

**IN THE EASTERN CAPE HIGH COURT, BHISHO  
(REPUBLIC OF SOUTH AFRICA)**

CASE NO. 276/16

In the matter between:

**EQUAL EDUCATION**

**First Applicant**

**AMATOLAVILLE PRIMARY SCHOOL**

**Second Applicant**

and

**MINISTER OF BASIC EDUCATION**

**First Respondent**

**MEC FOR EDUCATION: LIMPOPO**

**Second Respondent**

**MEC FOR EDUCATION: EASTERN CAPE**

**Third Respondent**

**MEC FOR EDUCATION: FREE STATE**

**Fourth Respondent**

**MEC FOR EDUCATION: GAUTENG**

**Fifth Respondent**

**MEC FOR EDUCATION: KWAZULU-NATAL**

**Sixth Respondent**

**MEC FOR EDUCATION: MPUMALANGA**

**Seventh Respondent**

**MEC FOR EDUCATION: NORTHERN CAPE**

**Eight Respondent**

**MEC FOR EDUCATION: NORTH WEST**

**Ninth Respondent**

**MEC FOR EDUCATION: WESTERN CAPE**

**Tenth Respondent**

---

**AFFIDAVIT**

---

I, the undersigned,

**DANIEL SHER**

state under oath the following:

1. I am the Deputy Head of Policy and Training at Equal Education (EE), the First Applicant.
2. The facts contained in this affidavit are both true and correct. Unless the context indicates otherwise, they fall within my personal knowledge.
3. The purpose of this affidavit is to respond to the contention in the answering affidavit that there is no need for the Minister to make a regulation ensuring that the regulation 4(6)(a) annual implementation plans and the regulation 4(7) annual progress reports are made public within a reasonable time of her receiving them from the MECs, because teaching staff, the school community, parents and learners “would” in any event have access to the Norms and Standards implementation plans and progress reports by virtue of their involvement in the school governing body.
4. The Minister does not say why or how this “would” happen. She does not allege that the procedures of the provincial departments, or of any one of them, require them to place the plans and reports before each school governing body in the province. Her statement is therefore a conclusion without any factual underpinning.

5. The Ministers' contention is not borne out by EE's and my recent engagement with principals, deputy principals and other teaching staff at public schools, which I set out below.
6. As part of EE's work on school infrastructure, EE visited a number of Eastern Cape schools for purposes of investigating government's compliance with the regulations.
7. From 14 to 18 November 2016, EE visited 60 schools across seven districts in the Eastern Cape: Butterworth, King William's Town, East London, Libode, Mbizana, Mount Frere and Mthatha.
8. In my capacity as Deputy Head of Policy and Training, I played a central role in the planning and execution of these school visits, and the analysis of the information obtained through this process. I was a member of one of five teams, composed of EE staff members and youth organisers, which carried out these visits. The five teams observed conditions and interviewed the principal, the deputy principal or an HOD at each of these 60 schools.
9. I was co-author of an EE report which was released on 30 November 2016, titled *Planning to Fail*, describing our findings regarding the schools visited and drawing conclusions on the systemic failures in the Eastern Cape public education system.

10. During our interviews with principals, deputy principals and HODs we specifically enquired about their knowledge, if any, of the regulations, whether they were aware of the MEC's obligations to produce annual norms and standards implementation plans, and, if so, whether they had had sight of the plans for their province.
11. Half of all principals/teachers we interviewed did not know what the Minimum Uniform Norms and Standards for School Infrastructure were. I suspect that the amount is in fact even higher than that, since some of the principals interviewed seemed to have conflated the regulations with the Norms and Standards for School Funding. This was evident when principals, for example, referred to the quintile system, which is a key part of the Norms and Standards for School Funding, in their explanation of the Minimum Uniform Norms and Standards for School Infrastructure. A few of those who were aware of the regulations had heard of them from EE rather than from the provincial or national departments.
12. More than half of the principals/teachers interviewed (32) said they were not aware that the MEC must produce an annual implementation plan in terms of the regulations. And 96% of principals/teachers said they had never seen any norms and standard implementation plan made by the MEC.
13. Two of the 60 said that they had seen the 2014 norms and standards implementation plan for the Eastern Cape. One of these had been shown the plan by the implementing agent for their school; this was therefore not an official communication on the part of the provincial or national department. The second

seemed unsure of what the regulations actually were, so that information is doubtful. Even in cases where principals had been informed that their school was due for an upgrade, this was frequently done verbally, without any official documentation. The principal who was shown the implementation plan by the implementing agent had not been given a copy for the school to keep. Principals/teachers reported that they find it difficult to hold the provincial department to account over these promises, in particular with regard to the timeframe in which upgrades were to begin and end.

14. Almost all principals indicated that they had made repeated requests for assistance with infrastructure at their schools. Most of these reported that their requests had not been successful. They reported that promises of upgrades were frequently unfulfilled, commitments changed over time, and deadlines were continuously shifted. Principals were enthusiastic about sharing their needs during our visit, but they showed little hope that the provincial or national department would fix their schools. They tended to feel poorly informed of the provincial department's plan, or concluded that the department had forgotten them.

15. I have been advised that it may be contended that this information is hearsay in nature. I submit that it is a relevant and admissible product of a legitimate research project. The information was collected in a valid manner for a legitimate research project.

16. To the extent that it constitutes hearsay, I ask that it be admitted into evidence. It is plainly impractical for EE to retrace its steps and obtain an affidavit from each of the 60 people concerned. Each of them is an employee of one of the Respondents. It cannot be reasonably expected that they will, at the request of EE, go to a commissioner of oaths and attest to an affidavit. This affidavit is the only practical way in which this information can be placed before the Court. It is placed before the Court not to prove the precise numbers to which I refer, but to demonstrate that to put the matter at its very lowest, there are many instances in which schools are not made aware of the provincial plans and reports. I respectfully submit that it is in the interests of justice that it be admitted into evidence.

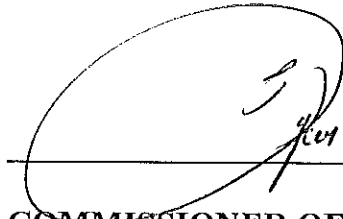
17. I respectfully submit that the Minister's assertion that the plans and reports "would" be made generally available, appears to indicate that she agrees that this is desirable. The research indicates that there are many instances in which this does not happen, with the result that schools, governing bodies, teachers, parents and learners are not aware of what they legally qualify for, and have no indication of when any upgrades will be undertaken.



---

**DANIEL SHER**

I certify that the Deponent acknowledged to me that he knows and understands the contents of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience. The Deponent thereafter uttered the words: *'I swear that the contents of this declaration are true, so help me God'*. The Deponent signed this declaration in my presence at CAPE TOWN on this the 19 day of December 2016.

  
1149037  
14/12/2016 CST  
**COMMISSIONER OF OATHS**

