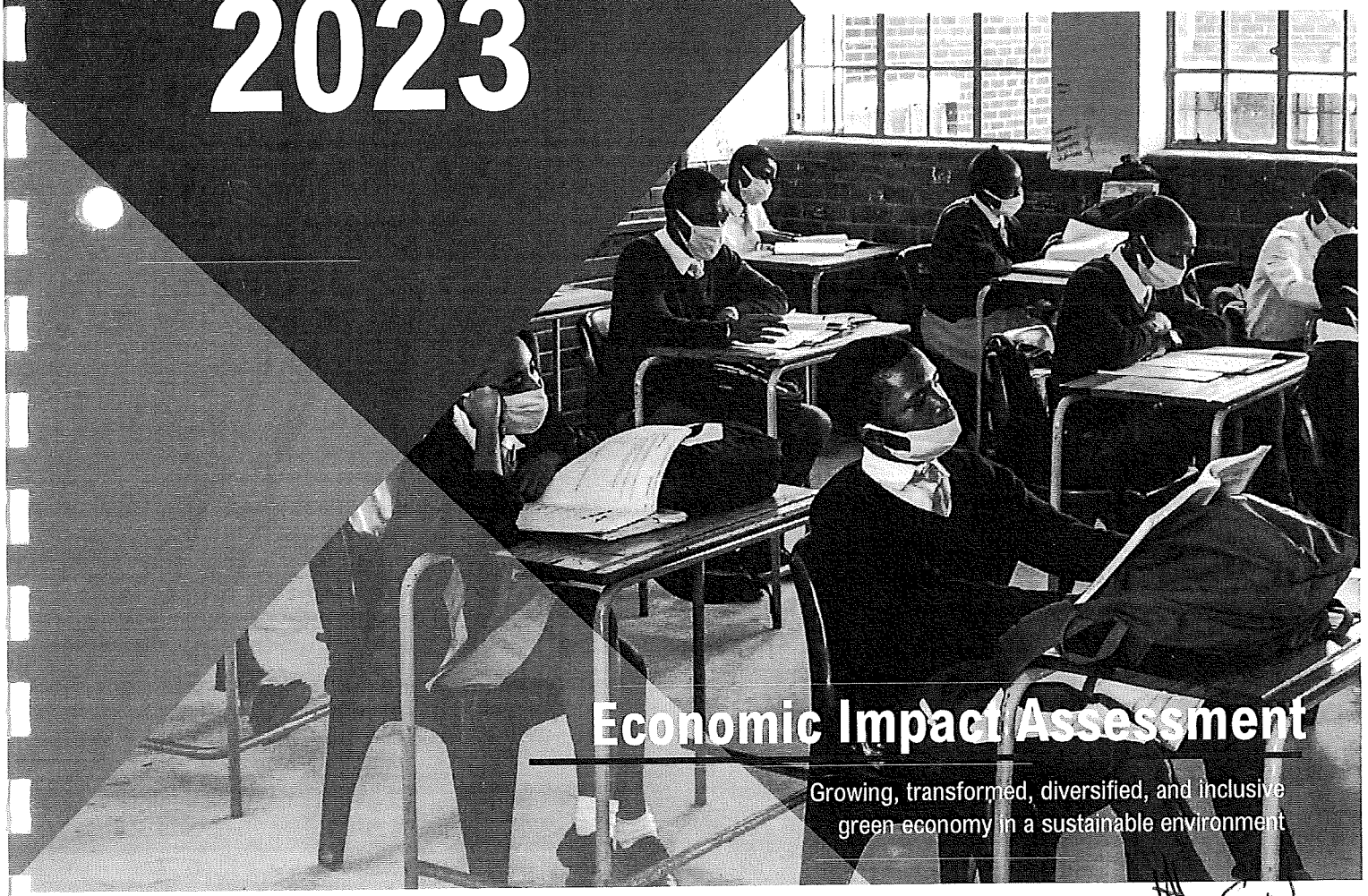
MAKHANDA CIRCLE OF UNITY

Education Cluster

DRAFT REPORT

January

2023



Economic Impact Assessment

Growing, transformed, diversified, and inclusive green economy in a sustainable environment

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EXECUTIVE SUMMARY

The aim of this study is to undertake a high-level assessment of Makhanda's education industry in an effort to quantify its contribution to the town's economy. This is achieved by undertaking an economic impact assessment of the estimated operating expenditure by all the educational institutions located within the town. This was combined with the impact of the estimated expenditure by tertiary learners and staff.

An economic impact assessment is a quantitative tool that can be used to quantify the economy-wide benefits associated with the town's education industry, as the initial spending by these institutions represents only a small portion of the total contribution of the industry. The total or economy-wide impact of the local education industry comprises, the direct, indirect, and induced impacts that occur as a result of the initial expenditure incurred by these institutions.

Economic impact assessments provide estimates of the effect an initial injection of demand (i.e. expenditure by Makhanda's various educational institutions), has on output/production[1], gross domestic product at basic prices (GDP, which measures the value added to the local economy and only includes the value of final goods and services), employment, and the aggregate wages paid to these employed individuals.

To effectively quantify the Makhanda education industry's impact on the local economy, it was necessary to estimate the local proportion of their total expenditure that accrues to the town. Determining this leakage factor is complex, and it was necessary to make various assumptions based on past research and similar industries. Although this leakage factor was comparably high, it is probable that most of the spending that occurs outside of Makhanda accrues to other parts of the Makana Local Municipality as well as the rest of the Eastern Cape.

The study estimates that the total economic impact of Makhanda's education industry on output was R3.70 billion in 2019. This includes both the direct expenditure incurred by the various educational institutions within the town as well as the indirect and induced effects throughout the value chain. The economy-wide impact of the town's education industry on Makhanda's GDP was estimated at R1.76 billion. The town's education industry sustains more than 6 000 jobs throughout the local economy, generating R1.05 billion in labour remuneration.

The scale of the town's education industry is very significant as illustrated in the Table below, which illustrates these figures relative to the available economic data for the broader Makana Local Municipality.

Table 1: Total economic impact of the Makhanda education industry on the local economy (R, millions)

	Economy-wide impact of the education industry	Makana Local Municipality	Share (%)
Production/Output	R3 701.1	R14 420.0	**25.7%**
GDP	R1 765.4	R5 654.7	**31.2%**
Employment	6 166	24 585	**25.1%**
Income	R1 056.1	R2 743.6	**38.5%**

[1] Output/production is the broadest measure of economic activity, and it measures the value of all sales and transactions that arise because of the initial injection of demand (BER, 2018).

As a result of multiplier effects, the total economic impact of Makhanda's education industry extends beyond just the initial impact on the town's economy. This is evident in the Table which shows that the town's education industry accounts for 25.7% of the total output generated by the broader municipal area, and almost a third of the GDP, and a quarter of total employment.

These figures are very conservative estimates and do not include expenditures made by visitors, spin-off companies or local businesses that are related to the education industry. Equally, the figures do not capture the economic benefits associated with other positive externalities flowing from the town's education industry such as improvement in skill levels, and the development of new and novel research methods.

Irrespective, at a local level, the Makhanda education industry is integral part of the town's economy. The benefits flowing from these institutions are very significant and extend well beyond just the town. Equally, the activities associated with the industry help to uplift and enhance the overall community of Makhanda.

1. INTRODUCTION

The education industry is an integral part of the Makhanda economy, with the Rhodes University at its centre. In addition to the university, the town is home to multiple public and private schools that service not only the surrounding communities but also the education needs of the border Eastern Cape and South Africa. Other key economic products in Makhanda according to Roodt (2012) include conferences, festivals, banking, and legal services all of which have close linkages with the education industry.

Many of these educational institutions and in particular the Rhodes University, are woven into the spatial layout of the town. Unlike other universities in South Africa, the Rhodes University does not consist of a separate closed-off section but is rather scattered across multiple buildings throughout Makhanda. Frequently, shops, restaurants, and other hospitality businesses are located adjacent to university buildings and residential housing (both for students and non-students).

School pupils and students also make up a significant part of the Makhanda local population, with the absence clear during vacation periods. The education industry is also an important employer, as evident by the fact that the Rhodes University alone is the town's single largest employer in Makhanda. The large proportion of the population that is employed in the education industry means that it subsequently has a sizeable impact on the town's economy owing to the wages earned by those individuals working in the industry. There are also several intangible benefits that accrue from the various educational institutions located throughout Makhanda, such as the promotion of spin-off companies and other cultural and socio-economic benefits. Overall, the economic benefits of the Makhanda education industry extends beyond just the simple provision of knowledge.

To quantify the contribution of the education industry on the local economy, the Makhanda Circle of Unity's Education Cluster has commissioned this high-level economic impact assessment. The economic impact assessment starts by considering the economic benefits stemming from the various Makhanda educational institutions operational expenditure. This direct economic impact, however, only represents a small proportion of the total contribution of the local education industry, and thus the indirect and induced impacts from the industry are also considered. These impacts emanate from up- and down-stream value chain linkages (including producers, suppliers, distributors, retailers, and other services provides), who generate additional income, tax revenue and employment. These activities, in turn, induce further economic benefits throughout the economy. It is also important to seek to quantify spending by educators and pupils/students, which partially takes place in the local economy. This spending likewise results in direct, indirect, and induced effects on the local economy.

Overall, the economic impact assessment permits the measurement of the full economy-wide impact of the Makhanda education induction in terms of value added (i.e. gross domestic product, GDP), intermediate output (i.e. production), employment, and remuneration. Importantly, the study confines itself to the impact of the education industry on the local Makhanda economy. It therefore does not consider the economic benefits that may accrue outside of the town (e.g. country or worldwide benefits from new and novel research methods).

1.1 ASSUMPTIONS AND LIMITATIONS

As with all studies of this nature, there are some inherent limitations with the models used to undertake economic impact assessments. Equally there are also some limitations peculiar to this study. Some of these limitations are discussed below.

1.1.1 COMPLETENESS AND ACCURACY OF DATA

As a desktop analysis, the study was reliant on publicly available documentation relating to student/pupil/staff numbers, budgetary allocations by various government departments to educational institutions, fees levied by different educational institutions in Makhanda, operational expenditure incurred by various educational institutions etc. In many cases, actual student and staff numbers could not be obtained for all educational institutions. In such situations, the average staff and pupil numbers where information was available were determined and applied to the missing the institutions where data could not be obtained. This was chiefly applicable to the Ealy Childhood Development (ECD) centres.

The study sort to, where possible, verify all secondary data with the relevant authorities, however, this was not possible in all instances. This necessitate making several assumptions regarding the expenditure incurred by such institutions. These assumptions were informed by industry benchmarks and similar educational institutions in other parts of Makhanda.

One pertinent example relates to the fees (and subsequently the operational expenditure) of public and private schools. Firstly, in was necessary to use fee income in conjunction with the Department of Basic Education annual funding allocation based on registered pupil numbers, as a proxy for operational expenditure. This was because it was not possible to obtain actual operational expenditure figures for most educational institutions in Makhanda. This approach relies on the assumption that educational institutions:

1. Do not run a surplus (i.e. income equals expenditure)
2. Income is derived from only the two aforementioned sources (i.e. no income from donations, bequests, fundraising etc.)

Secondly, fee income for both public and private educational institutions is striated by Grade and whether the pupil is a day scholar or a border. Since it was not always possible to disaggregated pupil numbers by Grade and residency status, two underlying assumptions had to be made in the study:

1. Average fees across Grades were calculated and then applied to aggregate pupil numbers as provided by the Makhanda Circle of Unity.
2. That between 10% and 80% of the relevant school's pupil populations were borders.

1.1.2 LIMITED PRIMARY RESEARCH

Only limited primary research was undertaken to verify and validate key secondary data statistics; however, it was not possible to undertake large scale primary research. This meant that it was not possible to obtain detailed monthly expenditure patterns for pupils, students, educators, and staff. This meant that it was not possible to estimate overall expenditure by pupils and staff involved in ECD centres as well as primary and secondary schools.

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1.1.3 COVID-19

COVID-19 has seen a rapid and sudden change in the educational environment around the world, and was no different in the study area. Many educational institutions have moved to remote learning, resulting in fewer pupils and students being permanently resident in Makhanda over the course of the year. Likewise, educational institutions expenditure patterns have changed owing to the need to expand ICT infrastructure to facilitate remote learning. Given these significant changes, the study has focused on the 2019 period, just prior to the outbreak of COVID-19 and the subsequent lockdowns and state of disaster declaration.

1.1.4 QUANTITATIVE ANALYSIS

The focus of the study was on the quantitative factors associated with the Makhanda education industry. Certain economic, social, and cultural benefits and their associated impacts are difficult to accurately determine and measure. For example, many parents based outside of Makhanda visit the town during major school events such as sports festivals. These parents in turn incur expenditure within Makhanda when they visit for such events (e.g. accommodation, food etc.). Such expenditure is thus indirectly associated with the local education industry and would increase the industry's economic impact. Obtaining such information, however, would require detailed surveying during such event. Given the high-level nature of the study the focus, is therefore on readily available quantitative factors such as annual operational expenditure by educational institutions.

1.1.5 STUDY AREA AND LEAKAGES

Every economic impact assessment commences with some form of injection of demand into the local economy - the initial impact. For this study, the focus is on the impact that the education industry has on the town of Makhanda. As economic data is only available to a municipal level (i.e. Makana Local Municipality) it is not possible to quantify the contribution of the industry to the town specially - but only to the municipality's economy as a whole.

This necessitates the consideration leakages. Leakages include, among others, "import" payments that flow out of the domestic economy (i.e. Makhanda), decreasing the share of local content in domestic consumption (BER, 2018). For example, while a school may be situated in Makhanda, it could procurer a portion of its goods from Port Elizabeth. This expenditure will thus accrue to the Nelson Mandela Bay Municipality's economy rather than that of the Makhanda economy. Furthermore, this leakage factor will vary from institution to institution. Determining this leakage factor, requires a detailed assessment of the various educational institutions suppliers and where they are located, which is beyond the scope of this study. Even if this information were readily available it is unlikely to be possible to fully control for all leakages, especially when it comes to indirect and induced impacts (i.e. insufficient information to determine whether the second, third etc. round suppliers are also local goods and/or services providers).

To overcome the absence of leakage factors for the Makhanda economy, this study had made use of the findings from BER (2018) and adjusted these factors based on the relative complexity of the Makana Local Municipality's economy.

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2. MAKHANDA IN CONTEXT

The town of Makhanda is in the Makana Local Municipality which covers an area of 4 376 km2 and includes the towns of Makhanda, Alicedale and Riebeek East. The municipality falls within the Sarah Baartman District Municipality and is situated in the Eastern Cape. As indicated, there is limited economic data at town level, thus this section focuses on profiling the Makana Local Municipality as a whole to contextualise the Makhanda's education industry within the broader municipality.

2.1 ECONOMIC PROFILE

Over the 2009 to 2019 period, the Makana Local Municipality's economy grew at a compound annual rate (CAGR) of 1.0% (Quantec, 2023). Between this period, the fastest growing sectors were manufacturing (at a CAGR of 4.5%), followed by followed by the transport, storage, and communication sector (at 3.3%), and finance insurance, real estate, and business services sector (at 2.0%). The local economy has still not recovered from the global financial crisis in 2008/2009. In the five years preceding the financial crisis the Makana Local Municipality's economy registered a 2.4% CAGR.

Given the developed nature of the Makana Local Municipality's economy, its real GDP per capita in 2019 (R62 672) was notable higher than both the rest of the Sarah Baartman District Municipality (R59 782) and the Eastern Cape (R48 943). This gap between the real GDP per capita of the Makana Local Municipality and the Eastern Cape, however, has narrowed over the last decade. In 2009, the Makana Local Municipality's real GDP per capita exceeded the provincial average by 40.0%, by 2019, this gap had narrowed to 28.1%. Although GDP per capita is an important economic indicator it does not provide an illustration of the distribution of the income across the region. To illustrate this point, the Makana Local Municipality accounts for just 7.5% of the total geographic area of the Sarah Baartman District Municipality, but it contributes 19.8% of the district's gross value added (GVA) in 2019 (Quantec, 2023).

The sectoral composition of the Makana Local Municipality's economy is like that of the Eastern Cape, which is biased towards the service-orientated tertiary industries. In addition to an established tertiary sector, the Makana Local Municipality's has a sizeable manufacturing sector which accounted for 10.9% of the municipality's total gross value add in 2019, slightly lower than the provincial and district figures. The municipality's agriculture sector contributes slightly more to the overall economy relative to the rest of the Eastern Cape, driven mainly by the local hunting industry.

Table 2: Percentage share of total GVA per economic sector in 2019

	South Africa	Eastern Cape	Sarah Baartman	Makana
Primary	7.9%	1.8%	6.9%	2.5%
Agriculture, forestry, and fishing	2.5%	1.6%	6.8%	2.4%
Mining and quarrying	5.4%	0.1%	0.0%	0.0%
Secondary	19.6%	17.2%	18.4%	16.1%
Manufacturing	13.6%	12.1%	12.0%	10.9%
Electricity, gas, and water	2.6%	1.5%	2.0%	1.3%
Construction	3.4%	3.5%	4.4%	3.9%
Tertiary	72.5%	81.0%	74.8%	81.4%
Wholesale and retail trade	13.6%	17.9%	19.9%	17.0%

Transport, storage, and communication	9.1%	8.1%	6.9%	7.2%
Finance and business Services	24.4%	23.0%	22.9%	22.9%
General government	8.9%	10.6%	8.9%	11.5%
Community, social and personal services	16.4%	21.4%	16.2%	22.8%

Source: Urban-Econ calculations based on Quantec (2023)

2.2 SOCIO-ECONOMIC PROFILE

The following section briefly analyses the socio-economic environment at national, provincial, district and local level and considers those variables that are likely to have a direct bearing on the education industry and particularly the future demand for skills and training. Furthermore, the analysis seeks to obtain an understanding of the key trends, issues and dynamics within each local economy thereby establishing a baseline for the economic impact assessment.

2.2.1 POPULATION

Population is one of several variables that affect the economy and subsequently the education industry in Makhanda. Understanding the population dynamics within an area is therefore critical when it comes to development as population changes impact:

- The demand for goods and services such as education, housing, water, sanitation, and electricity
- The need for certain types of infrastructure
- The size of the labour force

Table 3 below shows the total population, population growth rates between 2009 and 2019, and the percentage share of total population for each of the selected areas.

Table 3: Overview of population structure in 2019 by area

Area	Population	% Share[2]	Density (per km2)	Average Growth Rate	
				2018-2019	2009-2019
South Africa	58 436 716		47.9	1.5%	1.5%
Eastern Cape	6 660 149	11.4%	39.4	0.1%	0.2%
Sarah Baartman	477 320	7.2%	8.2	0.7%	0.9%
Makana	**90 226**	**18.9%**	**20.6**	**1.0%**	**0.9%**

Source: Urban-Econ calculations based on Quantec (2023)

From Table 3 it is evident that the Makana Local Municipality accounts for the significant share of the total population of the Eastern Cape, highlighting its importance. An analysis of the growth rates indicates that the total population across three of the areas increased year-on-year at a slightly lower rate than the long-term averages. The long-term population growth rate of the Manaka Local Municipality, in addition to being lower than the year-on-year rate, was also lower than the national average. Despite this, the population of the municipality has increased by nearly 8 000 people over the decade.

[2] Eastern Cape's share of South Africa, Sarah Baartman's share of the Eastern Cape and Makana's share of Sarah Baartman.

Unpacking the population in the respective areas by age group, reveals that the majority of are classified as youth. The 20- to 34-year-old age cohort in particular, accounts for 24.3% of the Makana Local Municipality's population. This is unsurprising given the presence of the Rhodes University within the municipality.

Table 4: Age composition by area in 2019

	South Africa	Eastern Cape	Sarah Baartman	Makana
Children (0-14 years)	28.5%	33.3%	27.6%	25.6%
Youth	35.1%	30.3%	30.2%	32.0%
15-19 years	7.9%	8.7%	7.5%	7.7%
20-34 years	27.2%	21.6%	22.6%	24.3%
Adult (35-64)	30.3%	28.8%	35.0%	36.3%
Elderly (65+ years)	6.1%	7.6%	7.2%	6.0%

Source: Urban-Econ calculations based on Quantec (2023)

2.2.2 EMPLOYMENT, EDUCATION AND SKILL LEVELS

In 2019, the Makana Local Municipality accounted for over 15.0% of the total workforce of the district and approximately 2.0% of the total employed population in the Eastern Cape. There is a clear link between the employment profile of the Makana Local Municipality and the respective sectors output as indicated in Table 5. The largest employer within the municipality is the community, social and personal services sector – in line with the provincial trend but very different to that of either the Sarah Baartman District Municipality or the rest of South Africa. The prominence of this sector is unsurprising as it into this sector that the education industry falls.

Table 5: Percentage share of total employment per economic sector in 2019, by area

	South Africa	Eastern Cape	Sarah Baartman	Makana
Primary	10.2%	8.1%	26.1%	10.7%
Agriculture, forestry, and fishing	7.0%	8.0%	26.0%	10.7%
Mining and quarrying	3.1%	0.1%	0.0%	0.0%
Secondary	15.7%	13.9%	12.6%	12.8%
Manufacturing	9.3%	8.1%	6.6%	7.2%
Electricity, gas, and water	0.4%	0.3%	0.3%	0.3%
Construction	5.9%	5.5%	5.6%	5.4%
Tertiary	74.2%	78.0%	61.4%	76.5%
Wholesale and retail trade	22.9%	23.8%	22.0%	23.7%
Transport, storage, and communication	4.6%	3.6%	3.0%	3.7%
Finance and business Services	17.7%	12.6%	9.7%	12.1%
General government	6.1%	8.3%	5.8%	8.3%
Community, social and personal services	22.9%	29.7%	20.9%	28.7%

Source: Urban-Econ calculations based on Quantec (2023)

From an unemployment perspective, the Makana Local Municipality has a lower rate than the provincial average. This can partially be attributed to the higher levels of educational attainment within the municipality. Residents in the Makana Local Municipality have, on average, a higher level of educational attainment compared to either the provincial or national levels. This is especially true

for tertiary education. According to Quantec (2023), 3.2% of the municipality's residents have a degree, compared to 2.7% at a national level. This difference is even more stark at a post-graduate level, where 1.6% of Makana Local Municipality's residents have a post-graduate degree of some kind compared to just 2.6% at a national level.

Table 6: Level of educational attainment in selected areas in 2019 (20+ years old)

	South Africa	Eastern Cape	Sarah Baartman	Makana
No schooling	12.9%	15.8%	12.4%	**9.4%**
Some Primary	9.6%	13.1%	15.0%	**12.2%**
Completed Primary	3.9%	5.2%	6.6%	**5.5%**
Some Secondary	30.5%	34.7%	35.6%	**34.9%**
Matric	30.1%	21.1%	21.4%	**25.1%**
Tertiary	12.6%	9.9%	8.7%	**12.4%**
Other	12.9%	15.8%	12.4%	**9.4%**

Source: Quantec Standardised Regional (2023)

Importantly, the level of education provision within an area is one of the main determinants when it comes to a locations ability to achieve long-term, positive economic growth. The provision of education alone, however, does not ensure that this growth will occur. Equally important is ensuring that this education provision is of a sufficient quality to meet both the communities and the broader economy's needs.

Economic research also shows that there is a positive relationship between educational attainment and individual income, that is higher educational levels tend to result in higher individual incomes. Higher incomes in turn drive greater consumption spending which has a positive impact on an areas overall economic growth. Increased access to education also improves the ability of low-income earners to access economic opportunities and thereby participate in the broader economy. Based on these factors, the level of education within an area determines and enables:

- Individual incomes
- Labour productivity
- Skills base and employability

3. EDUCATION INDUSTRY PROFILE

The following section provides a more detailed overview of the education industry in Makhanda focusing on primary, secondary and tertiary institutions located throughout the town. The aim of this profile is to outline the scale and magnitude of industry within the town to highlight its importance to Makhanda's economy, rather than to assess educational outcomes.

The information presented in this section is drawn from several different sources, such as the various school websites, and then aggregated to present a holistic picture of the education industry in the town. The varying nature of the sources used in compiling this profile, mean that it is not always possible to obtain comparable figures. Where possible, however, comparable figures are shown to illustrate change over time. Unless otherwise noted, the data presented in this section is for 2019.

3.1 INSTITUTIONS

A total of **106 educational institutions** were identified in Makhanda comprising a mix of Early Childhood Development (ECD) centres, public and independent schools (Grade 0 to 12), and tertiary institutions. While it was not possible to establish the average duration these institutions have been operating, the vast majority have established roots within Makhanda and have been operating more than 50 years. This is particularly true for Rhodes University (119 years old as of 2023) and many of the independent schools.

Table 7: Composition of Educational Institutions in Makhanda in 2019

Institution Type	Number	Percentage Share
ECD Centres	66	62.3%
Primary and Secondary Schools	35	33.0%
Public	30	28.3%
Independent	5	4.7%
Tertiary	5	4.7%
Total	**106**	**100.0%**

Source: Urban-Econ research based on selected sources (2023)

ECD centres are by far the most prevalent type of educational institution within the town accounting for 61.7% of all such institutions in Makhanda. This was followed by primary and secondary schools. Many of the primary and secondary schools operating in Makhanda, both public and independent, are interlinked. That is while the primary and secondary schools operate independent from one another, they operate under the same name and brand and, in many cases on the same property (e.g. Victoria Girls' Primary School and Victoria Girls' High School).

Table 8 provides a more detailed breakdown of the composition of Makhanda's primary and secondary schools. As evident from the table, more than two thirds of pupils (68.4%; 22 schools) attend no-fee schools (i.e. Quintile 1 to 3), with the remaining third attending quintile 4 to 5 schools. This, in conjunction with spending patterns outlined in subsequent sections, clearly highlights the disparity in resource allocation amongst Makhanda's primary and secondary schools.

Table 8: Composition of primary and secondary schools by quintile

Quintile	Number of schools	% Share of schools	Pupils	% Share of pupils
1	0	0.0%	0	0.0%
2	1	2.9%	82	0.5%
3	21	60.0%	11 043	67.9%
4	2	5.7%	1 036	6.4%
5	11	31.4%	4 100	25.2%
Total	**35**	**100.0%**	**16 261**	**100.0%**

Source: Urban-Econ research based on selected sources (2023)

Tertiary institutions represent less than 5.0% of the total educational institutions within Makhanda, however, this is greater than most towns in South Africa of similar sizes.

3.2 EDUCATORS AND STAFF

In 2019, almost **1 250 people** were directly **employed** in the identified Makhanda educational institutions. This figure represents both educators (i.e. teachers and lectures) as well as support staff (groundskeepers, maintenance workers etc.) that are directly and permanently employed by the respective educational institutions. It therefore does not include contractors that are employed by the respective educational institutions or temporary workers that are employed for short periods. This represents an estimated 5.1% of the total 2019 labour force employed within the jurisdiction of the Makana Local Municipality.

Table 9: Composition of educational institutions employment in 2019

Institution Type	Number	Percentage Share	Average Number of staff per institution type
ECD Centres	129	10.4%	2.0
Primary and Secondary Schools	759	60.9%	21.7
Public	534	42.9%	17.8
Independent	225	18.1%	45.0
Tertiary[3]	358	28.7%	71.6
Total	**1 246**	**100.0%**	-

Source: Urban-Econ research based on various sources (2023)

Unlike the composition of educational institutions within Makhanda, the majority of individuals employed in the towns education industry are employed by primary and secondary schools (63.5%). Early Childhood Development Centres, in contrast, typically employ less than one staff member compared to 21 staff for each primary and secondary school.

[3] Note it was only possible to source staff figures for two of Makhanda's tertiary institutions. Accordingly, the average number of staff to pupil ratio is likely overstated.

Table 10: Trends in Rhodes University staffing figures between 2017 and 2019

	2017	2018	2019	Growth Rate 2017-2019
Permanent Staff Headcount	322	356	357	3.5%
Student to staff ratio	15.8	14.9	14.6	-2.6%

Source: Rhodes University (2020)

3.3 PUPILS AND STUDENTS

Approximately **27 388 pupils and students** receive education through Makhanda's 106 educational institutions. This means that approximately 31.7% of the total population of the Makana Local Municipality is involved in the education industry, either as a teacher/lecturer or as a pupil/student.

Table 11: Number of pupils and students across Makhanda's educational institutions in 2019

Institution Type	Number	Percentage Share
ECD Centres	2 297	8.4%
Primary and Secondary Schools	16 810	61.4%
Public	14 502	53.0%
Independent	2 308	8.4%
Tertiary	8 281	30.2%
Total	**27 388**	**100.0%**

Source: Urban-Econ research based on various sources (2023)

Pupil and student numbers differ significantly across educational institution type. For example, despite ECD centres representing 62.3% of all educational institutions in Makhanda, they only represent 8.4% of total pupil numbers. This has a positive effect on the staff to learner ratio for ECD's which is only 1:17, compared to 1:22 for primary and secondary schools. It is also worth noting, that the staff to learner ratio is significantly lower for independent schools (1:10) than it is for public schools (1:27) further highlighting the disparity between the two.

Table 12: Staff to learner ratio in 2019 by institution type

Institution Type	Staff to learner ratio
ECD Centres	1: 18
Primary and Secondary Schools	1: 22
Public	1: 27
Independent	1: 10
Tertiary	1: 23

Source: Urban-Econ research based on various sources (2023)

3.4 EDUCATIONAL INSTITUTIONS INCOME AND EXPENDITURE

Educational institutions both public and private, derive their income from three main sources – fees/tuition, government subsidies, and other sources such donations, fundraising etc. The proportion of income derived from each source varies by institution type and between institutions of the same type. For example, the DBE (2022) estimates that ECD centres derive 69.0% of their income

from fees, 27.0% from government subsidies and 4% from other sources. Figures from the Rhodes University (2019) meanwhile suggest that the comparable figures are 38.9%, 43.5%, and 17.6%.

Given that most educational institutions are not-for-profit, analysing income patterns helps to provide insight into the likely expenditure of these institutions. In the context of this assumption, the following sub-section seeks to determine the income derived by the various education institutions in Makhanda, and thereby their inferred expenditure.

Equally important, in seeking to quantify the economic impact of the Makhanda education industry is considering the expenditure incurred by pupils/students and teachers/lecturers. Typically, these individuals are likely to spend a sizeable portion of their income within the immediate area either in the form of accommodation or on goods and services (BER, 2018). Given the limitations outlined in Section 1.1, it was necessary to estimate this expenditure based on industry benchmarks. The following sub-section also provides information in this regard.

3.4.1 GOVERNMENT FUNDING

The funding of various institutions is split across three government departments namely, the Department of Social Development, Basic Education, and Higher Education and Training. The Department of Social Development in conjunction with the Department of Basic Education provides funding to ECD centres[4], while the latter department also provides funding to primary and secondary schools (both public and private). The Department of Higher Education and Training, in contrast, provides funding to tertiary institutions such as universities and TVET colleges.

The funding received from the respective government department is intended to cover personnel cost (typically between 50.0% and 70% of total grant funding) as well as non-personnel costs. In the case of the Makhanda education industry, this funding is distributed by the relevant provincial department.

Although the study was unable to obtain detailed funding allocations for each individual educational institution in Makhanda, it was possible to estimate this figure based on the average allocation per pupil provided by the respective department multiplied by the number of pupils per education establishment.

Funding to tertiary learning institutions provided by the Department of Higher Education and Training is made via a block grant. This grant, however, is a function of the number of students attending the respective tertiary institution. This information is published by the department annually, and it was thus possible to obtain the 2019 funding figures for the respective Makhanda tertiary institutions. These various figures are illustrated in Table 13.

[4] As of 2022, the funding and oversite of ECD centres has moved exclusively to the Department of Basic Education. For the focus period of this study (2019), ECD centres were still being jointly funded by the Department of Social Development and Department of Basic Education. The source of funding dependent on the nature of the ECD centre.

Table 13: Estimated annual government funding received by educational institutions in Makhanda for 2019

Institution Type	Number of Learners	Estimated annual Funding per learner	Estimated Government Funding Received
ECD Centres[5]	2297	R4 646	R6 547 817
Primary and Secondary Schools	16 810	-	R277 959 021
Public	14 502	R18 643	R270 366 315
Independent	2 308	R3 290	R7 592 705
Tertiary	8 281	-	R899 448 000
Total	**27 338**		**R1 183 954 838**

Source: Urban-Econ calculations based on Department of Social Development (2020), Eastern Cape Department of Basic Education (2020) and the Department of Higher Education and Training (2020)

Based on the figures presented above, it is estimated that educational institutions in Makhanda received approximately **R1.18 billion in government funding** to cover both the personnel and operational costs in 2019. This equates to R43 229 per leaner per year, or approximately R3 602 per month.

In addition to the above figures, the Department of Basic Education provides qualifying schools with food through the National School Nutrition Programme, while the Eastern Cape Department of Transport, provides a scholar transport programme to qualifying leaners. In 2019, the Eastern Cape Department of Basic Education's annual expenditure per learner on the school nutrition programme was R799 (Eastern Cape Department of Basic Education, 2020), while the Eastern Cape Department of Transport incurred R7 382 per learner on its scholar transport programme.

Based on the data available it was not possible to determine the number of recipients of these programmes that were based in Makhanda, however, it is highly likely that a portion of these programme's expenditure will have accrued to qualifying educational institutions in Makhanda. This would likely take annual government funding to the Makhanda education industry to over R1.2 billion.

3.4.2 FEES AND TUITION

Although government funding comprises a significant portion of public schools' annual income in many cases it is insufficient to meet the needs of most educational institutions. This necessitates the levelling of tuition fees on learners.

The type, value and manner in which fees are levied by varies from institution to institution. Some schools (Quintiles 1 to 3) are prohibited from charging any fees, while others levy fees in excess of R250 000 per annum. Over and above these fees, there is very often additional costs for boarding, sport, extramural activities, sport etc. The varied nature of these fees makes it exceptionally complex to estimate actual total fee income for Makhanda's educational institutions.

[5] It is estimated that only 61.4% of learners attend ECD centre that receive government funding. Source: Urban-Econ calculations based on Haynes (2021)

To obtain an indicative figure for the fee income received by educational institutions in Makhanda during 2019, the study made use of the findings from the DBE (2022)[6], as well as the fees charged by the towns public and private schools as obtained from the respective school's website. The fee income derived by tertiary institutions was obtained from the respective institution's annual financial statements. The results of this exercise, are illustrated in Table 14.

Table 14: Fee income derived by various educational institutions in Makhanda in 2019

Institution Type	Income	Percentage Share
ECD Centres	R5 331 429	0.5%
Primary and Secondary Schools	R476 558 012	44.3%
Public	R52 772 054	4.9%
Independent	R423 785 958	39.4%
Tertiary	R593 007 000	55.2%
Total	**R1 074 896 440**	**100.0%**

Source: Urban-Econ research based on various sources (2023)

Based on the various assumptions set out above and in Section 1.1, it is estimated that the various educational institutions generated an estimated R1.07 billion in income from fees. A significant portion (39.4%; R423.7 million) of this total fee income was generated by independent schools. This is unsurprising, given that these schools as classified as "elite" (see Rodot, 2012) and receive only limited state funding.

Tertiary educational institutions also generate a significant proportion of their income from fees, with this institution type accounting for over 50.0% of all Makhanda educational institutions' fee income. This is due to both the large number of learners that attend these institutions (i.e. more than 8 000) coupled with tuition fees which are significantly higher than those levied by public primary and secondary schools.

It is evident that Makhanda's educational institutions derive approximately 47.6% of their annual income from fees. This figure, however, varies considerably across institution type. For example, public primary and secondary schools generate only 16.3%, on average, from fees compared to 98.2% for independent primary and secondary schools.

3.5 STUDENT AND STAFF EXPENDITURE

Given the large number of people are involved in the Makhanda education industry, either as learners or teachers/lecturers, their expenditure is likely to have a significant impact on the town's economy. Data limitations prevented this study from estimating the expenditure incurred by all individuals in the towns education industry. Using benchmarking information from BER (2018) and the Department of Science and Technology (2009), however, it was possible to estimate expenditure incurred by those individuals involved in the town's tertiary institutions, either as students or lecturers.

This was achieved in a similar manner to the estimation of fee income generated by the town's educational institutions. That is, the average inflation adjusted annual expenditure by students attending Rhodes University obtained from Department of Science and Technology (2009) was applied to the total tertiary student population in Makhanda during 2019. To estimate staff

[6] Specifically, that 38.0% of learners attend an ECD centre that charges fees, and that the average monthly fee charged by these centres was R471 in 2019 prices.

expenditure, the inflation adjusted expenditure by staff obtained from the BER (2018) study was applied to Makhanda's tertiary institutions staff complement in 2019. The results of this exercise are illustrated in the Table below.

Table 15: Maskanda's Tertiary institutions staff and student expenditure in 2019

Category	Number of Students/Staff	Estimated Average Annual Spend[7]	Total Expenditure
Students	8 281	R42 196	R347 949 363
Staff	358	R131 886	R47 215 123
Total	**8 639**	**R45 742**	**R395 164 486**

Source: Urban-Econ calculations based on Department of Science and Technology (2009) and BER (2018)

Through the application of the aforementioned benchmarks, it is estimated that Makhanda's tertiary students and staff incurred R395.1 million in expenditure across all categories of goods and services in 2019. This expenditure accrued directly to the Makhanda economy.

3.6 TOTAL EXPENDITURE

For the purpose of the economic impact assessment of the Makhanda education industry it is necessary determine the total aggregate expenditure across all educational institutions. Using the results of the preceding sub-sections, Table 16 illustrates these figures by institution type. When considering these figures, it is important to note the limitations of the study, particularly Section 1.1.5.

Table 16: Estimated total expenditure by Makhanda educational institutions in 2019

Institution Type	Total Expenditure[8]	Estimated Leakage Factor[9]	Actual Expenditure accruing to the Makhanda economy
ECDC Centres	R11 879 246	5%	R11 285 283
Primary and Secondary Schools	R754 517 032		R1 021 998 889
Public	R323 138 369	30%	R226 196 859
Independent	R431 378 663	45%	R237 258 265
Tertiary[10]	R1 757 416 385	32%	R558 543 766
Institution	R1 362 251 899	57%	R163 379 280
Students and staff	R395 164 486	0%	R395 164 486
Total	**R2 523 812 663**		**R1 591 827 938**

Without considering the leakage factor, the R2.52 billion in direct expenditure incurred by Makhanda educational institutions represents **21.4% of the total output of the Makana Local Municipality in 2019**. Through the application of the various leakage factors, it is estimated that the cumulative expenditure by educational institutions, that accrues to the Makhanda economy is approximately **R1.59 billion**.

[7] Note that both benchmark figures used include only the amount spent within the immediate geographic area of the respective tertiary institution. They therefor already take into consideration the leakage factor.

[8] Includes income from both government funding and fees and premised on the fact that total income equals total expenditure.

[9] The lack of primary research, absence of benchmark figures, and the complexity of determining leakage factors makes it difficult to estimate leakage factors. Leakage factors have therefore been estimated based on similar studies undertaken by Urban-Econ coupled with the firm's knowledge of the area.

[10] For tertiary institutions it was possible, using Rhodes University (2020), to determine actual expenditure for the insertion, and it was therefore not necessary to make the assumption that income equals expenditure.

This represents approximately 63.1% of the total expenditure incurred by all the towns educational institutions in 2019.

4. ECONOMIC IMPACT ASSESSMENT

As indicated in the introduction, the purpose of this study is to quantify the economic benefits resulting from the operational expenditure incurred by all Makhanda's educational institutions in 2019. This includes the expenditure incurred by learners and educators where this can be determined. The study does not quantify the additional expenditure incurred by visitors or spin-off companies that are linked to, or affiliated with, educational institutions in Makhanda.

The following section has several purposes. Firstly, it seeks to define and distinguish the different types of economic impacts as well as discuss how these economic impacts are measured. Secondly, the section seeks to estimate and quantify the potential effects, if any, on the Makhanda economy resulting from the expenditure from the towns educational institutions.

4.1 QUANTIFYING ECONOMIC IMPACTS

An economic impact is defined as an exogenous change in the local economy that has either a positive or negative effect on the current economic activity within an area. This external change can take the form of a new investment, such as the construction of a new building, the upgrading of a business, the expansion of existing production capacity, etc.

It is important to understand that there are two types of investment when a development is undertaken. Firstly, there is an initial capital injection/expenditure (CAPEX) which takes the form of either the construction of a new structure or the modification of an existing structure. Secondly, there is an annual recurring investment to maintain/operate the item on which capital expenditure was incurred. This is referred to as operating expenditure or OPEX.

The economic impacts created by a capital injection (CAPEX) are once-off impacts that will occur for the duration of the construction period. Economic impacts associated with the construction phase of a development are therefore not sustainable impacts. Operational economic impacts, in contrast, are sustainable in the sense that they occur on an annual basis provided that the development incurs operational expenditure.

The net economic impact of an exogenous change in the economy resulting from CAPEX and/or OPEX will be translated according to various direct and indirect economic effects which are defined as follows:

- **Direct effects:** Are those changes in local business activity occurring as a direct consequence of the exogenous change to the economy.
- **Indirect effects:** Include business growth for suppliers to the directly affected businesses and potential growth of municipal revenue due to raised taxes and service levies.
- **Induced effects:** Include business growth as the additional workers (created by direct and indirect economic impacts/effects) spend their income on food, clothing, shelter and other local goods and services.

To quantify the anticipated direct, indirect, and induced effect of both a CAPEX and OPEX investment, several econometric models can be applied. There are three main types of economic impact models based on the general equilibrium framework, namely: the Input/Output Analysis, SAM-Leontief and Computable General Equilibrium (CGE) models. These models require data which captures the

circular flow of funds through an economy. Input output tables and social accounting matrices (SAMs) provide such data. The actual models consist of systems of equations based on economic theory. The equations are used to generate multipliers which enable the estimation of economic impacts.

All three models were considered for this study, however due to the limitations of the Input-Output and CGE models, the SAM-Leontief model was applied. For example, the emphasis of an Input-Output table is on inter-industry transactions. Furthermore, the full circular flow of transactions in an economy is not captured in Input/Output model (i.e. households are excluded from the analysis). Since one of the key indicators for the study is the impact that the Makhanda education industry has on employment and household income the Input-Output model was not considered appropriate. The CGE Model was not selected as it is generally used to determine the impact of national interventions on the national economy and requires considerable input data which is often difficult to obtain. In addition to this it has not yet been possible to determine whether the data generated by CGE models is quantitatively accurate.

SAM or social accounting matrix is defined as an economy-wide database which contains information about the flow of resources associated with all transactions that take place between economic agents in an economy during a given period. A SAM is an extension of an Input/Output table which shows more detailed information on economic agents and factors of production (i.e. includes households as economic agents). The SAM illustrates in a single square matrix all the interactions between production, income, consumption, and capital accumulation in the various sectors of an economy. It is, therefore, a logical arrangement of statistical information concerning income and expenditure flows in an economy and provides a 'snapshot' of the economy at a given point in time.

The SAM-Leontief model uses social accounting matrices as the underlying database. Coefficients are taken from the SAM and are used to calculate the open (households included) and closed (households excluded) Leontief inverses which are multiplied by the exogenous change to obtain direct, indirect, and induced impact on production[11]. The change in production is then multiplied by direct multipliers to obtain specific impacts on GDP, employment, and income.

The economic impact assessment presented in the subsequent section is based on the 2004 Eastern Cape SAM and updated to 2019 prices. Optimally, one would aim to narrow the economic impacts down to a municipal level, however, input-output tables which form the building blocks of SAMs are not available at this level. The analysis is therefore based on the assumption that the structure of the Eastern Cape economy is like that of the Makhanda economy. The Eastern Cape multiples have this been used as a proxy for the Makhanda economy[12].

Using the above methodology and the estimated expenditure figures set out in this Section 3.6, Table 17 indicates the total direct, indirect and indirect economic associated with the aggregate operational expenditure of the various educational institutions in Makhanda, while Table 18 indicates the economic impact of tertiary student and staff expenditure.

[11] Production/Business Sales refers to the value of all inter- and intra-sectoral business sales generated in the economy as a consequence of the introduction of an exogenous change in the economy. Explained more simply, new business sales equate to additional business turnover as a result of the introduction of an exogenous change in the economy.

[12] Urban-Econ is fully aware that the structure of the Makhanda economy differs from the structure of the Eastern Cape as evident in Section 2. The data limitations of the study, however, necessitate the use of the Eastern Cape SAM as a point of departure.

Table 17: Estimated economic impact of the Makhanda education industry on the economy (R millions, 2019 prices)

	Direct	Indirect	Induced	Total
Production/Output	R1 196.7	R766.3	R819.4	**R2 782.3**
GDP	R710.3	R307.2	R309.7	**R1 327.1**
Employment (FTE)[13]	1 246	1 415	1 557	**4 218**
Income	R558.1	R118.2	R117.7	**R793.9**

Based on the Eastern Cape SAM, it is estimated that the economy-wide impact of Makhanda's education industry on output is R2.78 billion, the bulk of which is attributable to the direct impact (43.0%; R1.19 billion). This increase in output translated to a R1.3 billion million impact on GDP, again, the majority of which was attributable to the direct impact.

The Makhanda education industry supports 4 218 Full-Time Equivalent (FTE) employment positions throughout the economy. This figure includes those who are directly employed by the various educational institutions in the town as well as the additional employment opportunities arising because of the indirect and induced effects. This employment contributed to total remuneration income owing the Makhanda education industry of R793.9 million.

Table 18: Estimated economic impact of tertiary students and staff expenditure on the Makhanda economy (R millions, 2019 prices)

	Direct	Indirect	Induced	Total
Production/Output	R395.2	R253.0	R270.6	**R918.8**
GDP	R234.6	R101.4	R102.3	**R438.2**
Employment (FTE)[14]	966	467	514	**1 947**
Income	R184.3	R39.0	R38.9	**R262.2**

Staff and student spending by Makhanda's tertiary institutions, contributes to R918.8 million in output due to the direct, indirect, and induced effects, resulting in GDP of R438.2 million. This spending supports 1 947 FTE's across the economy.

In total, the economy-wide impact of the Makhanda education industry including both institutional expenditure and that incurred by tertiary students and staff on output (or value of production) is estimated to be R3.70 billion in 2019. The economy-wide impact on the Makana Local Municipality's GDP is a significant R1.76 billion million. The composition of the economy-wide impact on GDP is similar to that of output, with student spending stimulating the bulk of gross value added.

The presence of educational institutions in Makhanda also generates R1.05 billion in labour remuneration, of which 70.3% is attributable to the direct impact, 14.9% to the induced impact and the remaining 14.8% to the indirect impact. Finally, the Makhanda educational industry also sustains 6 166 jobs in the local economy.

[13] FTE refers to the total number of hours worked by one employee on a full-time basis.

[14] FTE refers to the total number of hours worked by one employee on a full-time basis.

Table 19: Total economic impact of the Makhanda education industry on the local economy (R, millions)[15]

	Economy-wide impact of the education industry	Makana Local Municipality	Share (%)
Production/Output	R3 701.1	R14 420.0	**25.7%**
GDP	R1 765.4	R5 654.7	**31.2%**
Employment	6 166	24 585	**25.1%**
Income	R1 056.1	R2 743.6	**38.5%**

As a result of multiplier effects, the total economy-wide impact of the Makhanda education industry community stretches far beyond its initial expenditure in the local economy. Table 19 shows that town's education industry has a significant impact on the Makana Local Municipality's economy and in fact contributes over 30.0% of gross value added in the region, as well over a quarter of total formal employment.

This is a **very conservative estimate** as it does not include expenditures incurred by these educational institutions outside of the town that accrues to the rest of South Africa (i.e. **does not consider the leakage factor**) nor made by visitors, spin-off companies or local businesses that are related to the education industry.

[15] Employment figures are actual values and not reflected in millions.

5. CONCLUSION

The aim of this study was to undertake a high-level assessment of the Makhanda education industry in an effort to quantity it's contribution to the economy of the town. This was done by means of an economic impact assessment, which sought to quantify the expenditure incurred by the town's various educational institutions, as well as the expenditure incurred by these institutions staff and leaners.

The study showed that the Makhanda education industry has a highly significant impact on both the town's economy as well as the broader region. More than 25.0% of output and almost a third of the gross value added generated by the broader municipality is stimulated by the presence of Makhanda's education industry. Furthermore, the town's education sustains more than 6 000 jobs in the region, equivalent to 25.1% of the municipality's total employment.

These estimates, however, underestimate the full scale of the Makhanda education industry, as the study only focused on only the local benefits that accrue to the town. Most, if not all, of the educational institutions in Makhanda are closely integrated with the rest of the provincial economy. This is evident, for example, by the leakage factor for the Rhodes University, which was estimated at 57.0%. This means that the significant portion of the economic benefits flowing from the university accrue to the rest of the Eastern Cape.

Irrespective, at a local level, the Makhanda education industry is integral part of the town's economy. The benefits flowing from these institutions are very significant and extend well beyond just the town. Equally, the activities associated with the industry help to uplift and enhance the overall community of Makhanda.

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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 869 **31 August 2006**

SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO 84 OF 1996)

AMENDED NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

I, Grace Naledi Mandisa Pandor, Minister of Education, in terms of Section 39 (7) of the South African Schools Act, 1996 (Act 84 of 1996) hereby publish the Amended National Norms and Standards for School Funding, as set out in the Schedule. The implementation date of the norms will be 1 January 2007.

Copies of the documents are available from the Department of Education:
Private Bag X895
PRETORIA
0001

G.N.M. Pandor

GNM Pandor, MP
Minister of Education
Date: 27-08-2006
(034S0283)

SCHEDULE

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

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ABBREVIATIONS

CEM	Council of Education Ministers
DoE	Department of Education
EMIS	Education Management Information System
HEDCOM	Heads of Education Departments Committee
HOD	Head of a Provincial Education Department or Head of Department
MEC	Member of the Executive Council for Education
MTEF	Medium Term Expenditure Framework
PED	Provincial Education Department
SASA	South African Schools Act, 1996 (as amended)
Section 21	Section 21 of the South African Schools Act, 1996
SGB	School Governing Body

PART 1

1. INTRODUCTION

This document

1. This document sets out the national norms and standards for school funding in terms of the South African Schools Act, 1996 (No. 84 of 1996). It also deals with the procedures to be adopted by Provincial Education Departments (PEDs) in determining resource allocations to their schools. These norms replace any previous school funding norms issued in terms of Section 35 of the South African Schools Act, 1996 (No. 84 of 1996).
2. These norms and standards are based on the original norms and standards published in 1998 (Notice 2362 of 1998). They include amendments introduced in 2003 (Notice 20 of 2003) and amendments made in 2006 following the publication of proposals for public comment (Notice 1357 of 2004).
3. These norms and standards deal with
   (a) the public funding of public schools, in terms of Section 35 of the Act.
   (b) the exemption of parents who are unable to pay school fees, in terms of Section 39(4) of the Act.
   (c) Public subsidies to independent schools in terms of Section 48(1) of the Act.
4. The funding policy relating to learners with special educational needs will be prepared in accordance with Education White Paper 6: Special Needs Education.
5. The Department of Education (DoE) prepared this document after consultation with the Sub-Committee on Finance of the Heads of Education Departments Committee (HEDCOM). The Sub-Committee includes representatives of the DoE and PEDs, the National Treasury and the national educator organisations.

Interpretation

6. In this document-
   (a) unless the context indicates otherwise, any expression to which a meaning has been assigned in the South African Schools Act, 1996 (No. 84 of 1996), has that meaning;
   (b) "Regulations" means the Exemption of Parents from the Payment of School Fees Regulations, determined in terms of Section 39 of the Act;
   (c) "the Act" means the South African Schools Act, 1996 (No. 84 of 1996).

Application of the norms

7. The norms and standards in this document apply uniformly in all provinces, and are intended to prevail in terms of Section 146(2) of the Constitution.

When the norms come into effect

8. These norms become national policy on 1 January 2007.
9. Some norms will apply to the public school financial year (January to December) and others to the state financial year (April to March).
10. Pre-conditions for full and efficient implementation of the norms are described later in this document, with suggestions for a sequence of activities that would enable PEDs to prepare themselves to put the norms into effect.

Monitoring of implementation

11. The Department of Education is responsible for monitoring the implementation of the norms in terms of Section 8 of the National Education Policy Act, 1996 (No. 27 of 1996). The DoE is required to undertake its monitoring and evaluation role

    > "in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance." (Section 8(4))

    For purposes of monitoring the DoE will determine reporting formats in consultation with PEDs.

12. Each Head of Department will be expected to verify that the national norms are being complied with in allocating funds, or that acceptable alternatives are being implemented after consultation with the DoE. PEDs must use, for this purpose, systems and software tools that have been made available by the DoE or alternative methods that will produce reports required by the DoE. If the PED is unable to comply with the norms because of a lack of expertise or for any other reason, the DoE must be informed without undue delay, so that the problem can be examined and remedies sought.

2. POLICY FRAMEWORK

The right to education and the financial responsibility of the state

13. The Bill of Rights in the Constitution of the Republic of South Africa, 1996 (No. 108 of 1996) establishes the right to education in these terms:

"Everyone has the right-

(a) to a basic education, including adult basic education; and

(b) to further education, which the state, through reasonable measures' must make progressively available and accessible" (Section 29(1)).

14. The South African Schools Act, 1996 came into effect on 1 January 1997. The principal objective of the Act is "to provide for a uniform system for the organisation, governance and funding of schools". In terms of the Act, schools cover learning programmes between grade O (better known as grade R. for "Reception") through to grade 12.

15. The SASA (Section 3) provides for compulsory attendance of learners at school between the ages of seven and 15 (or the completion of grade 9). This is known as the compulsory or General Education phase. Every provincial Member of the Executive Council for Education (MEC) is required to provide sufficient school places for every child in the compulsory attendance bracket. If this cannot be done because of a lack of capacity, the MEC must take steps to remedy the lack as soon as possible.

16. The Act imposes other important responsibilities on the state with respect to the funding of public schools. The basic principles of state funding of public schools derive from the constitutional guarantee of equality and recognition of the right of redress. The Act provides that:

"The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in educational provision" (Section 34(1)).

17. These principles therefore underlie the national norms and standards for public school funding which the Minister is required to determine (Section 35).

18. The SASA follows the Constitution (Section 29(3)) in establishing the right of any person to establish and maintain an independent school at his or her own cost, and sets out the grounds on which a PED must register an independent school. The Constitution does not preclude state subsidies for independent education institutions. The Act empowers the Minister of Education to determine norms and minimum standards for the granting of subsidies to independent schools. Such subsidies may be granted by the MEC in a province (Sections 46, 48).

Personnel costs in Provincial Education Departments

19. Except in this section, this document does not deal with personnel costs in Provincial Education Departments.

Policy targets

20. The Ministry of Education's personnel policy for schools embodies these key principles:
    (a) schools must be supplied with an adequate number of educator and non-educator personnel
    (b) such staff members must be equitably distributed according to the pedagogical requirements of the schools, and
    (c) the cost of personnel establishments must also be sustainable within provincial budgets.
21. As a policy target, based on both local and international evidence, the Ministry of Education has determined that personnel:non-personnel spending in ordinary public schools should be of the order of 80:20.
22. Progress toward meeting the personnel: non-personnel target must be assessed by Provincial Education Departments in the course of preparing each year's updated MTEF. A reduction in the proportion of the education budget spent on personnel must result in an actual increase in budgeted expenditure on pedagogically critical non-personnel items (such as new school construction, provision of essential services, supply of books and other learning support materials, and educator development).
23. Within the total personnel allocation in PEDs, teaching personnel costs should be targeted at 85%, to allow for the appointment and proper distribution of administrative and support staff in Provincial Education Departments.
24. The Department of Education (DoE) will work with Provincial Education Departments, using existing databases, to ensure that they can track the number and location of personnel engaged in teaching and non-teaching activities, in order to assist planning towards this target.

Educator personnel

25. Aside from the above general policy targets, this document does not norm the allocation of educator personnel, either in a province generally, or in teaching posts at or in connection with schools.
26. The Minister of Education determines national policy in respect of educator post provisioning, in terms of the National Education Policy Act, 1996 (No. 27 of 1996). The educator post establishment in each province is determined by the MEC, subject to national norms prescribed for the provisioning of posts (Employment of Educators Act, 1998 (No. 76 of 1998), Section 5(1)).

27. The Minister determines norms in respect of posts to be allocated to public schools, in relation to their curriculum and other circumstances, which the Head of Department must follow in distributing the available posts within the approved education establishment of a PED.

28. The Ministry's personnel and funding policies aim to remove inequities in the distribution of public resources for education, both across provinces and within provinces. The logical direction of policy is that personnel allocation costs to schools should be funded, eventually, on the basis of an equitable cost per learner, in order to address more efficiently the aim of redress and equity in the provision of quality education. However, these norms and the funding practices of PEDs are not yet based on a strict equitable cost per learner.

Non-teaching personnel at school level

29. The allocation of non-teaching staff to schools, including administrative and support staff, is extremely uneven. The provision of such personnel has been severely lacking in historically disadvantaged and small schools. Inequalities in the provision of such staff members is almost certainly associated with major inefficiencies in schools which serve poor communities.

30. The Minister of Education is responsible for determining norms for the provision of non-educator personnel, including non-teaching personnel at school level.

Targeting expenditure for redress, equity and quality

31. Effecting redress and equity in school funding, with a view to progressively improving the quality of school education, within a framework of greater efficiency in organising and providing education services, are matters of urgent priority for the Ministry of Education. The Preamble to the South African Schools Act, 1996 states that:

> "...this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities...."

32. To achieve these objectives in a systematic manner requires new systems of budgeting and spending for schools.

33. In terms of our Constitution and the government's budgeting procedure, the Ministry of Education does not decide on the amounts to be allocated annually for Provincial Education Departments. This is the responsibility of provincial governments and legislatures, which must make appropriations to their education departments from the total revenue resources available to their provinces. Thus, each province determines its own level of spending on education, in relation to its overall assessment of needs and resources.

34. It follows that national norms for funding schools cannot prescribe actual minimum amounts in Rands to be spent per learner, however desirable that might be.

35. From the 1998/99 financial year, the national and provincial budgets have been prepared within the MTEF, which enables government outlays to be planned on a three-year rolling basis.

36. An important assumption underlying these national norms is that the national and provincial levels of government will honour the state's duty, in terms of the Constitution and the SASA, to progressively provide resources to safeguard the right to education of all South Africans. However, educational needs are always greater than the budgetary provision for education. To effect redress and improve equity, therefore, public spending on schools must be specifically targeted to the needs of the poorest. This will apply to both the General Education (grades 1-9) and the Further Education and Training (grades 10-12) phases.

Fee charging and exemption policy in public schools

School fees and equity

37. The SASA imposes a responsibility on all public school governing bodies to do their utmost to improve the quality of education in their schools by raising additional resources to supplement those which the state provides from public funds (Section 36). All parents, but particularly those who are less poor or who have good incomes, are thereby encouraged to increase their own direct financial and other contributions to the quality of their children's education in public schools. The Act does not interfere unreasonably with parents' discretion under the law as to how to spend their own resources on their children's education.

38. Ironically, given the emphasis on redress and equity, the funding provisions of the Act appear to have worked thus far to the advantage of public schools patronised by middle-class and wealthy parents. The apartheid regime favoured such communities with high-quality facilities, equipment and resources. Vigorous fund-raising by parent bodies, including commercial sponsorships and fee income, have enabled many such schools to add to their facilities, equipment and learning resources, and expand their range of cultural and sporting activities. Since 1995, when such schools have been required to down-size their staff establishments, many have been able to recruit additional staff on governing body contracts, paid from the school fund.

39. Poor people, on the other hand, especially in former homeland areas, have contributed a disproportionate share of their incomes over many decades to the building, upkeep and improvement of schools, through school funds and other contributions, including physical labour. All too many schools in poor rural and urban working-class communities still suffer the legacy of large classes, deplorable physical conditions, and absence of learning resources, despite various school building

S.N

programmes. Yet the educators and learners in poor schools are expected to achieve the same levels of learning and teaching as their compatriots.

40. Such contradictions within the same public school system reflect past discriminatory investment in schooling, and vast current disparities in the personal income of parents. The present document addresses these inequalities by establishing a sharply progressive state funding policy for ordinary public schools, which favours poor communities.

Parents' responsibility

41. All public school governing bodies are obliged by the Act to support their schools financially as best they can. The Act provides that a governing body must -

> "take all reasonable measures within its means to supplement the resources provided by the State in order to improve the quality of education provided by the school to all learners at the school" (Section 36).

42. However, in fulfilling their obligation to raise supplementary resources, governing bodies are not required to charge school fees. Whether or not to charge school fees is a matter for the parents of the schools, where schools have not been declared no fee schools in terms of these norms and Section 39(7) of the Act[1]. The Act links the question of fees to the budget of the school, which the governing body must present to a general meeting of parents for approval. The intention is that the governing body will give the parents all necessary information about the school's income, from the state and other sources, and its educational needs. Parents will then decide what additional revenue the school needs for educational purposes, and how that revenue is to be raised, including whether or not fees are to be charged.

43. At the parents' general meeting, any resolution that proposes fee payment must include the amount of fees to be charged, and "equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay" the fees (Section 39(2)). In making its decisions, therefore, the parent body must take into account, as far as is practicable, the financial circumstances of all the parents, taken as a whole. The Ministry expects that more affluent, or less poor, parent communities will contribute proportionally more, because state funding per learner in their schools will be less than in schools serving poorer communities. In no fee schools, parents may not set compulsory school

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[1] Section 1(xiv) of the Act defines "parent" as-

(a) the parent or guardian of a learner;

(b) the person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) or (b) towards the learner's education at school.

fees, and the school may not levy such fees. This is to protect households in the socio-economically least advantaged sections of society.

44. A parent body, taking into account its circumstances, may decide to charge no fees at all, even if parents have the right to determine compulsory school fees. In such a case the question of exemptions does not arise. Another parent body may decide to set a small fee, so that no parent needs to be exempted. In most public schools where parents decide to charge fees, parents' ability to pay fees may vary considerably. In such cases, difficult decisions must be taken about the level of fees, and an equitable threshold for exemption from fee-paying.

45. Parents of learners at a public school, therefore, carry serious responsibilities with respect to the determination of a school's budget, its sources of revenue, and (if fees are charged) the level of fees and the conditions for exemption of parents from fee paying. Furthermore, if a majority of parents vote in favour of school fees, each parent is responsible for paying the required fee, unless an exemption has been granted, and unless the school has been declared a no fee school. But no learner can be denied admission, or otherwise discriminated against, on grounds of the parent's inability or failure to pay fees.

46. The Ministry of Education monitors all aspects of the implementation of the South African Schools Act, 1996, in order to assess to what extent its objectives are being met. In particular, the effect of the new budget allocation policy on the current inequalities in school provision, the levels of fee charging by public schools, and the uses to which such income is put, are all important matters of legitimate concern to the Ministry and the public, which must be kept under review.

State subsidies to independent schools

The independent school sector

47. Independent schools vary substantially in age, size, location, socio-economic status, facilities, staff, mission, governance, representivity, religious or secular identity, community service, cost structure, endowments, financial viability, rates of fees, and quality of teaching and learning. It is impossible to generalise about them. Many deliver valuable educational services and have loyal clienteles. Others deliver services of low quality and exploit the ignorance of parents. Some pride themselves on conservative principles of governance and teaching. Others value innovation. Some have an inward focus. Others have a deliberate mission of social concern and professional co-operation with public schools serving the poor.

48. Independent school enrolment amounts to about two percent of total school enrolment nation-wide. This percentage may be increasing. Within provinces, independent school enrolments vary from a fraction of a percent of total school enrolment, to several times the national average. If all learners were to transfer to public schools, the cost of public education in certain provinces might increase by as much as five percent.

49. The practice of granting state subsidies to registered independent schools (previously known as private schools) is well established in South Africa. Subsidies have typically been calculated as a defined fraction of the cost per learner in the public school system. Before 1994, independent schools were required to register with the respective education departments of the apartheid state, among which the cost per learner was grossly unequal. Therefore, state subsidies to independent schools reflected the pattern of race-based inequality in the public (state and state-aided) school systems under apartheid.

50. Race-based inequalities in subsidies to independent schools have been eliminated since 1994. Since then, subsidy levels have differed somewhat by province. But extreme pressure on the non-salary components of provincial education budgets, especially in 1997/98 and 1998/99, has resulted in a sharp decline in the per learner value of independent school subsidies, and considerable uncertainty as to the future trend of independent school funding by provincial education authorities.

51. Fees in independent schools have tended to rise in response to subsidy cuts. Some independent school proprietors have applied for schools to be taken over by Provincial Education Departments, as public schools on private property, in terms of Section 14 of the Act. PEDs have been slow to comply.

52. The Government is grappling with the necessity to stabilise and reprioritise provincial education budgets, in terms of the Medium Term Expenditure Framework. The serious reality underlying the new policy for school funding is that, for the foreseeable future, provincial education budgets will be extremely constrained, especially with respect to non-personnel allocations, out of which subsidies are paid.

Subsidy policy

53. The Ministry of Education cannot determine subsidy levels in monetary (Rand) terms because, under our Constitution, budget decisions of that kind are made within provincial governments. For this reason, the national norms for independent school subsidies are expressed as criteria of eligibility for subsidy, and principles of allocation. These criteria and principles are consistent with the values underlying the Constitution and the Act.

54. The Ministry of Education bases its subsidy policy on the fiscal argument, and on social grounds. The fiscal argument is as follows. The state has a constitutional and statutory responsibility to provide school education to all learners. However, the right of reputable, registered independent schools to exist is protected by the Constitution, and the payment of subsidies to them is not precluded. Such independent schools perform a service to their learners that would otherwise have to be performed by the Provincial Education Departments. Public subsidies to such schools cost the state considerably less per learner than if the same learners

enrolled in public schools. It is, therefore, cost efficient for the state to provide a subsidy.

55. In South Africa, the fiscal argument is an important but not a sufficient basis for national policy. Given the extreme inequalities and backlogs in the provision of public education and the pressure on public education budget allocations, the national policy on public subsidies to independent schools must serve explicit social purposes.

56. Subsidy allocations, therefore, must show preference for independent schools that are well managed, provide good education, serve poor communities and individuals, and are not operated for profit. Such criteria must be capable of measurement according to objective, transparent, and verifiable criteria.

3. IMPLEMENTATION

Developing capacity for intensive data use

Data needs

57. Most PEDs manage budgets of many billions of Rands. Targeting redress, and improving equity in public funding of public schools in an efficient manner, requires the DoE and PEDs to undertake serious budgetary and financial analysis, and to use information intensively.

58. In order to make progress towards equity in school funding, each Provincial Education Department must

    (a) use relevant provincial data much more intensively in budgeting and planning decisions;

    (b) develop the necessary data systems to guide planning and allocations; and

    (c) be able to demonstrate to the DoE that progress is being made.

59. The SASA provides that all public schools are budget and cost centres (Sections 37, 38 and 42). These norms and standards therefore require the use of certain data that have not previously been necessary in budgeting for public schools.

60. Schools must provide information to Provincial Education Departments (Section 59 of the Act). On their part, departments must ensure that information is received on time from schools, so that the necessary analysis can be undertaken, and resource allocation decisions made on time.

61. PEDs must annually provide public schools with sufficient information so that the schools' governing bodies can develop their budgets as required by Section 34 of the Act.

62. PEDs must annually provide independent schools by 30 September of each year with sufficient indicative information, at least the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools, and an indication of the subsidy category under which the school is grouped in Figure 4 of paragraph 187, to enable them to plan their budgets and fee schedules for the following year. It should be noted that this subsidy amount is merely for planning purposes and might differ from the actual subsidy amount allocated.

63. Initially, the budget information provided to schools by PEDs may be indicative, rather than fully detailed. In time, such information should include the current year's expenditures at each school, and the guideline amount of the total allocation by the Provincial Education Department to the school for the coming school year, including all guideline personnel costs. Such costs should be expressed both in absolute and per learner terms. This is necessary so that schools become accustomed to thinking

about their total costs per learner. The aim is to improve each PED's accounting and information processing systems so that each school's costs for personnel and non-personnel can be identified by item.

64. Comprehensive data on schools have been created through the national School Register of Needs survey, whose databases have been incorporated in provincial data systems, and the new, provincially-based national Education Management Information System (EMIS). The 1996 national Census reports will provide reliable and up-to-date demographic information. Provincial Education Departments may have access to other data sources, and the national Department will augment these wherever possible.

65. The MTEF provides a co-operative mechanism for improving the accuracy of budget-related data, and undertaking relevant analytic studies. The DoE and PEDs are active participants in these processes.

Skill requirements

66. To attempt to accomplish the new tasks without high-level skills is absolutely unrealistic, especially given the size of provincial education budgets. Each Provincial Education Department must, therefore, acquire the services of:

    (a) At least one, and preferably several, highly-skilled strategic financial analysts who understand the use of data-intensive planning and analysis techniques in public financial management. If not already deeply familiar with education issues and policies, they must be willing to make a careful study and acquire the necessary knowledge.

    (b) Several high-level accounting experts who understand the national computerised public financial and management information systems. Both accounting expertise and strategic financial management expertise are necessary if PEDs are to apply the norms satisfactorily.

    (c) Several highly-skilled information systems experts to improve the functioning of the education databases (including the EMIS). This will include the decentralisation or devolution of such functions and the training of regional and district officers.

    (d) At least one senior statistician or applied numerical analyst.

    (e) At least one person skilled in educational planning and forecasting techniques.

    (f) Computer systems and databases.

67. Provinces that have difficulty making the necessary appointments should explore:

    (a) the use of existing donor-funded arrangements with consulting firms and NGOs;

(b) secondments from other public sector organisations (e.g., financial or scientific);

(c) secondments from the private sector;

(d) consultancies or other contracted services; and

(e) the use of DoE personnel with financial and EMIS expertise, to assist with the induction of the new, high-level analysts.

68. Each Provincial Education Department should plan the work of such specialists as follows:

(a) Assess the tasks that must be accomplished, taking into account financial regulations, sound financial management procedures, and the National funding norms described in this document

(b) Proceed to appoint, or cause to be seconded, or out-source with own or donor funds, persons with the skills listed above to undertake the tasks identified in step (a).

(c) Clarify the relationship of the new specialists to existing work units. Lines of accountability and working relationships must be very clear.

(d) Ensure that the new specialists have the necessary operating budget, status, and support personnel, such as data entry personnel, to get the work done.

(e) Ensure that they interact with colleagues in similar posts in other provinces and with DoE officials working on these tasks, as a means of assisting with their familiarisation with the policy environment.

(f) Ensure that they have a written Scope of Work or task description. Draft lists of technical tasks consistent with the funding norms and other ongoing financial management tasks are available from the DoE.

(g) The Scope of Work must include budgeted plans for financial capacity building in provincial, district and other offices of the PED (depending on their actual responsibilities), school management teams and SGBs.

69. A Provincial Education Department that is not technically ready to apply the norms in full, will be expected to present to the DoE a detailed management plan for the acquisition of the necessary capacity to implement. This plan must be consistent with paragraphs 58-60 of this document. The DoE will assist PEDs to develop the capacity they need.

Implementing the norms

70. Certain tasks have priority, and must be undertaken or continued even before the norms and standards come into effect. These are:

(a) creating a computerised method of tracking and documenting the targeted allocations and subsidies, according to the norms;

(b) creating appropriate accounting and financial mechanisms to allocate and track funds in terms of the norms, and to inform schools of their allocations as required by Section 34 of the Act;

(c) helping SGBs, in schools that have not been declared no fee schools in terms of SASA Section 39(7), to understand how to advise parents on whether to set fees, to calculate the level of fees, to determine exemption criteria and procedures, and to handle appeals (SASA, Sections 38-40).

71. Analytical and budgetary preparation for January of year n+1 must start not later than the beginning of the school year of year n. Figure 1 outlines key aspects or functions of the norms that pertain to the school and fiscal years, or that are ongoing. The entries are presented in approximate chronological order during the year, except for the "ongoing" column. There is no time-wise correspondence across the three lists. Details and explanations of the activities listed in Figure 1 may be found in Part 2 of this document.

Figure 1. Sequencing the application of the norms during the school and state financial years

School Financial Year	State Financial Year	Ongoing
1. Determination of Rand value of subsidies to independent schools (term by term) for current school year. 2. Determination of which public schools will be able to receive direct transfer payments for certain items for next school year and of which public schools will be no fee schools. 3. Targeting of public schools according to targeting criteria for next school year and development of master targeting list. 4. Provide guideline budget information to public schools on their level of financial support for next year, including personnel, other directly-provided items, and transfer payments. 5. Determination of percentage subsidy levels for independent schools for next school year. 6. Fee determination and exemptions at public schools for next school year. (The PED is not necessarily directly involved in these processes, but bears a responsibility of supervision and ensuring that governing bodies are well prepared.)	1. Availability of guideline, preliminary, and final budgetary information which can be used to determine school-level budgets and inform schools. 2. Availability of budgeted funds.	1. Ensure that personnel, teams, and systems needed to accomplish the tasks in this table and in these norms are available. 2. Improve databases for targeting of public schools according to poverty and school conditions criteria 3. Improve criteria for determining which public schools receive direct transfer payments for certain items. 4. Improve financial and physical planning for new construction requirements, including analysis for targeting priorities. 5. Improve accounting, financial, and EMIS tracking methods ensure that individual school costs and personnel allocations can be tracked, cross-indexed and made more accurate. 6. Provide financial management training to governing bodies and school leadership 7. Ensure audited status of public schools. 8. Ensure well-functioning process of appeal from parents over school fee exemptions.

PART 2

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4. CAPITAL COST ALLOCATIONS IN PUBLIC SCHOOLS

Scenario planning for new school construction

72. "New classroom and other construction allocations" includes provision for water, electricity, sewage and telephone services on site, and connections to mains services where these are provided to the school site.

73. Provincial Education Departments must budget for this category in terms of their overall budget for education and for schools, and the relative flexibility or rigidity of other budget items.

74. The MEC for Education of each province must ensure that there are enough school places to enable each child living in the province to attend school during the compulsory phase (Section 3(3) of the Act). If an MEC cannot comply with this mandate, he or she must take steps to remedy the situation and must report annually to the Minister of Education on progress made (Section 3(4) of the Act).

75. Despite the current shortage of funds for capital development, as an aid to planning and decision-making, each PED must:

    (a) maintain an accurate, prioritised, annually updated database of school construction needs, and

    (b) undertake annually updated long-term projections of new school construction targets and funding requirements, based on these norms.

76. Part of the physical planning framework should include an analysis of the cost and educational need for schools that are smaller than is normally desirable. If they are very close to each other, and there are no economic or educational grounds for their separate existence, the options of merger or closure (in terms of Section 33 of the Act) should be considered. In the event of a merger or closure, the Provincial Education Department must ensure that all affected learners have access, on a reasonable basis, to alternative public school accommodation.

77. The scenario planning should initially estimate the requirements to eliminate backlogs and provide sufficient school places by the target year 2008. This must form part of the analytical work required for the MTEF, and should be adjusted annually in the light of new data and performance in new school construction. Depending on the availability of funds each year, and construction performance, the plan may require acceleration or deceleration.

Target list

78. The construction of new schools or additional classrooms and learning facilities should be targeted to the neediest population. In this expenditure category, "need" is defined in terms of

    (a) lack of current schools, or

    (b) overcrowding of existing ones.

79. No national norm for "crowding" is given in this document. Each PED must objectively determine where to site new schools and classrooms based on provincial norms and verifiable crowding and distance indicators (need indicators) developed from available data, including the School Register of Needs, Census data, and the department's own EMIS. Wherever possible, PEDs must aim to eliminate under-utilisation of physical space occurring concurrently with overcrowding, and must therefore also determine minimum per classroom occupation levels below which schools will be considered under-utilised.

80. Need indicators should refer to the proportion of children who are out of school or are in over-crowded schools. Preference should be given to areas where –

    (a) children are out of school and there is no uncrowded local or nearby school; or

    (b) all eligible children are enrolled in school but the local or nearby schools are crowded; *and*

    (c) an analysis of population movements demonstrates that the population concerned is resident and permanent.

81. Using these criteria, the PEDs must develop a ranking of geographical areas from neediest to least needy, based on the numbers of children out of school or in existing crowded schools. Backlogs must be eliminated by starting with the neediest, most crowded areas, and proceeding as quickly as possible down the list of priorities.

82. In the allocation of new school construction funds, preference must be given to-

    (a) facilities serving the compulsory education grades (grades 1-9) in order to ensure that all eligible learners have school places as soon as possible, and

    (b) extensions to existing schools, rather than new schools, except where extensions would result in schools that are too large to be pedagogically sound, or would otherwise be uneconomical, impractical, or undesirable on educational grounds.

Hostel facilities

83. New hostel facilities may be built if the following criteria are satisfied:

(a) the crowding criteria in paragraphs 78 to 82, for construction of new schools or extensions; and

(b) the transport time and poverty criteria in paragraph 148.

84. Other criteria may be used, provided that they give the same results in terms of equity and efficiency. Provincial Education Departments may be required to verify such results, in order to demonstrate that they have complied with this national norm for hostel construction.

5. THE SCHOOL ALLOCATION

85. This section describes the rights and obligations of schools and the state with regard to the school allocation that is granted by Government on an annual basis to public ordinary schools. This section also describes the hostel subsidy.

86. This section relates to public ordinary schools only. 'School' in this section must be taken to mean 'public ordinary school'.

Key terms

87. The following terms have particular importance with regard to the school allocation.

National poverty distribution table (or the 'poverty table'). A table, provided in this policy, that describes the distribution of national poverty across the country.

National quintile for public schools. One of five groups into which all South African public ordinary schools are placed, and where the grouping is according to the poverty of the community around the school. Quintile one is the most poor quintile, quintile two is the second-poorest quintile, and so on. Each national quintile encompasses one-fifth of the learners enrolled in public ordinary schools. In this policy, 'national quintile' means 'national quintile for public schools'.

National quintile for learners. One of the five groups into which all South African public ordinary school learners are placed. The national quintile for any learner is always the same as the national quintile for the public school in which the learner is enrolled.

National table of targets for the school allocation (or the 'targets table'). A table, provided in this policy, that lays down the per learner monetary targets for the school allocation in terms of national poverty quintiles.

Resource targeting list. A list of schools in a province with schools ranked according to poverty of the school community. Schools should be sorted from poorest to least poor on this list.

School allocation. An amount allocated by the state to each public ordinary school in the country on an annual basis in order to finance non-personnel non capital expenditure items.

School allocation budget. A provincial budget used exclusively to finance the school allocations in the province.

School poverty score. A score attached to each school that reflects the degree of poverty of the surrounding community.

Introduction

88. The school allocation is intended to finance key inputs other than personnel and buildings in the education process. Key examples of inputs for which the school allocation is intended are textbooks, stationery and non-educational items such as cleaning materials and electricity. Such inputs are necessary if educators and other personnel in schools are to perform their functions properly. The school allocation is therefore an important instrument supporting Government's commitment to fulfilling the state's Constitutional obligation to provide education.

89. As there is a history within South Africa and in other countries of school fees being used to cover the items targeted by the school allocation, Government regards a school allocation that is adequate for at least the poor, as a key lever for ensuring that households suffering the effects of poverty enjoy schooling that is adequately funded by the state. A distributional approach that favours the poor in this regard is in keeping not only with Government's Constitutional obligation to redress the imbalances of the past, but also with South Africa's commitment to various regional and international agreements to combat poverty through increased access to quality education.

90. Government sees the school allocation as a key means of empowering school communities, and realising democracy at the level of the school. It is important for the local level to participate in decision-making relating to what non-personnel inputs to purchase for particular schools. For this reason, Government supports the gradual transfer to the school level of decision-making powers relating to the school allocation. This must obviously occur in a controlled manner, in accordance with the important Sections 19 to 22 of the SASA, and in such a way that public funds are not squandered, and are spent in a manner that fully supports the national curriculum.

91. Government will determine the level of the school allocation, and optimise the translation of the school allocation into resources that schools can utilise, on the basis of five key considerations:

    (a) The rights of learners with regard to schooling.

    (b) What the minimum basic package of school inputs is in order to make quality education a possibility. With regard to this consideration, Government acknowledges that in striving for equity in education, there is a need to spend more on education for the poor, and that the basic minimum package may vary with factors such as socio-economic context.

    (c) Prices of goods and services required by schools.

    (d) The distribution of income and poverty in the country, including the greater ability of certain communities to make private contributions to the schooling process. With regard to

this consideration, it is recognised that the poor in South Africa are not all equally poor, and that it may be necessary for the state to deal with the problem of poverty differentially.

(e) The overall budget of Government.

Background

92. A school allocation for South African public ordinary schools was established through the 1998 publication of the National Norms and Standards for School Funding. It was first implemented in 2000 by PEDs, and represented a major innovation in South African school funding both in terms of financing systems and pro-poor resourcing.

93. During the period 2000 to 2003 major lessons were learnt with respect to the pro-poor school allocation. On the side of implementation, lessons were learnt regarding the required management training for schools, the required financial accounting systems, and the importance of understanding how best to use the allocation in the interests of school improvement and the support of the curriculum. On the side of policy, it became clear that though the 1998 policy was fundamentally correct, certain policy improvements were needed. In particular, inter-provincial equity emerged as a key policy concern. Two major assessments, in 2001 and 2003, focussing specifically on the school allocation were conducted. Moreover, in 2003 the DoE published an assessment of the overall system for the resourcing of schools. This assessment led to the 2003 Plan of Action: Improving access to free and quality basic education for all. These documents are milestones in our building of a post-apartheid schooling system, and they strongly inform this amended policy on the school allocation.

Inputs that may be covered by the school allocation

94. This sub-section describes which items may be covered by the school allocation. The description is not intended to be unnecessarily restrictive or prescriptive. Nor does the description exclude the use of state funds other than the school allocation for the items mentioned. Instead, this description should guide the state in determining the level and distribution of the school allocation, and schools in determining the utilisation of the allocation. This sub-section does not in any way place the state under the obligation of ensuring that the cost of all the items listed here should be fully covered by the school allocation, given that the list covers the range of possibilities, and not a set of core items.

95. In general, the school allocations are intended to cover non-personnel recurrent items and small capital items required by the school as well as normal repairs and maintenance to all the physical

infrastructure of the school. Moreover, the school allocation is primarily and exclusively intended for the promotion of efficient and quality education in public ordinary schools.

96. The following list provides examples of items that the school allocation may cover, and a categorisation of these items. It should be noted that the items are mentioned serve as examples, and do not constitute all the possible items. The definition of a capital item is as per Treasury regulations (currently, any item exceeding a value of R5,000 per item is defined as a capital item).

(i) Learning support materials (LSMs), including textbooks, library books, charts, models, computer hardware and software, televisions, video recorders, video tapes, home economics equipment, science laboratory equipment, musical instruments, learner desks, chairs. (These items, and the ones under (ii) to (iv) below, would typically support the SASA Section 21(c) function.) This category is subdivided into capital items and non-capital items.

(ii) Non-LSM equipment, including furniture other than learner desks and chairs, paper copier machines, telephone sets, fax machines, intercom systems, equipment for connectivity within the school and to the Internet, hardware tools, cleaning equipment, first aid kits, overalls for cleaners and ground staff, sporting equipment, electrical accessories. This category is subdivided into capital items and non-capital items.

(iii) Consumable items of an educational nature, including stationery for learners.

(iv) Consumable items of a non-educational nature, including stationery for office use, paper, cleaning materials, petrol, lubricants, food.

(v) Services relating to repairs and maintenance, including building repair work, equipment repairs and maintenance, light bulbs. (These items would typically support the SASA Section 21(a) function.)

(vi) Other services, including workshop fees, TV licences, Internet service providers, school membership of educational associations, postage, telephone calls, electricity, water, rates and taxes, rental of equipment, audit fees, bank charges, legal services, advertising, security services, public or scholar transport, vehicle hire, insurance, copying services. (These items would typically support the SASA Section 21(d) function.)

97. In view of the fact that schools are not equally subject to the legacy of apartheid inequities, population increases and unexpected calamities, the DoE and the PEDs must pursue resourcing

mechanisms other than the school allocation in order to deal with the following shortages of the items referred to in paragraph 96:

(a) Shortages of LSMs and equipment where the shortage is clearly and directly linked to historical expenditure inequities.

(b) Shortages of of LSMs and equipment, and in particular shortages of learner desks, learner chairs and textbooks, where the shortage is clearly and directly linked to a recent and significant increase in the enrolment of the school.

(c) Urgent building repair needs which are clearly and directly linked to historical expenditure inequities.

(d) Shortages resulting from calamities such as fire or floods.

(e) Start-up resource requirements linked to the approved introduction of new grades into existing schools, or the establishment of completely new schools.

98. Nothing in this policy prevents PEDs or SGBs from devoting funds derived from the school allocation towards needs described in paragraph 97, if this is regarded as being in the interests of education in the school, and if this occurs in accordance with the general policy governing the school allocation. An SGB may, for instance, approve the use of the school allocation for urgent building repair needs arising out of a natural calamity. A PED may establish a system whereby schools are reimbursed at a future date for utilising funds from the school allocation for non-intended expenditure of a non-personnel nature. Such a system of reimbursement must be transparent and treat all schools equally. Schools do not have an automatic right to this type of reimbursement outside of, or in the absence of, such a system in the province.

99. The school allocation may not be used to cover the cost of personnel and new buildings.

The resource targeting list

100. This sub-section describes the 'resource targeting lists' that PEDs must maintain as a basis for the pro-poor distribution of the school allocation budget. The resource targeting list is a list of all the public ordinary schools in the province, sorted from poorest to least poor. The principle is followed that, ideally, communities are best served by the schools closest to them. It is precisely for this reason that the preferential public funding of schools in poorer communities is regarded as a priority for Government. However, exceptions to this principle are also contemplated in this sub-section.

101. The PED must assign to each school a school poverty score that will allow the PED to sort all schools from poorest to least poor. The principles governing the determination of the school poverty score are the following:

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(a) The score should be based on the relative poverty of the community around the school, which in turn should depend on individual or household advantage or disadvantage with regard to income, wealth and/or level of education.

(b) The score should be based on data from the national Census conducted by StatsSA, or any equivalent data set that could be used as a source. The beneficiaries of the school allocation, for example schools or districts, should never be the source of the data, in order to avoid undesirable incentives to distort information.

(c) The derivation and calculation of the score should be sufficiently comprehensive to provide a reasonable measure of the relative poverty of the school community. However, it should not be the intention to incorporate the complete range of poverty indicators in the score. The score should moreover be constructed to be as transparent and generally understandable as possible.

(d) The basic methodology behind the score should be national in order to promote a pro-poor funding framework that treats equally poor schools equally, regardless of the province they find themselves in.

102. The following steps should be followed in the determination of the school poverty score:

(a) Each school must be linked to a specific geographical area that can be considered, for the purposes of these determinations, the catchment area of the school. Where Census data is used, the geographical area would be the set of enumerator areas or place names closest to the particular school. Different levels of the schooling system, for example primary schools and secondary schools, would be dealt with separately. The DoE may determine precise rules for this step after consultation with PEDs.

(b) Variables from the data set relating to households or individuals must be selected to inform three different indicators of poverty: income; dependency ratio (or unemployment rate); and level of education of the community (or literacy rate). The DoE may change this set of indicators after consultation with the PEDs.

(c) Variables from the data set, and the indicators of poverty, must be weighted, for the purposes of arriving at a final poverty score for each specific geographical area, corresponding to each school. The DoE will determine the weightings that should be used.

103. The Provincial Departments of Education must, as a first priority, aim to provide schooling to communities in quality schools that are

geographically accessible for learners. Linked to this priority, is the imperative to ensure that preferential school funding in poorer communities translates into effective interventions and optimal combinations of inputs that assist in combating historical disadvantage. However, PEDs may deviate from this principle, and may deviate from the school poverty score methodology described in paragraph 102, in the following circumstances:

(a) There are inadequate places in local schools, and the PED has determined that the community should make use of schools at a distance from the local community.

(b) The PED has requested parents to make use of a school other than the local school, where the local school is suffering severe and temporary problems relating to, for instance, the quality of teaching and learning.

104. The exceptional circumstances referred to in paragraph 103 may permit the use of an approach other than the one described in paragraph 102 in order to determine a school's poverty score. In particular, the provision that it is the poverty of the community around the school that should be the determining factor, might be waived. Where a PED has determined that learners should attend a school other than the local school, the PED could, for instance, expand the community of the receiving school so that it included households from the community from which learners originated. Any deviation from the approach described in paragraph 102 must be effected transparently, and uniform criteria must apply to all similar deviations within the same province. PEDs must register deviations in a provincial register that provides details on each deviation, including the justification for the deviation. Such a register must be available for scrutiny by the public and monitoring authorities such as the DoE.

105. A school may apply to the PED for a deviation of the type described in paragraph 103 to be effected for that school, where the school believes that it warrants special consideration. PEDs must establish transparent and fair procedures for dealing with such applications from schools, in line with paragraph 104.

106. A school may dispute the correctness of the poverty score assigned to it through representation to the Head of Department. PEDs must establish transparent and fair procedures to deal with such queries regarding technical accuracy. These procedures should not exceed six months in duration.

107. PEDs must on an annual basis, subject to the availability of new data which is sufficiently reliable, consider reviewing the poverty scores of schools and/or the poverty ranking of a school and make the necessary adjustments to effect equity. Those allocations of schools negatively affected by any such changes should be changed in a phased manner.

The determination of nationally progressive school allocations

108. This sub-section describes how PEDs should use the resource targeting list, the table of targets for the school allocation (the 'targets table') and the national poverty distribution table (the 'poverty table') to determine the school allocation for each school.

109. The following 'table of targets for the school allocation' or 'targets table' establishes target per learner amounts for the school allocation. Column A provides the percentages that underlie the pro-poor funding approach. For example, the first national quintile (or one-fifth) of learners should receive 30% of funding, which is six times more than the 5% of funding which should go towards the least poor quintile. Column B specifies the target per learner school allocation amount in rands for each of the years 2007, 2008 and 2009. Column B furthermore specifies what the average per learner target value would be for the country as a whole. The 'no fee threshold' amount appearing in column B indicates the per learner amount that Government considers minimally adequate for each year. For 2007, the no fee threshold is set at R554, and for the following two years inflationary increments have been calculated to give R581 and R605. Column C indicates the maximum percentage of learners in each national quintile that could be funded to the no fee threshold level. Column C provides an indication of both the possibility of adequate resourcing without school fees, and the percentage of learners which could be exempted from the payment of school fees, given the existence of fees. For example, in 2007 in national quintile 5, if school fees were used to finance the needs of 78% of learners, then 22% of learners could be financed through the state's school allocation, in other words 22% of learners could be fully exempt from the payment of school fees.

Figure 2. The targets table

National table of targets for the school allocation (2007-2009)

		2007		2008		2009	
	A	B	C	B	C	B	C
NQ1	30.0	R 738	100%	R 775	100%	R 807	100%
NQ2	27.5	R 677	100%	R 711	100%	R 740	100%
NQ3	22.5	R 554	100%	R 581	100%	R 605	100%
NQ4	15.0	R 369	67%	R 388	67%	R 404	67%
NQ5	5.0	R 123	22%	R 129	22%	R 134	22%
Overall	100.0	R 492	89%	R 517	89%	R 538	89%
No fee threshold		R 554		R 581		R 605	

110. The table appearing in paragraph 109 covers the school allocation targets to the year 2009 only. The Minister, in consultation with the Minister of Finance, will release targets relating to years beyond

2009, and may change previously released targets, depending on circumstances. The Minister would publish in the Government Gazette, on an annual basis, the new column B targets for the new outer year. For instance, in 2007 the Minister would publish the column B targets applicable to 2010. This is to promote predictability and better medium term planning in the schooling system. Changes to previously released targets could be made to deal with factors such as unexpected changes in the inflation rate. The Minister may revise the distribution between national quintiles contained in column A. The Minister may revise the no fee threshold amounts, after consultation with the Minister of Finance. Revisions should occur on the basis of emerging research into the costs of schooling in different socio-economic contexts, changes in the socio-economic profile of the country and the overall budget of Government. The Minister will release for public comment a report on the methodology employed whenever the no fee threshold is altered, and will take into consideration the ensuing comments. The Department of Education must actively promote research that can inform optimal school allocation budgets, and an optimal distribution of this budget. Should research into costs, in combination with imperatives around equity, efficiency and compulsory schooling, indicate a need for a no fee threshold that is differentiated by grade, the Minister may implement such differentiation in the targets table.

111. Considering that poverty is unevenly spread across South Africa, and that it is Government's intention to establish targets that treat equally poor learners equally, regardless of the province they find themselves in, province-specific poverty data should be taken into account. The following 'national poverty distribution table' or 'poverty table' should be used by PEDs in determining how the target table in paragraph 109 finds expression in each province. For example, Eastern Cape must consider the national quintile 1 target to be applicable to as many schools on the resource targeting list as it takes to cover 34% of learners, starting from the poorest school. The national quintile 2 target would be applicable to the following schools on the resource targeting list, up to the point at which the next 26% of learners would be covered. The national quintile 5 target would be applicable to only as many schools on the non-poor end of the resource targeting list as it takes to cover 11% of learners. The data in this table is based on household income data supplied by National Treasury.

Figure 3. The poverty table
National poverty distribution table

	National quintiles					
	1 (poorest)	2	3	4	5 (least poor)	Total
Eastern Cape	34.8%	21.6%	21.0%	11.6%	10.9%	100%
Free State	30.8%	14.9%	20.1%	18.8%	15.4%	100%
Gauteng	10.5%	11.4%	27.4%	27.2%	23.6%	100%
KwaZulu_Natal	24.2%	18.8%	25.6%	17.3%	14.1%	100%
Limpopo	34.0%	22.3%	24.9%	11.6%	7.2%	100%
Mpumalanga	16.7%	20.2%	29.8%	19.9%	13.5%	100%
Northern Cape	26.3%	17.7%	21.6%	14.8%	19.6%	100%
North West	22.7%	15.2%	30.5%	20.5%	11.0%	100%
Western Cape	6.5%	8.0%	23.1%	27.7%	34.6%	100%
South Africa	20.0%	20.0%	20.0%	20.0%	20.0%	100%

112. The Minister, in consultation with the Minister of Finance, will review the national poverty distribution table on an annual basis and, when necessary, will publish updated versions of this table in the Government Gazette.

113. In order to calculate the target school allocation for each individual school for the following year, the PED must multiply the relevant per learner target from the targets table by the enrolment of the school in the current year. For example, a school serving 100 national quintile 2 learners (defined as such according to the criteria laid out in paragraph 111) in 2007, would have a target school allocation of 100 multiplied by R711 or R71,100, in 2008.

114. Each PED must, as part of its ongoing MTEF budgeting process, calculate the school allocation budget implied by the national targets, and compare this amount to the actual school allocation budget amount available in the MTEF budgets. If the target amount is not equal to the actual amount, one of the following sets of procedures should be followed:

(a) If the actual amount exceeds the target amount, the PED must ensure that, as a minimum, each school receives the school allocation implied by the national targets. A PED may use the difference between the actual amount and the target amount to create a smoother distribution, or a continuous curve, so that less abrupt per learner funding shifts occur between one school on the resource targeting list and the next. However, such smoothing should not result in any school receiving less than the target per learner amount applicable to that school.

(b) If the target amount exceeds the actual amount, the PED and the DoE, in collaboration with the National and Provincial Treasuries, must jointly devise a plan for attaining the targets in the earliest possible year. This plan must include details on

how, in the interim, the actual budget will be distributed across the national quintiles. Such a plan must prioritise the attainment of targets in quintiles 1 and 2, and for learners in Grades 1 to 9.

115. Each PED must provide a recommended breakdown of the school allocation, for each school, according to the three Section 21 functions of SASA that imply expenditure and according to the breakdown provided in paragraph 96. This breakdown should be communicated in all official letters to schools indicating what their school allocations are. The three relevant Section 21 functions are restated here, with some comments:

Section 21(a) of SASA: To maintain and improve the school's property, and buildings and grounds occupied by the school.

Section 21(c) of SASA: To purchase textbooks, educational materials or equipment for the school.

Section 21(d) of SASA: To pay for services to the school.

It should be noted that though school hostels are mentioned in Section 21(a) of SASA, funding of school hostels is dealt with in the next section of this policy, titled 'Hostel costs'.

116. In addition to the breakdown referred to in the previous paragraph, and apart from the financial directions issued in terms of Section 37 of SASA, PEDs may determine other conditions governing the use of the school allocation where this is deemed necessary for the promotion of better school management. The other conditions would apply to all schools, whether they have SASA Section 21 functions or not. All these conditions must be communicated to schools in the official letters referred to in the previous paragraph.

The school allocation and accountability

117. The effective implementation and monitoring of the school allocation requires timely provision of accurate information by the DoE, PEDs and schools. This sub-section explains key obligations in terms of information provisioning and accountability, and provides some important timeframes.

118. The DoE must provide the Minister with sufficient data and research to enable the Minister to publish, in the Government Gazette, school allocation information (as described in paragraph 109) for the next three years, by 1 August of each year. Moreover, by this date, the Minister should publish information on what quintiles or parts of quintiles will comprise no fee schools in the following school year, in terms of paragraph 157, and Section 39(7) of SASA.

119. PEDs must process enrolment data, school poverty data (as described in paragraph 101), provincial budget data and the school allocation data released by the Minister in order to determine provisional school allocations for each school for the next three

years. The provisional school allocations for the next three years must be communicated to schools by 30 September of each year. This communication must include information on which national quintile individual schools find themselves in, what the national per learner target amount applicable to that national quintile is, what the rationale is for the national targets published by the Minister, what the national no fee threshold is and what calculations were performed by the PED to arrive at each school's school allocation amount. PEDs must furthermore submit to the DoE the data and calculations used to arrive at the provisional school allocations for each school, so that the DoE can be in a position to monitor policy compliance, make inter-provincial comparisons, and advise PEDs of national best practice. The submission of the information to the DoE must occur by 30 September.

120. By 30 September of each year, MECs must publish in the provincial Government Gazette the entire resource targeting list for the province. This list must include, as a minimum, school EMIS numbers, names of schools, the poverty score of each school, and the national quintile in which each school is situated. The list must also include SASA Section 21 functions allocated to each school in terms of paragraphs 125 to 130. If the national determination, in terms of paragraph 161, of the finalised list of no fee schools has occurred, and a formal communication to the MEC has occurred in this regard, the provincial resourcing targeting list should specify which schools are no fee schools. It is important that MECs and PEDs should not release any information on no fee schools that deviates from the national list. PEDs must furthermore make all of this information available to the public and schools on an ongoing and updated basis through a medium such as the Departmental website.

121. Due to the fact that the school year and the Government financial year are different, the final school allocation for any school year can only be determined during the course of the school year in question, after the Provincial Legislature has approved the budget for the PED. The final school allocation for the current year must be communicated to schools during the two weeks following the finalisation of the PED budget by the Provincial Legislature. In order to facilitate proper planning, PEDs should strive to ensure that the final school allocation communicated to schools in terms of this paragraph deviates as little as possible from the provisional figures provided on 30 September of the previous year.

122. The DoE, PEDs and schools must report on the usage of the school allocation, and the DoE and PEDs must furthermore report on the determination of the school allocation, within their respective annual reports. Reports produced by schools must explain how the spending of the school allocation supports the school development plan, quality education and learner performance. The DoE and PEDs must also produce analyses and proposals on how the school allocation

can further enhance education delivery, including school effectiveness and learner performance. Analyses must moreover be produced on the impact of the school allocation on general socio-economic transformation, including black empowerment amongst manufacturers and suppliers of school materials. These analyses and proposals must be widely disseminated to encourage public debate and participation.

123. The DoE and PEDs must work with National Treasury and its provincial counterparts to ensure that the charts of account governing PED and school finances support the implementation of these norms. In particular, it must be clear from PED accounts what non-personnel non-capital expenditure on schools was occurring outside the framework of the school allocation, for instance in terms of paragraph 97. Furthermore, school accounting systems should allow for differentiation of expenditure according to SASA Section 21 functions, and any other required classifications, partly in order for the provisions in paragraph 140 below to be implemented.

124. The DoE and PEDs will collaborate to ensure that every school in the country has a set of policy implementation manuals and tools relating to the school allocation. This set must include, for example, the policy documents themselves, explanatory manuals, and tools for educating the school community about the purpose of the school allocation. Materials must be available in all official languages. Materials applicable to all provinces will be made available on the website of the DoE. The DoE and PEDs must design and roll out training programmes in the use of the policy implementation tools.

The list of Section 21 status

125. This sub-section deals with the SASA Section 21 functions that may be allocated to schools by the Head of Department, and the maintenance by the PED of the list of Section 21 status used for determining mode of resourcing to schools with respect to the school allocation.

126. The SASA makes provision for public school governing bodies to become progressively more responsible for managing aspects of recurrent expenditure. Section 21 provides that, subject to the Act, a School Governing Body may apply in writing to the Head of Department to be allocated any of the SASA Section 21 functions.

127. The HOD must approve a governing body's application for Section 21 functions, conditionally or unconditionally, unless the SOB does not have sufficient capacity to undertake the functions effectively.

128. A MEC may determine that some governing bodies may exercise one or more functions under Section 21, even if they have not applied for them. This is permitted only if the governing bodies have the capacity to perform the functions effectively, and there is a

reasonable and equitable basis for allocating the functions to them (Section 21(6) of the Act).

129. In order to guide the actions of the MEC, the HOD and an affected SGB, it is necessary to establish an objective test of governing body capacity in terms of Section 21 of the Act. DoE, in consultation with PEDs must, therefore, devise a managerial capacity checklist, for approval by the HOD. The checklist will include items relating to the capacity to handle and account for public funds, the capacity to meet ongoing contractual obligations to suppliers of goods and services, and the ability to make financial decisions that are educationally sound. The criteria used in developing such a list must be transparent and public.

130. Each PED must maintain a 'list of Section 21 status' containing all public ordinary schools in the province. This list must specify the Section 21 status of each school on the list, in other words what Section 21 functions have been officially allocated to each school. All the Section 21 functions of SASA, including additional functions introduced through amendments, must be considered in the list of Section 21 status. The list must be updated each time functions are granted to or withdrawn from schools, and must be easily accessible to the public. The number of schools with one or more Section 21 functions is expected to grow as more schools acquire the requisite capacity.

Resource transfer procedures where SASA Section 21 functions have been allocated

131. This sub-section deals with the resource transfer procedures relating to the school allocation, where SASA Section 21 functions (a), (c) and/or (d) have been allocated.

132. Schools which, according to the list of Section 21 status, have been allocated one or more of the three SASA Section 21 functions, will receive a single transfer in accordance with their national quintile, their enrolment, the national table of targets for the school allocation, and the SASA Section 21 functions that have been allocated to the respective schools. A recommended breakdown into cost categories, in terms of paragraph 115, must accompany the transfer. If a school has not been allocated all of the three SASA functions in question, the transfer will only include funds for the allocated functions, determined in terms of paragraph 115.

133. School governing bodies that have been allocated the relevant SASA Section 21 functions may carry out their own procurement and may deal directly with suppliers and contractors for the relevant budgeted items in accordance with standard procurement procedures, the financial directions issued in terms of Section 37 of the SASA and paragraph 116 of this policy. They must keep documents as evidence of correct dealing with such suppliers and contractors, and records of

how the materials and services were used, and produce such documents or records at the request of officials from the PED and for audit purposes.

Resource transfer procedures where SASA Section 21 functions have not been allocated

134. Although it is Government's aim to improve school management capacity, and to make the assumption of Section 21 functions possible across all schools in the country, Government also recognises that this is a long-term task, and that the system will continue to include many schools without Section 21 functions, or so-called non-Section 21 schools, for many years. It will therefore continue to be necessary for the DoE and PEDs to work together to improve the systems and procedures that resource non-Section 21 schools with respect to the school allocation.

135. There is no single solution for the resourcing of non-Section 21 schools. Many different approaches are pursued by PEDs, and a number of different improvements to current practice have been proposed. A common approach is for PEDs to procure resources in bulk for schools, relative to the size of the school allocations, and to manage the delivery of items to schools. This approach can involve varying degrees of determination by the schools regarding what resources are procured. Where this approach is pursued, it is important for schools to receive adequate information regarding the monetary value of the resources they receive. This need will increase with the establishment of national targets for the school allocation, as school communities will in many cases have a clearer idea than before of what the size of the school allocation is. The DoE and PEDs must collaborate to improve accounting systems that can provide schools with the required expenditure data.

136. The DoE and PEDs must continue to explore innovative solutions to improve the resourcing of non-Section 21 schools. Joint control by schools and the PED over individual school accounts, or special district-level accounts, must be considered. Moreover, solutions whereby the PED pays suppliers from whom schools have ordered goods should be considered. The aim should be to develop the capacity of the school to determine its own resource mix within the policy framework, to ensure that goods reach schools on time, and to combat the inefficient utilisation of resources, as well as excessive prices for school inputs. These aims should be pursued within the overall policy intention of a pro-poor school allocation, as expressed in this policy.

137. PEDs must take adequate measures to ensure that expenditure occurs according to school budgets within the relevant MTEF financial year, where SASA Section 21 allocations have not been allocated. This is in view of the fact that Provincial Treasuries generally do not

allow the roll-over of funds from one financial year to the next. In this regard, it is important that non-section 21 schools should not be disadvantaged relative to those schools that receive the transfer in terms of paragraph 132. In order to facilitate the purchase of, for instance, equipment, which may necessitate some saving from one year to the next, PEDs should explore budgetary solutions that allow schools to plan upfront for such expenditure without necessitating roll-overs at the Provincial Treasury level.

138. Schools with some, but not all, of the SASA Section 21 functions (a), (c) and (d) must be resourced on the basis of this sub-section (paragraphs 134 to 138) and the previous sub-section (paragraphs 131 to 133).

Financial controls where Section 21 functions have been allocated

139. Schools which receive the school allocation as a monetary transfer into the school fund must administer this money in accordance with the SASA. The PEDs must ensure that the financial management directions issued to all schools in terms of Section 37 of the SASA are adequate, and that schools comply with these directions.

140. Schools must be guided by the breakdown in the school allocation determined in terms of paragraph 115. PEDs must monitor compliance with, and deviations from these breakdowns. Where schools spend substantial amounts of private income, in addition to income from the school allocation, PEDs must ensure that total expenditure according to the breakdowns is at least as great as what was determined in terms of paragraph 115. In particular, PEDs must promote adequate expenditure on educational items, and strive to ensure that the SASA Section 21(c) function relating to educational inputs is not under-funded. Schools that deviate from the PED-determined breakdown, must have justifiable reasons for doing so, and should only under-budget for the educational items relative to the recommended breakdown after consultation with and approval from the PED. Where PEDs observe substantial deviations from the recommended breakdowns in the school allocation, in particular deviations where the educational inputs suffer and proper schooling is consequently placed at risk, PEDs should seriously consider implementing SASA Section 22, dealing with the withdrawal of SASA Section 21 functions.

Transition and commencement issues

141. This sub-section contains recommendations regarding the transition from previous to new policy imperatives with respect to the school allocation.

142. It is important that in the planning around the school allocation, all the various items linked to this fund, as described in paragraphs 95 to 99, be taken into account. For example, if utility charges had been excluded from the school allocation in the past, it would be important for these items to begin to become included.

143. The resource targeting lists of the PEDs should undergo a gradual transition with respect to the new policy imperatives. Poverty scores according to the new methodology should be determined during 2007. However, changes in the position of schools on the resource targeting list, in particular movement from one national quintile to another, should be phased in over some years. It should be noted that this principle of gradual change should apply even without changes to the methodology, as the relative poverty of communities does not remain static.

144. In the interests of stability, the implementation of this policy should not result in any school receiving a smaller school allocation in nominal rand terms than it did in the past, or than it was promised for the future.

145. The amended policy provisions relating to the school allocation become applicable from 1 January 2007.

Hostel costs

146. **Records.** Schools with hostels must keep a separate account for all recurrent costs associated with hostels, and a record of the number of learners staying at each hostel. Such accounts and records will be subject to unannounced audits by officials of the PED.

147. **Hostel fee**. The school must charge each learner staying in the hostel a hostel fee equal to the average running cost per learner in the hostel. No blanket cross-subsidisation of hostel costs from fee income is permitted. However, if the SOB wishes to exempt particular learners from hostel fees, it may do so by recording the necessary book-keeping transfer.

148. **Hostel subsidy.** The PED must, in turn, set aside a budget item for hostel subsidies. These hostel subsidies are not a part of the school allocation referred to in paragraphs 85 to 145. Schools with hostels will be paid pro rata out of this budget for each of their learners

(a) whose transport time to the school is greater than 1½ hours;

(b) if there are no available school places near the learner's parents' place of residence; and

(c) whose parents cannot afford the per-child hostel cost.

149. The PED may adjust these criteria in order to ensure that the subsidy per learner is meaningful, while recognising that this may decrease the number of learners thus covered, requiring a tightening of the targeting criteria.

150. Subsidies for hostel costs incurred by learners with special education needs enrolled in ordinary public schools will be provided by the Provincial Education Department in accordance with the overall funding approach used for such learners.

6. FEE EXEMPTIONS IN PUBLIC SCHOOLS

151. The SASA requires the Minister of Education to make regulations about the equitable criteria and procedures for exemption of parents who are unable to pay school fees, and to identify schools that will be no fee schools (Section 39). This section provides the basic principles governing school fee exemptions and the principles and procedures with respect to no fee schools, whilst the regulations, provide details on the exemptions calculations and how the exemptions policy should be implemented.

Introduction

152. School fees provide two benefits for the schooling system. Firstly, they provide a mechanism for raising revenue amongst parents who can afford to make this contribution, which in turn provides fiscal space for the state to implement preferential funding for poor schools. Secondly, school fees, even if they are set at a low and nominal level, encourage parent participation in school governance, and promote accountability of schools to the communities they serve.

153. School fees must not be allowed to become an obstacle in the schooling process, or a barrier preventing access to schools, especially as far as the most marginalised are concerned. Government believes that in the schools serving the poorest communities, there should be no school fees. Moreover, where schools do charge school fees, proper parent participation in the fee-setting process is critical. Effective criteria determining which schools should not charge school fees, as well as an effective exemptions policy to protect those who are less advantaged economically within fee-charging schools, are of utmost importance.

154. The amended policy on school fee exemptions, contained in these norms and in the regulations governing fee exemptions, is informed by a rigorous and participatory process of re-assessment of the school fee situation, culminating in Report to the Minister: Review of the financing, resourcing and costs of education in public schools and Plan of Action: Improving access to free and quality basic education for all, both published in 2003 by the DoE. The DoE's commitment to the global Education for All goals strongly informs this amended policy.

No fee schools

155. This sub-section deals with schools that may not levy compulsory school fees, referred to as 'no fee schools' in Section 1 of SASA. No fee schools are an integral part of Government's strategy to alleviate the effects of poverty and redress the imbalances of the past.

156. A school is a no fee school, and compulsory school fees may consequently not be charged in the school, if both of the following two criteria apply:

(a) The school has, in terms of paragraph 111, been placed in a national quintile, or in a part of a quintile, that has been identified by the Minister, in terms of paragraph 157 and Section 39(7) of SASA, as being in need of a total prohibition on compulsory school fees.

(b) The school receives a per learner school allocation, as defined in paragraphs 87 and 113, that is greater than or equal to the no fee threshold for the year in question referred to in paragraph 109. This criterion is aimed at ensuring that a critical level of public funding is reached before private funding in the form of school fees is removed. The per learner school allocation amount that should be compared against the no fee threshold is the amount implicit in the communication made to schools in terms of paragraph 120.

157. The Minister shall, terms of Section 39(7) of SASA, annually determine those quintiles or parts of quintiles where, subject to condition (b) in paragraph 156, schools may not implement compulsory school fees in the following school year. This information should be made public by 1 August of each year, concurrently with the school allocation information referred to in paragraph 118.

158. In order for the Minister to make the determination referred to in paragraph 159, whilst applying condition (b) of paragraph 156, MECs must supply certain background information relating to the financing of schools to the Minister in advance. Specifically, MECs must inform the Minister of the school allocation amounts budgeted for in the MTEF budgets by quintile. It should be clear from this information whether the province is able to afford the school allocation targets referred to in paragraph 109. The information should reach the Minister by 15 July.

159. The determination by the Minister referred to in paragraph 157 may involve the determination of schools with no fee grades, in other words the removal of compulsory school fees from certain grades only. This provision allows the Minister to take special measures that will support compulsory attendance of seven to fifteen year old learners in terms of Section 3 of SASA. The determination of no fee grades for certain schools will be subject to the condition of adequate state funding referred to in paragraph 156.

160. In accordance with Section 39(9) of SASA, MECs must identify which schools qualify as no fee schools, and must determine the details, if any, regarding no fee grades. The details of schools which are identified as no fee schools by the MEC must be submitted to the Minister of Education by 1 September. Details must include, as a

minimum, school EMIS numbers, names of schools, and physical addresses of schools.

161. In accordance with Section 39(10) of SASA, the Minister must assess the validity of the information on no fee schools submitted by MECs, and must publish a valid list of schools, organised by province, in the Government Gazette. This must occur by 30 September. The list of no fee schools published by the Minister is the definitive list of no fee schools in the country for the following school year.

162. In addition to the publication of the list described in paragraph 161, the Minister and MECs must ensure that additional communication strategies are implemented in order to make the identity of no fee schools, and the implications of this to parents, as clear as possible. MECs should ensure that the identity of no fee schools is specified in the provincial Government Gazette referred to in paragraph 120.

163. If, in spite of the planning steps outlined in paragraphs 157 and 158, a no fee school does not receive a school allocation that is at least as high as the no fee threshold then, in terms of Section 37(11) of SASA, the school may charge school fees up to an amount equal to the difference between the no fee threshold and the school allocation actually received. The planning process should be sufficiently rigorous to prevent any such contingencies. However, should the funding of no fee schools for some reason not reach the no fee threshold level, it would be important for parents to have a way of dealing with this contingency. Importantly, the school allocation that should be considered the received school allocation, is the sum of any monetary transfer of this allocation, and the monetary value of goods procured by the PED on behalf of the school, in line with paragraphs 134 to 138.

Automatic exemptions for individual learners

164. This sub-section deals with instances where the status of the individual learner makes school fees with respect to that learner undesirable, and hence an automatic exemption for that learner a necessity. The provisions in this sub-section apply to all schools charging school fees in terms of SASA Section 40. Should a learner be subject to a no fee situation in terms of paragraphs 155 to 160, then this sub-section becomes redundant.

165. An automatic exemption applies to any learner who is an orphan or who has been abandoned by his or her parents.

166. An automatic exemption applies to any learner for whom a poverty-linked state social grant is paid. A poverty-linked state social grant is any state social grant distributed explicitly to alleviate poverty, and would include all social grants issued on the basis of a means test.

167. Details regarding, for instance, the procedures for establishing automatic exemptions, and for nullifying them when the conditions in

paragraphs 164 to 166 no longer apply, are explained in the exemptions regulations.

Calculations to determine total and partial exemptions

168. Parents may be fully or partially exempted from the payment of school fees, even if they do not qualify for exemptions in terms of the foregoing two sub-sections. it is principally the income of individual parents and households, relative to school fees and other education expenses that is used to determine eligibility to such total or partial exemptions.

169. The formulas for total or partial exemptions, explained in the exemptions regulations, are informed, amongst other things, by two important equity principles:

(a) Within any school, the income threshold in rands below which parents qualify for total exemption, should be the same for all parents, regardless of the number of learners for which parents have been charged school fees. It must not be possible for there to be two parents within the same school, with the same income, where one parent is fully exempt from school fees whilst the other is not.

(b) Within any school, the income threshold in rands below which parents qualify for partial exemption, should depend partly on the number of learners for which parents have been charged school fees. The greater financial burden of having more than one learner for whom school fees are charged, should be recognised, especially insofar as the less advantaged are concerned.

Other types of fee exemptions

170. An SGB may grant fee exemptions in addition to the types referred to above, on condition that such exemptions are based on transparent and equitable criteria which take into account the need to alleviate the effects of poverty in the households of the school community.

7. SUBSIDIES TO INDEPENDENT SCHOOLS

Introduction

171. Every person has the right, in terms of the Constitution, to establish and maintain, at their own expense, an independent educational institution that does not discriminate on grounds of race and complies with Section 9(4) of the Constitution, is registered with the state, and maintains standards that are not inferior to standards in comparable public educational institutions. The provision does not preclude state subsidies for such institutions (Section 29(3) and (4)).

172. The SASA provides for the right of persons to establish and maintain an independent school, and for the registration of an independent school by the Head of Department, under conditions consistent with the Constitution. The Act enables the provincial MEC to grant a subsidy to a registered independent school, in terms of norms and minimum standards determined by the Minister of Education (Sections 45-46, 48).

173. The norms that follow are the first uniform national norms for independent school subsidies. They are intended to provide a stable and principled basis for MECs in all provinces, to decide the eligibility for subsidy and the level of subsidies for registered independent schools.

174. The national norms apply uniformly in all provinces. However, a provincial MEC may vary them, so long as their intent and spirit is maintained. The Head of Department must consult the national DoE on this matter.

175. The following norms embody conditions of eligibility for subsidy, and funding criteria for allocating subsidies.

Conditions of eligibility

176. An independent school may be considered for subsidy if it

(a) is registered by the PED;

(b) has made an application to the PED in the prescribed manner;

(c) has been operational for one full school year;

(d) is a registered non-profit organisation in terms of the non-profit organisations Act, Act No. 71 of 1997.

(e) is managed successfully according to a management checklist determined by the PED, as described in paragraph 179;

(f) agrees to unannounced inspection visits by officials of the PED or person duly authorized by the PED; and

(g) has not been established in direct competition with a nearby uncrowded public school of equivalent quality.

177. In addition to the conditions in the previous paragraph, the following conditions apply to the secondary school phase. A secondary school phase may be considered for subsidy if–

(a) its final grade 12 pass rate is 50% or more of full-time candidates writing the examination in the prior year ;

(b) not more than 20% of Grade 11 learners are repeaters who took Grade 11 in the same school during the previous year;

(c) not more than 20% of Grade 12 learners are repeaters who took Grade 12 in the same school during the previous year; and

(d) it does not engage in practices that are calculated to artificially increase the school's grade 12 pass rate.

178. The Head of Department may vary conditions (a), (b) or (c) in the previous paragraph in response to good cause shown by a school to the Head of Department.

179. Each school requesting funding will be subject to a management checklist (which may be the same as, or based on, the checklist referred to in paragraph 129 above), which will be approved by the HOD after consultation with representatives of independent schools. In the event that the independent school sector could not agree regarding this checklist, the HOD will determine the checklist. This checklist will determine, amongst other things, whether the school is able to manage its finances responsibly. It must include indicators of sound management, such as whether the school keeps proper admissions and attendance registers, and maintains fee payment and other financial records. To be eligible for funding a school must subscribe to the checklist, and must allow unannounced inspections by officials of the PED, to ensure that the practices in the checklist are up-to-date. Refusal to allow an unannounced visit will result in forfeiture of further funding.

Funding criteria

Subsidies related to fees

180. For the purpose of this national policy, "fees" means any form of payment for registration and tuition made by a parent in relation to a learner's enrolment or attendance at an independent school. It includes the present annualised value of any past or future once-off payment, using a market rate of interest for investments of equal certainty. It also includes any other form of payment by a parent, or equity in the school taken by a parent, as a form of fee payment-equivalent. The highest level of fees normally charged at the school, as opposed to fees discounted for once-off payment, will be taken as representative. Additional costs associated with the normal course of instruction which learners are expected to follow are to be

considered fees, even if they are not formally called fees. However, payments for extra items or services, or for school materials that are procured by the school instead of having to be purchased by the parent, are not to be considered fees, as long as the cost of such items is similar to their open-market value.

181. For purposes of these norms, "primary" phase comprises grades 1 to 7, and "secondary" phase comprises grades 8 to 12.

182. In what follows, the level of annual fees as defined in paragraph 180 charged at primary phases and secondary phases of independent schools as of the date stated in paragraph 183 below will be taken as indicators of the socio-economic status of a school's community.

183. The initial date is January 1998. This date will be amended from time to time by the DoE by way of Government Notices in the month of January of any year. This date must be retroactive to the date of publication.

184. The subsidy category of schools based on the date in paragraph 183 will remain until a new date is published.

185. When a new date in paragraph 183 is published the PED will inform the independent schools eligible for subsidy of their relevant subsidy category for the year subsequent to the date of publication referred to in paragraph 183 during April or earlier of the year in which the notice referred to in paragraph 183 is published. To determine the subsidy category per school the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools, and the learner numbers according to the 10th Day/Snap Survey in the different school phases of the year mentioned in paragraph 183 must be used.

186. Schools established after the date in paragraph 183 and which qualify for subsidy will have their subsidy category determined through paragraph 188.

187. The Ministry's policy is to enable subsidies to be granted in relation to the socio-economic circumstances of an eligible school's clientele. The level of school fees charged by the primary or secondary phases of an independent school is taken as an objective, publicly-available criterion that correlates well with the socio-economic circumstances of the school's clientele for each of those two phases. Subsidy levels are therefore related to fee levels on a five-point progressive scale, as shown in Figure 4 below. Eligible schools charging the lowest fees will qualify for the highest level of subsidy. Schools charging fees, in excess of 2.5 times the separate provincial average estimates per learner in primary or secondary phases of ordinary public schools respectively, are considered to serve a highly affluent clientele, and 0% subsidy will be paid to them from public funds.

Figure 4. Allocation table for independent school subsidies	
School fee level as on the date in Paragraph 183	Level of subsidy from the PED in school year n, where n is initially the school year 2003, is equal to:
1. Up to 0.5 times (50%) of the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools[1)] respectively in the fiscal year, following the date in paragraph 183.	60% of the separate provincial average estimate per learner in primary and secondary phases of ordinary public schools 2) respectively in the PED's fiscal year n/n+1.
2. Higher than 0.5 and up to 1.0 times the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools respectively in the fiscal year, following the date in paragraph 183.	40% of the separate provincial average estimate per learner in primary and secondary phases of ordinary public schools 2) respectively in the PED's fiscal year n/n+1.
3. Higher than 1.0 and up to 1.5 times the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools respectively in the fiscal year, following the date in paragraph 183.	25% of the separate provincial average estimate per learner in primary and secondary phases of ordinary public schools 2) respectively in the PED's fiscal year n/n+1.
4. Higher than 1.5 and up to 2.5 times the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools respectively in the fiscal year, following the date in paragraph 183.	15% of the separate provincial average estimate per learner in primary and secondary phases of ordinary public schools 2) respectively in the PED's fiscal year n/n+1.
5. Higher than 2.5 times the separate provincial average estimate per learner in the primary and secondary phases of ordinary public schools[2)] respectively in the fiscal year, following the date in paragraph 183.	0% subsidy.

Suffix 1) refers to the "Adjustments Estimates of Expenditure" (including planned increases in remuneration) as they apply to the sub programmes of primary and secondary phases of ordinary public schools separately as included in the programme structure of the same "Adjustments Estimates of Expenditure". The budget amounts included in the other sub-programmes under the programme: Public Ordinary Schools, must be added to the sub-programmes of primary and secondary ordinary public

schools in the ratio of the sub-programmes of primary and secondary ordinary public schools.

Suffix 2) refers to the provincial "Main Estimates of Expenditure Figures" (including planned adjustments to personnel costs) as they apply to the sub programmes of primary and secondary phases of ordinary public schools separately and the learner numbers according to the 10th Day /Snap Survey of year n. The budget amounts included in the other sub-programmes under the programme: Public Ordinary Schools, must be added to the sub-programmes of primary and secondary ordinary public schools in the ratio of the sub-programmes of primary and secondary ordinary public schools.

188. PEDs will need to establish a procedure to deal with borderline situations. For example, if the average public school cost in a province is R2000, and an independent school charges fees of R1050, it will just miss being in the first (highest subsidy) category, even if its clientele is not different from that of a school charging, say, R950. PEDs may use the following criteria, in addition to any other relevant information submitted by the school, to judge whether a school falls into a certain category:

(a) schools in the first (highest subsidy level) category would typically be located in townships, deep rural areas, or informal settlements and serving the residents in these areas.

(b) schools in the second category would typically be in inner city or transitional suburban areas, catering largely for township and informal sector clientele or the urban lower middle class.

(c) schools in the third and fourth categories would be middle and upper middle class schools with good facilities with a local clientele.

(d) schools in the fifth category would be well established schools with excellent facilities and a national or regional clientele and very low learner: educator ratios.

189. Subsidies may be paid only in respect of grades 1-12. No other grades are eligible for subsidy for the time being. If the fee structure varies by grade, the enrolment-weighted average of the fees in all relevant grades will be taken as representative of each level.

190. The fee levels applying to the primary and secondary sections of a combined school may differ. The principal of such a combined school can approach the HOD with a request to lower its fees in either the primary or secondary sections so that it is the same for both the primary and secondary sections of the school in order to qualify for the same percentage subsidy in both the primary and secondary sections. The HOD may recommend a subsidy, if it is deemed in the interest of the school and the Provincial Education Department.

Subsidies in relation to PED budgets

191. The Ministry of Education is sensitive to the connection between the total cost of independent school subsidies and the overall budgetary position of a Provincial Education Department. Recent reductions in the overall funds available for independent school subsidies because of urgent budgetary expediency, should not become de facto policy by default. At the same time, PEDs must have latitude to vary budgetary allocations between programme areas, in relation to the total funds at their disposal, and the priorities established in terms of national and provincial policies.

192. A PED may, therefore, alter the fee levels and/or corresponding percentage subsidies levels except for the 0% subsidy level applicable to school fee level 5 in Figure 4 after consultation with the DoE, if the application of these norms would-

(a) cause a PED's expenditure on subsidies to independent schools to deviate from a three-year historical moving average by more than 10 percent in real terms in any given year; or

(b) contribute to over-expenditure on the PED's budget in the year they are applied; or

(c) result in the total independent school programme receiving year-to-year budget cuts (or increases) in any given year that are significantly larger (or smaller) than other programme areas in the PED's budget.

Other deviations

193. Aside from deviations already discussed in this document, a PED may deviate from the subsidy and fee levels in these norms only on good cause shown to the DoE (see paragraph 174 above).

Date of subsidy payments

194. Subsidies will be calculated on a per learner basis according to the verified enrolment in the school at the beginning of each term.

195. PEDs must ensure that the first term's subsidy is paid no later than 1 April in each school year. Subsequent subsidies must be paid no later than six weeks after the beginning of each school term.

Monitoring and revision

196. The Ministry of Education, in co-operation with PEDs and representatives of independent schools, will monitor the application of these norms in order to:

(a) monitor fee levels;

(b) monitor subsidy levels;

(c) ensure that the overall level of subsidy to independent schools is a reasonable percentage of the total education budget in a province, in relation to the relative size of the independent and public school sectors in the province, and other relevant considerations; and

(d) ensure that national education policy objectives are being well served by the norms and their application.

197. In the light of an analysis of these matters, the Ministry, after due consultation, may amend or revise the norms.

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