

DECEMBER 2021

Newsletter



A NOTE FROM THE EXECUTIVE DIRECTOR



Friday 10 December 2021, marks 25 years of our country's constitution and the promise of an unqualified right of all children in South Africa to basic education. Despite this, our education system is one that is still marked by pervasive inequalities which have only been amplified and exasperated by the COVID-19 pandemic.

As we come to the end of another challenging year for our country, our sector and indeed each one of us, we have taken a moment at the EELC to reflect on 2021. Much of our work remains focused on the impact of the COVID pandemic on education. The continual school closures and rotational timetabling have translated into alarming learning losses for thousands of children across our country. We are concerned not only about the repercussions of lost learning time but also on the risks young children continue to face at home, in some cases up to 4 days in a week. The EELC will be closely monitoring the reopening of schools in 2022 to ensure all learners can safely return to school on a full-time basis with appropriate and reasonable measures in place.

In this newsletter we reflect on some of the highlights and impact of our work.

I would like to take this opportunity to thank our passionate and dedicated team as well as our comrades at Equal Education and colleagues in the sector who we have collaborated with during 2021. I wish each one a peaceful, safe and restful holiday season and trust we will all be back to continue the struggle for equitable, inclusive, quality education for all in 2022.

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EELC RESPONSE TO IMPACT OF COVID-19 ON EDUCATION

The EELC has continued to prioritize and respond to COVID-19 issues effecting the education sector. We have, together with Equal Education, engaged extensively on and contributed to the formulation of various directions released by the Department of Basic Education in response to the COVID-19 pandemic and continued learning. We continue to monitor the implementation of these directions and the impact they have on the rights of learners and their access to education.

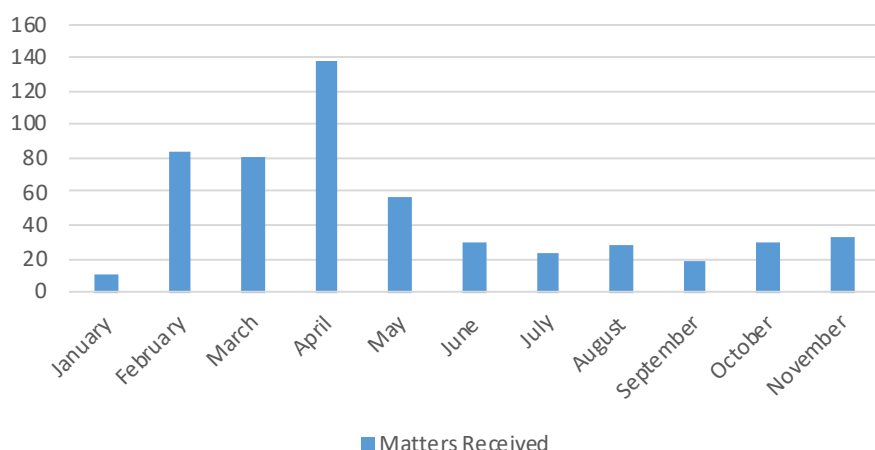
Throughout the year, the EELC met with various officials in the DBE in an effort to properly interrogate the implementation, and efficacy, of the DBE's risk adjusted strategy. This fruitful engagement fostered improved open engagement with the DBE and a better understanding of the strategy which we hope will lead to improved access for learners in areas where COVID-19 numbers are low. Whilst the risk adjusted strategy has not been adequately implemented by the DBE since the onset of the pandemic and the state of emergency, we intend to continue our advocacy to have the risk adjusted strategy properly implemented.

Other aspects of COVID-19 that we have engaged on with the DBE, provincial education departments, Equal Education and other education and children's rights organisations include:

- The full time return of primary school learners to school, as well as the plans the provincial education departments are putting in place to ensure the return to traditional timetable models;
- Rotational timetabling and its' effect on learners; and
- Monitoring the implementation of the National School Nutrition Programme in line with our successful 2020 and 2021 High Court Orders.



Matters Received



DRAMATIC INCREASE IN ADVICE CLINIC MATTERS FOR 2021

The EELC has received approximately **532** advice clinic matters between January and November 2021. This is more than a 60% increase on matters received over the same period in 2020. The advice clinic numbers for 2021 are more than triple the numbers we were receiving in 2017.

ADVICE CLINIC MATTERS FOR 2021

Admissions

The failure to place all learners in Grade appropriate schools at the beginning of each year, continues to be one of the biggest issues which the EELC's law clinic tackles at the beginning of every year. The majority of matters received over the course of 2021 involved admission matters, with, in some cases, entire communities approaching the EELC for assistance in securing placements for their children. During 2021, so far, we have received approximately **261** admission related enquiries, which is but a small percentage of what is an endemic problem in South Africa. We continue to seek innovative and systemic solutions in order to address this crisis. We have developed a guide for parents to help them navigate admission processes. This can be accessed [HERE](#).

School fee and fee exemption related matters

School fee and fee exemption related matters were among the highest number of matters received during 2021, with many parents approaching us seeking assistance with cases where schools, both public and private, made use of irregular or unlawful practices when collecting outstanding school fees. The EELC has successfully assisted a number of parents in securing rescissions of judgments in cases where schools have proceeded with debt collection measures against parents without first affording the parent the right to apply for a fee exemption.

Additional fee related issues have included the cancellation of contracts (in the case of private school); withholding reports; exclusion of learners where parents are unable to pay school fees; or not allowing learners to write exams.

During May 2021, the EELC was approached by a parent for assistance with a school fee exemption issue. This parent had heard about us through her friend who we had successfully assisted previously. The parent is a single parent, and sole financial provider, to three young boys - two of whom attend a public primary school. The school had accepted and assessed her fee exemption application and decided to award her only a partial fee exemption, which she was unable to afford.

After assessing the parents' financial information, the EELC was able to ascertain that the school had not calculated the fee exemption correctly and that the parent in fact qualified for a full exemption. As a result of this, the EELC lodged an appeal with the HOD highlighting the discrepancies. The HOD investigated and found that the parent did in fact qualify for a full exemption and recommended that the SGB reconsider their decision and grant the client's full exemption; which they duly did.

ADVICE CLINIC MATTERS FOR 2021

Disciplinary Hearings

We have noted a marked increase in parents contacting us for advice on disciplinary proceedings and what to expect in a hearing with specific issues including schools and SGBs not following correct procedures in disciplinary hearings, and learners being given prolonged suspensions pending either disciplinary hearings or decisions from the provincial education departments regarding expulsions.

During September 2021, the EELC was approached by a parent where their child was expelled from school without the school holding a disciplinary hearing or discussing any disciplinary issues with the parents. We discussed disciplinary processes with the parent, advised them of their rights, as well as the rights of the learner, in these processes, and advised the parent of what steps to follow in approaching the school to address this situation. The parent, empowered by the knowledge provided to her by the EELC, approached the school principal who acknowledged the error made by the school, apologized to the parent, and immediately reinstated the learner into her class.

This is but one of the many disciplinary matters in which we have legally empowered parents and learners to ensure that proper procedures are followed in schools and that learners are not kept away from schools unlawfully and for inordinate periods.



KNOW
YOUR
RIGHTS

We have also periodically shared various 'Know Your Rights' material on education-related topics which are available on our website, in order to guide and empower learners and parents.

THE STRUGGLE TOWARDS INCLUSION IN SOUTH AFRICA'S EDUCATION SYSTEM

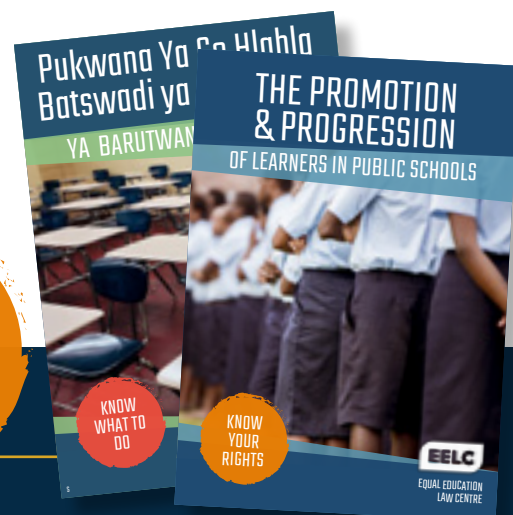


EELC Launches “Let in or Left out?” report on inclusive education

The primary policy regulating the transformation of South Africa's education system into an inclusive one is “Education White Paper 6: Special Needs Education – Building an inclusive education system” (White Paper 6). As the 20-year implementation plan outlined in White Paper 6 comes to an end in 2021, EELC took the initiative to review the regulatory framework for inclusive education and publish a report of its findings. The report, which is entitled “Let in or Left out: a 20-year review of the regulatory framework for inclusive education and its implementation in South Africa” provides insightful analysis on the extent to which implementation of the regulatory framework took place over the 20-year period. It proposes recommendations for regulatory reform in order to ensure that the right to an inclusive, equitable, quality education for all is protected, enforced and promoted. The [Executive Summary](#) to the report was released at the launch of the report on 3 December 2021 (International Day of Persons with Disabilities).

In addition to having drafted a report on the state of inclusive education in South Africa, EELC's Learner Support Thematic spent time focusing on the protection of LGBTI learners. In particular, EELC (together with Matimba, an organisation that advocates for children who are transgender or gender variant) made submissions on the Prevention and Combatting of Hate Crimes and Hate Speech Bill. Some of the concerns raised included the penalties in the Bill not being aligned with those in the Child Justice Act, the use of binary pronouns within the Bill itself, and a lack of clarity on the role-players involved in the prevention of hate crimes and hate speech, as well as the nature of their involvement. The Submission was submitted to the Portfolio Committee on Justice and Correctional Services on 1 October 2021.

In addition, we have developed a “Know your rights” pamphlet for parents on promotion and progression. This can be accessed [HERE](#).



EELC's Inclusive Litigation in 2021

Our team of attorneys have worked on over 11 active litigation matters during the course of 2021. During 2021, we paid particular attention to the difficulties faced by learners with disabilities in South Africa.

SARS Rebates

The EELC instituted litigation in its own name challenging the constitutionality of a regressive decision by the South African Revenue Services' (SARS) in March 2020 which had the effect of reducing the rebate that parents of children with disabilities could claim for fees which they paid to private special schools. One of the consequences of this regressive measure was that parents could no longer afford to send their children to these schools but had no adequate public-school alternatives. This denied many learners with disabilities the right to basic education.

The EELC were co-applicants with Glenoaks School NPC, and a number of parents of children with disabilities attending Glenoaks. The litigation led to SARS amending its decision to an earlier version effective retrospectively from 1 March 2020 which will allow parents to use a more beneficial formula in calculating their tax rebate.

Access to reading materials for blind and visually impaired learners

The EELC represented the International Commission of Jurists (ICJ) as a friend of the court in an application brought by Blind SA. Blind SA challenged the constitutionality of South Africa's Copyright Act on the grounds that it violates the constitutional rights of visually impaired persons, including their rights to dignity and equality.

The current Copyright Act fails to make provision for persons with visual impairments to convert, reproduce or distribute copyrighted works into a format they can read without the copyright holder's permission.

This has made it very difficult for persons, in particular learners, to access literary works in readable formats.

The ICJ's submissions centred on international law and standards on the rights to education and cultural life protected under the UN CRPD and the ICESCR as well as the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. A favourable judgement, declaring the Copyright Act unconstitutional and noting that it violated various rights of blind and visually impaired persons, including the right to education and that it did not comply with Marrakesh Treaty was handed down on 21 September 2021.



LONG AWAITED KZN LEARNER TRANSPORT POLICY FINALISED

During April 2020, the KwaZulu-Natal Department of Education (KZNDOE) published the draft scholar transport policy for public comment. EE and the EELC submitted comprehensive comment on this policy which, in its' draft form, failed to ensure the adequate provision of scholar transport to all qualifying learners in KZN, and failed to improve access to education for these learners.

After consistent follow up for almost one year, coupled with the years of campaigning by our client, EE, and two court cases, the KZNDOE released the final KZN Learner Transport Policy on 9 June 2021, which policy came into effect on 1 July 2021. This final version has taken many of our comments and inputs into consideration which has resulted in the development of a policy that addresses the need for safe, reliable, government-subsidised learner transport across KZN. Despite still having some reservations as to how the implementation of this policy will play out on the ground, having a solid and comprehensive provincial policy is essential for ensuring adequate planning.

This final policy now addresses important aspects such as:

- **The provision of transport to learners with disabilities;**
- **The roles and responsibilities of the KZN Department of Education as well as of the KZN Department of Transport, with clear guidance as to which department is responsible for which areas of transport provisioning to learners;**
- **The inclusion of certain timelines and deadlines for applications for learner transport, which is essential for ensuring adequate monitoring and accountability.**

Unfortunately, this final policy has to date not been widely published, with many principals in Nqutu being unaware of its' existence. The EELC together with EE will be closely monitoring the implementation of this policy; and will be working towards empowering schools, School Governing Bodies, principals, and learners on this policy.