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22 January 2016

To: Ms N Gina, MP
The Chairperson:
Parliamentary Portfolio Committee on Education

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To: Minister of Basic Education
Ms Angelina Motshekga
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To: Minister of Transport
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And to: Committee Secretary: Portfolio Committee on Basic Education
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Dear Hon. N Gina, Hon. Min. D Peters and Hon. Min. A Motshekga

RE: THE 2015 NATIONAL LEARNER TRANSPORT POLICY

1. Equal Education (“**EE**”) is membership-based democratic movement of learners, parents, teachers and community members working for quality and equality in South African schools. EE has approximately 3220 high school learner members across KwaZulu-Natal, Eastern Cape, Western Cape, Limpopo and Gauteng who are active on a weekly basis.
2. The Equal Education Law Centre (“**the EELC**”) is a law centre established in January 2012 with a mandate of using legal advocacy and strategic litigation to further the goal of an equitable and adequate basic education for all. The EELC works closely with EE in pursuit of this vision.
3. Section 29 of the Constitution guarantees that “[e]veryone has the right to a basic education”. A necessary and important component of this right is ensuring that learners are able to access schools, which includes the provision of scholar transport for learners.
4. EE and EELC have been working together to actively and consistently advocate for the adoption, publication and implementation of a national scholar transport policy.

5. On or about 27 May 2015, a Cabinet meeting statement indicated that a National Learner Transport Policy had been approved by Cabinet. Despite this statement, as well as repeated attempts, the EE and EELC were unable to obtain a copy of the policy.
6. Eventually, on 8 September 2015, the Department of Transport (“**DoT**”) undertook to publish the policy in the *Government Gazette* by September 2015. Despite this commitment, the policy was not published.
7. On 8 October 2015, EE addressed a letter to the DoT and DBE (which is attached hereto) demanding publication of the policy by no later than 22 October 2015.
8. Finally, on 23 October 2015 the DoT published the National Learner Transport Policy in *Government Gazette* 39314 (“**the Policy**”). EE and EELC are pleased that the Policy has now been published, despite the long period of delay.
9. At the outset, we note that the publication of the Policy is a potential step forward toward the fulfilment of the right of access to basic education. Indeed, the Policy recognises that learner transport forms part of “*the constitutional mandate of the [DoT] to provide a safe and efficient transport system*”¹ and promises that “*even learners in disadvantaged communities and deep in rural areas of the country will have access to schools and become part of the active economy in the near future*”.²
10. In principle, the strategic objectives of the Policy are laudable, particularly in the commitment to improve the planning and implementation of an integrated learner transport service and to ensure effective management of the learner transport system.³

¹ Foreword to the Policy by the Minister of Transport, Ms Dipuo Peters.

² Foreword to the Policy by the Minister of Transport, Ms Dipuo Peters.

³ Paragraph 1.7, Page 15 of the Policy.

11. In addition, the Policy does include progressive areas of focus, which should be applauded. In particular, it is positive that the Policy commits to providing dedicated attention to universal design for learners with disabilities, and recognises the need to ensure effective safety and security measures for learners.

12. However, whilst the Policy advances broad principles that we generally support, we note that the current version of the Policy still requires significant detail, clarity and development in order to effectively realise its stated objectives. In particular, we have noted the following key areas of concern, which we set out in more detail below:

- 12.1. Insufficient clarity on multi-stakeholder coordination.
- 12.2. Insufficient guidance on how planning for learner transport provision will be implemented.
- 12.3. Gaps in ensuring effective monitoring and implementation of the Policy.
- 12.4. Inadequate criteria for qualifying beneficiaries of subsidised scholar transport.
- 12.5. Lack of timeframes and deadlines for implementation.
- 12.6. No mechanisms to ensure adequate funding and budgeting.

13. We urge the DoT and DBE to take note of these issues and to respond to the queries we raise. We all share an interest in ensuring the realisation of learners' rights. It is in this spirit that we raise our concerns.

A. INSUFFICIENT CLARITY ON MULTI-STAKEHOLDER COORDINATION

14. We note that various provisions of the Policy express a commitment to multi-stakeholder collaboration in the planning and implementation of learner transport provisioning. This is positive in principle and we support the need for collaboration and coordination between all stakeholders.

15. However, whilst the Policy commits to the principle of inter-departmental coordination, the Policy itself does not provide a sufficiently clear framework for such cooperation. Rather, the Policy envisions the establishment multiple

bureaucratic structures at various levels of government. Such structures are mostly described in vague terms, with very little detail on their respective roles and responsibilities.

16. In this regard, the Policy broadly indicates that a National Interdepartmental Committee (“**NIDC**”) will be established consisting of representatives from the DoT, DBE and the provinces.⁴ The NIDC will apparently report to the Ministers of Transport and Basic Education.
17. The NIDC has the potential to present a useful national coordinating mechanism, however, the Policy is regrettably unclear on the mandate and powers of the NIDC and fails to set a timeframe within which the NIDC must be established.
18. In addition, reference is also made in the Policy to “*institutional mechanisms*” that will be established at provincial and local level, which “*mechanisms*” would include “*all relevant stakeholders*” (such as the provincial departments of transport and education, SGBs, municipalities and law enforcement authorities).⁵
19. However, there are no timeframes by which such “*mechanisms*” will be established; little detail is offered on the role and responsibilities of such “*mechanisms*”; and no clarity is offered on relevant reporting lines for accountability. In the absence of these crucial details, it is difficult to understand what effective role the amorphous “*institutional mechanisms*” will play in the implementation of the Policy.
20. Furthermore, and significantly, the Policy itself is silent on the guiding principles that will inform cooperation and coordination between the various bureaucratic structures envisioned in the Policy. Rather, the Policy defers this to the formulation of a “*national policy advocacy programme*”, which will apparently “*define the roles of the DoT and other stakeholders*”.⁶ The Policy does not indicate the time period within which the “*national policy advocacy programme*”

⁴ Paragraph 2.1.3, page 17 of the Policy.

⁵ Paragraph 2.1.4, page 18 of the Policy.

⁶ Paragraph 6.6, page 27 of the Policy.

should be developed, nor is it clear who will ultimately be responsible for its formulation.

21. We reiterate that we are supportive of the principle of multi-stakeholder collaboration. However, the benefits of multi-stakeholder collaboration between the DoT and DBE (at national, provincial and local levels), as well as other stakeholders, can only be fully realised once the Policy itself clearly delineates the roles and functions of various government entities.

22. This is also crucial to ensuring accountability, since institutional responsibility for the implementation of the Policy cannot be diffused amongst various bureaucratic structures. The public must know who is primarily and finally responsible for oversight and implementation of the Policy.

23. Despite the silence on timeframes in the Policy, we note that in a presentation to the Portfolio Committee on Basic Education on **08 September 2015** (“**the DoT Presentation**”), the DoT committed to certain timeframes within which some steps would be taken.

24. The DoT Presentation indicated that the NIDC will be established by **October 2015** and that the national policy advocacy programme would be developed by **December 2015**.

25. As far as we are aware, there is no publicly accessible information indicating the status of the formation of the NIDC and its composition. We are also not aware of any publication of the national policy advocacy programme at this stage.

26. Accordingly, it is imperative as a matter of accountability and effective implementation of the Policy that the DoT and DBE indicates, amongst others:

26.1. Whether the NIDC has in fact been established, as promised? If not, why not?

26.2. What is the composition of the NIDC?

26.3. What are the functions and powers of the NIDC?

- 26.4. Who is accountable to the NIDC, and what are the timeframes for such persons to report to the NIDC?
- 26.5. How will reports to the NIDC be made publicly available, as is required by the principles of accountability and transparency in a constitutional democracy?
- 26.6. How and when will the NIDC report to the Ministers of Transport and Basic Education?
- 26.7. How will reports by the NIDC be made publicly available, as is required by the principles of accountability and transparency in a constitutional democracy?
- 26.8. How will the NIDC ensure that public participation is effectively ensured in the planning and implementation of learner transport provisioning?
- 26.9. How will the NIDC facilitate the “*provincial interdepartmental committees*” as mentioned in the DoT Presentation?
- 26.10. Whether the “*national policy advocacy programme*” has been developed? If not, why not?
- 26.11. If the “*national policy advocacy programme*” has been developed, when will it be published so as to ensure effective accountability and transparency?

B. INSUFFICIENT GUIDANCE ON HOW PLANNING FOR LEARNER TRANSPORT PROVISION WILL BE IMPLEMENTED

27. We note that it is encouraging that the Policy recognises that planning is fundamental to the success of learner transport provision, and requires consultation through a multi-stakeholder platform. Our understanding in this regard is as follows:

- 27.1. The Policy envisions that learner transport plans will be developed at the provincial level. To this end, the Policy makes reference to the establishment of “*joint planning committees*”, including representatives

of the provincial departments of transport and education, as well as representatives of municipalities.⁷

27.2. The Policy requires provinces to develop provincial learner transport “*implementation plans and strategies*”, and also requires local government to align integrated transport plans with the provincial strategies.

28. Despite these provisions, it is unfortunate that the Policy is unclear on who is *primarily* responsible for initiating planning at the provincial level and establishing the “*joint planning committees*”.

29. In the DoT Presentation, the DoT merely indicated that the “*facilitation*” of “*provincial interdepartmental committees*” would take place in October 2015, without establishing clear start date to their functions.

30. In addition, there are no specific timelines for development of provincial plans, or for the approval or review of such plans. At most, the Policy indicates that provincial strategies and local government plans must be “*approved by the MEC and submitted to the DoT at specified times*”.⁸ The Policy itself provides no guidance or uniformity as to such timeframes.

31. The Policy also fails to provide sufficient guidance as to the content of the provincial plans, thus allowing for significant variance between provinces. The Policy merely provides that Learner Transport Planning must “*start with determination of transport needs*” which includes safety, infrastructure and drop-off/pick-up points.⁹ This is exceptionally thin.

32. In the DoT Presentation, the DoT committed to the finalisation of Norms and Standards and Operational Guidelines for Learner Transport (“***the Learner Transport Norms and Standards***”) by **December 2015**. At this stage, it is far

⁷ Paragraph 3.1.2, page 20 of the Policy.

⁸ Paragraph 6.3, page 26 of the Policy.

⁹ Paragraph 3.1.2, page 20 of the Policy,

from clear what the Learner Transport Norms and Standards are intended to cover and there has been no publicly accessible information on this process. Nevertheless, it can only be assumed that the finalisation and publication of the Learner Transport Norms and Standards is crucial to giving proper guidance for effective planning.

33. In light of the above issues, we request that that the DoT and DBE provides clarity on, amongst others, the following:

- 33.1. Has the Learner Transport Norms and Standards been finalised? If not, why not? If so, when will these be published?
- 33.2. Who is primarily responsible for establishing the “*joint planning committees*”?
- 33.3. By when will the “*joint planning committees*” be established?
- 33.4. By when will provincial implementation plans have to be finalised? How often will the provincial implementation plans be reviewed and updated?

C. GAPS IN ENSURING EFFECTIVE MONITORING AND IMPLEMENTATION OF THE POLICY

34. It is encouraging that the Policy makes explicit provision for oversight and reporting on the implementation of learner transport services in various ways, including independent assessments.

35. However, the broad intention of the Policy to ensure monitoring and oversight is regrettably not always carried through in the detail. In this regard, the Policy has concerning gaps, including the following:

35.1. There are no details as to when monitoring by national, provincial and local government should take place and who in particular will be finally responsible for such monitoring.¹⁰

35.2. The Policy makes mention of the development of Key Performance Indicators (“KPIs”) with “other stakeholders”, but provides no deadlines or processes through which the same will take place.

35.3. There are no specific provisions requiring that all reports and assessments be made publicly available, as is necessary in light of the constitutional principles of transparency and accountability.

36. In light of the above, we request that the DoT and DBE provides clarity on, amongst others, the following:

36.1. When will monitoring by national, provincial and local government take place?

36.2. Which department will be finally responsible for such monitoring?

36.3. When will KPIs be developed to ensure effective monitoring and oversight?
How will stakeholders be engaged in this process?

36.4. When will monitoring reports and assessments be published for public scrutiny?

D. INADEQUATE CRITERIA FOR QUALIFYING BENEFICIARIES OF SUBSIDISED SCHOLAR TRANSPORT

37. It is clear that one of the major issues impacting on the provision of learner transport has been the significant variation, inconsistencies and arbitrariness across provinces in the qualification criteria for subsidised scholar transport.¹¹

This implicates learner’s rights to equality and access to basic education.

¹⁰ We note that the Policy indicates that, in addition to government monitoring, a separate “independent assessment” will be undertaken every 3 years (paragraph 4.1 of the Policy). This is a positive development and we welcome the independent oversight.

¹¹ Indeed, the Policy itself recognises the need to have a uniform approach to learner transport provision (page 3 of the Policy).

38. It is against this background that we expected the Policy to provide sufficiently detailed criteria to determine which learners would be entitled to learner transport.

39. Regrettably, the Policy in its current form is woefully inadequate in this regard. The only criteria that can be gleaned from the relevant provisions of the Policy are as follows:¹²

- 39.1. Beneficiaries must be “*needy*” learners from Grade R to 12 “*as prescribed*”.
- 39.2. Primary school learners who “*walk long distances*” will be prioritized.
- 39.3. Subsidised transport will only be provided to the nearest available school and not to a school of parental choice
- 39.4. Existing learner transport services must be taken into account and no learner transport services will be provided where “*public transport is available*”.

40. The criteria are broad, vague and in some respects irrational. In particular:

- 40.1. The Policy widely refers to “*needy learners*” who walk “*long distances*”. The Policy does not specify the threshold considerations for defining “*needy*” or “*long distances*”. There is merely an indication that the scope of “*needy*” learners may be “*prescribed*”, but in the absence of details as to when this will occur, the Policy remains meaningless in this regard.
- 40.2. The Policy only takes into account the *distance* that learners walk, without considering terrain, safety and natural obstacles that also impact on the accessibility of schools to learners. This results in the unlawful and irrational exclusion of some learners who may be in desperate need, but may not be covering whatever a particular principal may consider a “long distance”.
- 40.3. The Policy adopts an inflexible approach where schools of parental choice are concerned. On this score, the Policy fails to taken into account the myriad of circumstances (including limited school capacity) which may force

¹² Paragraph 3.3.1, page 22 of the Policy.

parents to admit their child into a school other than the one nearest to their home.

40.4. On its face, the Policy suggests that scholar transport will not be provided in areas where public transport is available. However, this fails to recognise that there are learners who may live in areas where public transport is available but who come from poor households who are unable to afford to pay for public transportation. In addition, whilst public transport might theoretically be “available”, it may nevertheless be inappropriate or inaccessible for learners. It may be that the Policy intends to refer to areas where there is existing provision of *subsidised* public transport for learners, however this is not clear from the literal wording of the provision.

40.5. Finally, the Policy’s failure to sufficiently emphasise the need to take into account the best interests of each learner is a critical deficiency.

41. In respect of application processes, it is also noted that the Policy only provides that school principals, in consultation with school governing bodies, must determine which learners qualify for scholar transport.¹³ It does not allow for parents and learners themselves to take their cases to the Department of Basic Education, in instances where they are unfairly left out by principals.

42. The inadequacy of the criteria provided by the Policy is deeply worrying and, in its current form, we are concerned that the Policy may be impugned on the basis of, amongst others, vagueness and irrationality.

43. *In light of this, we request clarity on the following:*

43.1. Will the Learner Transport Norms and Standards provide further criteria and specific detail for determining the beneficiaries of subsidised scholar transport?

43.2. If so, when will the Learner Transport Norms and Standards be published?

43.3. If not, what steps will the DoT and DBE take to ensuring the review of the criteria in the current Policy?

¹³ Paragraph 3.3.1, page 22 of the Policy.

E. LACK OF TIMEFRAMES AND DEADLINES FOR IMPLEMENTATION

44. It cannot be gainsaid that effective and timeous implementation is essential for this policy to achieve its stated aims. Amongst the Policy's stated aims is to realise timeous delivery of service and to improve the planning and implementation of an integrated learner transport service.¹⁴

45. Despite this commitment, the Policy surprisingly fails to provide deadlines for when key actions must be undertaken. By way of example, no timeframes are set out for the finalisation of learner transport implementation plans and strategies, performance reports, learner transport service design, and the code of conduct for drivers. Clarity is needed regarding what information needs to be contained in these documents, as well as when and how often provinces need to produce these key documents.

46. At most, the Policy states that "*...elements of the Policy that require... administrative action will be implemented immediately, ... those that require major changes to existing practice may require phased implementation*".¹⁵ This is entirely insufficient for at least the following reasons:

46.1. It is not clear what constitutes merely "*administrative action*" or how a "*major change to existing practice*" is defined.

46.2. It is not readily apparent what should be prioritised as urgent and what are the outer limit timeframes for "*phased implementation*".

46.3. The timeframes for implementation are left entirely within the discretion of the relevant implementing agent. This is anathema to effective implementation and accountability.

47. *We therefore request that the DoT and DBE urgently attend to ensuring that the deadlines and timeframes for implementation of the Policy are clarified.*

¹⁴ Paragraph 1.6.3, page 15 of the Policy.

¹⁵ Paragraph 6.5, page 27 of the Policy.

F. NO MECHANISMS TO ENSURE ADEQUATE FUNDING AND BUDGETING

48. EE and EELC have consistently pointed out that that one of the reasons that scholar transport provision remains inadequate is due the shortage of adequate funding for this in provincial budgets.
49. We note that the Policy specifically requires the Department of Transport to submit performance reports and related budget needs to Treasury.¹⁶
50. However, the Policy provides no further details regarding the measures that need to be taken in order to secure appropriate budgetary allocations for the effective implementation of the Policy.
51. In our view, this oversight threatens to undermine the achievement of the aims and objectives of the Policy and requires review.

G. CONCLUSION

52. EE and EELC implore the DoT and the DBE to consider the submissions made in this letter and respond to the requested information as set out herein by **5th February 2016**.
53. In light of the submissions made, we envisage that the DoT and the DBE may consider an urgent review of the Policy in order to remedy deficiencies and thus ensure effective realisation of the stated objectives of the Policy.
54. The EELC and EE are open to discussing the concerns we have raised here and would be eager to meet with both departments at the beginning of next year should you be open to such dialogue.
55. We look forward to your response.

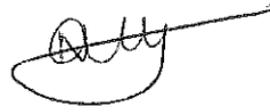
¹⁶ Paragraph 6.3, p26.

Yours faithfully,



TSHEPO MOTSEPE

GENERAL SECRETARY: EQUAL
EDUCATION



NURINA ALLY

EXECUTIVE DIRECTOR: EQUAL
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