



EQUAL
EDUCATION
LAW CENTRE



9 March 2018

Attn: Ms Mpho Boikanyo

Provincial Manager: North West Province

South African Human Rights Commission

By email: mboikanyo@sahrc.org.za and zluthuli@sahrc.org.za

Dear Ms Boikanyo,

Re: Provincial hearing on the lack of safety and security measures in special school needs schools in the North West

Introduction

1. The Equal Education Law Centre (“the EELC”) and the Centre for Child Law (“the CCL”) thank you for your invitation to participate in the aforementioned provincial hearings. We make this written submission together, as law clinics committed to advancing education rights as well as children’s rights in South Africa.

2. We note the objectives of the hearings, as well as the questions which the South African Human Rights Commission (“the SAHRC”) has requested that the invited organisations address in their written submissions. In so far as the EELC makes submissions, these are limited to its involvement with one school hostel accommodating special needs learners which is located in KwaZulu-Natal (“KZN”). The EELC interviewed this school in 2017. The CCL has interviewed three special schools with hostels in Gauteng, two special schools with hostels in the North West Province and one special school with a hostel in Limpopo. The CCL’s legal representative has, on its behalf, interviewed five special schools with hostels in the Eastern Cape. All schools were interviewed in the course of 2017. While the CCL and EELC’s experience with respect to the situation in special school hostels is therefore not necessarily or always specific to the North West province, we submit that our experience is nonetheless valuable to the panel, as our submissions reflect broader, systemic issues occurring in various provinces and many of our recommendations will therefore also be applicable to the North West province.
3. Our submission is set out as follows:
 - 3.1. a description of our respective organisations and their mandate;
 - 3.2. the experiences the EELC and CCL have gathered in respect of school hostels accommodating learners with special needs; and
 - 3.3. based on our experiences, answers to the SAHRC’s questions, including our recommendations for what steps need to be taken to address the safety and security concerns of special needs learners residing in hostels on an urgent as well as long-term basis.

The Centre for Child Law and the Equal Education Law Centre

4. The EELC is a registered, non-profit law clinic located in Khayelitsha, Cape Town, which aims to advance the right to basic education in South Africa through legal mechanisms such as public interest litigation, and other tools such as advocacy and research.
5. The CCL is a registered law clinic which was established in 1998 and is based in the Faculty of Law at the University of Pretoria. The CCL’s main aim is to contribute towards

the establishment and promotion of the best interests of children in South Africa through litigation, advocacy, research and education.

The experiences of the CCL and the EELC in working with special needs learners residing in school hostels

6. Through its work in attempting to ensure that children with disabilities can access their constitutional right to a basic education, the CCL and the EELC have become aware of the dire conditions that many children face when residing in special school hostels (including in the North West province). We set out our experiences below.

Shortages of skilled hostel staff

7. The CCL interviewed schools in the North West and Gauteng provinces after receiving complaints relating to a lack of non-professional, non-educator staff (hereinafter referred to as “carers” or “hostel staff”). Through these interviews, the CCL has been made aware that hostels in special schools are direly understaffed, resulting in the neglect of learners, and exposing them to risks which could otherwise be avoided. Two schools in the North West province reported that they house approximately 100 learners, each of whom have learners living with multiple disabilities – with only 8 staff members assigned to look after those learners in a shift. As a result, there are only two staff members assigned to a dormitory of approximately 25 children who must bathe the children, assist them with toileting and brushing their teeth, getting them ready for school in the morning, serving (and assisting them to eat) breakfast, lunch and dinner, preparing and distributing snacks, washing and ironing their laundry, tidying and mopping the hostels in the evenings, getting them ready for bed and assisting them during the night.
8. Similarly, the EELC was also informed of problems of understaffing during its investigations at a school hostel accommodating special needs learners in Kwa Zulu Natal in 2016 and 2017. At this hostel, one hostel staff member oversees approximately 30-42 special needs learners during a shift. These learners vary in ages, and live with different physical or mental disabilities, such as blindness or cerebral palsy. Consequently, hostel staff are not able to provide adequate supervision or individualised attention to each learner. In addition, hostel staff reported incidents of theft, severe bullying, and sexual

abuse amongst learners residing in the hostel, which may very well be the direct result of inadequate supervision due to understaffing.

9. As illustrated in paragraphs 7 and 8 above, the carers perform an enormous amount of parental-like work and can be said to stand in *loco parentis*. However, it is apparent from the situation described above that the carers are overburdened and are not capable of adequately and appropriately caring for the learners. Rather, the CCL has been advised by schools that learners are treated cursorily. One school complained to the CCL that two staff members are forced to go through quick motions to get 25 children ready for school or bed - a task which two parents might find daunting in a home with only 2 or 3 children.
10. The situation described above warrants additional concern when considering that the schools or staff that the CCL and EELC interviewed all accommodated children with multiple disabilities, who require additional attention and affection, as well as a certain level of skill and care. The risks that are attached to treating the learners in this manner are of great concern, as the already vulnerable children are susceptible to physical injury and the creation of feelings of neglect, loneliness, unworthiness and homesickness.
11. The risk of physical injury, as mentioned above, is especially great during bath-time. One school explained to the CCL that there is only one general assistant who is tasked with bathing seven learners in thirty minutes. This creates the possibility of learners slipping on wet bathroom floors, scalding themselves, falling off changing tables or being injured while being "handled" (a risk that may be considerably higher when taking into account the disability the learner has). There are, of course, other risks than those posed at bath-time, such as students falling or otherwise injuring themselves under circumstances where a general assistant is incapable of adequately supervising them.
12. Unfortunately, one North West school explained to the CCL that the risks outlined above have in fact resulted in a fatality. In 2006, a learner entered the bathroom, climbed into the bath and turned on the hot water tap, allowing the hot water to spill onto her legs. Having no sensation in her legs, she did not know how hot the water was and was not able to alert the general assistants, who were in the bathroom with another learner, to her presence or the danger she was in. The assistants found her minutes later, after she had already sustained second-degree burns. Although she was hospitalised and operated on several times, she passed away, apparently as a result of infection.

13. From the above it is clear that the shortage of hostel staff cannot be taken lightly as it leaves wide room for error, neglect and inadequate supervision that may result in bullying, theft, sexual abuse, and injury among learners. This is to the incredible detriment of the learners, who are among the most vulnerable in our society and who in turn require the greatest care.

No child care qualifications required for non-professional, non-educator staff who care for children

14. As hostel staff are tasked with the direct care of the learners, they clearly require a degree of skill or training to ensure learners are properly cared for. Alarming, however, hostel staff are not required to have any specific qualifications, including even basic training in child care, prior to being employed. The schools which the CCL interviewed confirmed that staff are not required to have any particular skill or training when employed as a non-professional non-educator staff members.

15. During its investigations concerning the aforementioned hostel in Kwa Zulu Natal, the EELC learned that hostel staff do not receive regular, up-to-date training concerning the treatment of special needs learners and the administering of medication. As at August 2017, the last training workshop for hostel staff was held in 2012. As such, hostel staff are not capacitated to adequately administer medication, nor are they properly trained to attend to medical emergencies that may occur amongst learners. There is also no first aid kit in the hostel, and hostel staff are left with very little support to attend to even minor injuries or ailments. The EELC was also informed that there is no nurse on duty at night in the hostel. Some learners suffer from conditions such as epilepsy, and are therefore left vulnerable to suffering through medical emergencies in the evenings without adequate medical support.

16. With respect to inadequate training and the risks attached, the CCL received a complaint from a special needs learner's parent in Gauteng. The parent advised the CCL that a staff member dispensed the learner's medicine to her, and when they thought that the medicine was not working, gave her two more doses. In the parent's view, this was a direct result of the fact that 1) the school does not have nurses available 24-hours a day and 2) when nurses are not present it is untrained and unqualified staff members who dispense

medication to learners. The incorrect dosage of medication led to the learner in question fainting several times, and thereby sustaining a concussion.

17. As a result of the information set out in paragraphs 14 to 16 above, all schools that the CCL interviewed agreed that it is crucial for all carers to have special qualifications in childcare. Moreover, they stated that specific additional qualifications were necessary depending on the nature of the learner's disability. For example, one school in the Eastern Cape stated firstly, that the current minimum qualification that carers have (which is currently Grade 10) is not enough, and second, that in their school (which is a school catering for deaf learners), the carers should at a minimum be able to sign. Remarkably, at this school - a school for deaf learners - many of the staff were not able to do so. Staff that cannot sign cannot adequately teach or communicate with deaf learners, resulting in severe prejudice to the learners. Three other deaf schools in the Eastern Cape shared this experience - demonstrating the need for special childcare qualifications that must also cater to the particular disabilities the learners have (as opposed to a one-size-fits-all approach).

Infrastructure and maintenance

18. During the EELC's investigations of the special school hostel in Kwa Zulu Natal, it became apparent that the hostel facilities are completely inadequate for the housing of special needs learners. In particular, the school hostel is designed for able-bodied learners and is not equipped to cater for special needs learners. As a result there are no railings or ramps to assist learners with physical disabilities, while bathroom facilities, eating facilities, and other rooms in the hostel are not designed to support special needs learners. For example, the hostel comprises of three floors that can only be accessed via stairs. Due to a lack of ramps, the EELC was informed that younger, or severely disabled learners are, at times, carried over the shoulders of other learners, in order to get to the second or third floors of the hostel.
19. The hostel is also extremely dilapidated and requires maintenance. For example, hostel doors are either missing or broken and many bedroom lockers are broken. Baths and showers are also severely dilapidated and require urgent maintenance or replacement. As at August 2017, there was no hot water available for hostel learners, and hostel staff were compelled to wake up at 02:00 in the morning to start heating water up. This was

done by using one electric element in a twenty five litre bucket of water. Three of these buckets of water were heated up in the morning, one of which was used for 8 small boys, and the rest shared amongst older learners to use in order to get ready for school. At the time, there was also no running water in the showers, and learners used a bucket of water while standing in the shower facility to wash themselves.

20. The CCL's visits to special needs schools in Limpopo and their legal representative's visits to schools in the Eastern Cape also revealed that special school hostels are dilapidated and the infrastructure is incredibly poor. One school in the Eastern Cape had unhygienic toilets that did not have seats, nor did they have rails to assist the learners in using them. In another Eastern Cape school, ramps to the school hostels were potholed and were hazardous to learners with physical disabilities - particularly those using mobility devices such as wheelchairs. The school also did not have perimeter fencing, which resulted in learners wandering off the premises. Further, at the same school, the lack of perimeter fencing resulted in several break-ins, including a break-in into the boys' hostel. In another special needs school hostel in the Eastern Cape, staff complained that one of the hostels did not have electricity which, amongst others, is critically necessary for communication between deaf learners who rely on signing. In this particular case, the children in question are forced to go to sleep when it becomes dark and complained of feeling lonely.

21. The CCL notes further problems with respect to the suitability of the infrastructure to the learner's disability. Many schools accommodating deaf learners complained that the infrastructure in the hostels did not take into account deaf learners' needs. For instance, the schools did not have warning systems (or bells) that used light (as opposed to sound) to indicate emergencies. In the hostel setting, one school did not have electricity, which as mentioned, deaf learners rely on for communication.

Corporal punishment and abuse

22. The CCL is aware that corporal punishment continues to be used in the special needs hostel environment. At least two schools in the Eastern Cape complained that their staff have administered corporal punishment on hostel learners. It must be noted that measures have since been taken to address this. Notwithstanding that, clearly abuse remains a problem.

23. While much is needed to combat the abuse of learners in special schools hostels, as a minimum, the vetting of staff would go some way to resolving the issue. Such vetting should include checks to ensure that the potential staff member does not have a criminal record, and also ensure the potential staff member's suitability to work with children.
24. In this respect, three schools in the Eastern Cape advised that the provincial Department of Education has recently started to check, prior to hiring staff, whether the potential employees have criminal records. However, the EELC and CCL are of the view that this must happen in all provinces. In addition to ensuring the potential staff member does not have a criminal record, investigations into the person's suitability to work with children must be undertaken - as a clean criminal record does not necessarily ensure the person is suitable to work with children.

Overcrowding in hostel rooms

25. In the hostel in Kwa Zulu Natal, the EELC found that learners are residing in overcrowded conditions in hostel rooms. In particular, hostel rooms are designed to accommodate 4 learners per room. However, 5 to 6 learners are placed in a room, and must share 4 lockers (some of which are broken) amongst them for the storage of clothes and personal items. The situation is exacerbated by the fact that learners in a room differ in ages and in physical and mental disability, which may increase the likelihood of bullying and conflict among learners.

Lack of scholar transport to and from the hostel

26. During the EELC's investigations in KZN, it found that learners, some of whom have severe physical disabilities, are compelled to walk from the school hostel to school and back on numerous occasions, as the school bus is either not operational, has no bus driver to operate the bus, or the bus collects learners living in the surrounding areas and cannot also manage the collection of hostel learners. Attorneys from the EELC have personally witnessed a learner carrying a severely disabled younger learner over their shoulder to school as the latter was not able to walk the distance without assistance. In addition, the route upon which hostel learners must walk to school is approximately 500 metres in length, is not demarcated for the learners, and runs alongside a busy road. Learners are

therefore walking through a public gravel path that taxis and cars use as a thoroughfare. Some hostel learners using this pathway have walking disabilities, are very young or use wheelchairs. As a result they are exposed to extreme danger and are at risk of being injured by ongoing traffic.

Lack of safe, educational activities and facilities in hostels

27. As hostel learners are often far from home and spend a large portion of their free time at the hostel, it is crucial that hostel facilities provide some form of safe, stimulating recreation to assist learners in socialising with each other, and engaging in extra mural activities that they would have been able to do if at home. At the hostel in Kwa Zulu Natal, the EELC was informed that there are no facilities to provide safe, educational entertainment for learners over the weekends. As learners cannot be properly supervised, they are kept inside the hostel as often as possible, and if they are permitted to spend time outside, they only have the use of the hostel grounds at their disposal. These grounds comprise mostly of gravel / tarred areas, are not properly enclosed, and have building material on site.

28. The CCL too, has been made aware of many complaints made by children in a special school in the Eastern Cape which similarly does not have a recreational programme, nor any facilities to support such a recreational programme. Numerous children complained of boredom and a lack of stimulation after school and on weekends. Despite this, there were no programmes in place to guarantee adequate stimulation and there were no games for the children to play. Attempts to generate their own activities were not supported - they were not able to read the library books as the library, despite containing books, was not operational. The children were also not allowed to make day trips to the mall on the weekends. Two other schools in the Eastern Cape stated that they also did not have recreational programmes. The schools similarly believed that this was problematic as the children were understimulated on the weekends. One of the schools attempted to facilitate sporting activities but as they did not have a field, the attempts were, by and large, futile. Another school explained that while they agreed that the lack of a recreational programme was a problem, the carers were exhausted over weekends, leaving little motivation to assist the children with recreational activities.

Lack of emergency procedures

29. The CCL was advised by the parent mentioned in paragraph 16 above that, despite the fact that the learner had been overdosed on medication and had fainted, the parent was informed only hours later, and no ambulance was called. The parent is of the view that this is a direct result of a lack of emergency procedures. Despite this incident, the CCL is advised that the school still does not have emergency procedures in place.

30. Another school in Limpopo complained to the CCL about the lack of emergency procedures in place, but when asked why they did not draft and implement one, admitted that first, there was no obligation on them to do so (indicating a need for hostels to have national regulations which schools are compelled to comply with), and 2) that they did not have the requisite expertise to draft such a procedure (indicating the need for government to provide some form of guidance).

Failed attempts to engage with state officials

31. Since the end of 2015, the EELC has attempted to raise awareness of the issues that affect, amongst others, conditions at a school hostel accommodating special needs learners in Kwa Zulu Natal. In particular, the EELC has written to various Kwa Zulu Natal officials working at different levels of the Kwa Zulu Natal Department of Education (“KZN DOE”), and has even escalated the matter to the Minister of Basic Education, with little success. The challenges the EELC has faced include severely delayed or no response to letters written to officials, limited access to task team reports and recommendations, which have been scant and vague, with no evidence of follow-ups, and severe difficulties in accessing the KZN DOE’s plans to address the problems facing the hostel. In addition, five investigations have been undertaken by the KZN DOE since 2011, the most recent being October 2015. However, to date, the conditions at the hostel remain substantially unchanged. The EELC has been informed that, in response to a recent letter, a new task-team is currently in the process of interviewing school and hostel staff.

The EELC and CCL’s recommendations and answers to questions posed by the SAHRC

32. Learners accommodated in special needs schools are evidently especially vulnerable and rely heavily on the care and support of hostel staff. It is an affront to both the learner’s right

to dignity and safety to allow such appalling conditions to continue. As such, the CCL and EELC make the following recommendations:

- 32.1. The National Learner Transport Policy (published on 23 October 2015, GGN 39314) (“NLTP”) states that when identifying beneficiaries of subsidized learner transport services, priority must be given to learners with disabilities, taking into consideration the nature of the disability. Provincial Learner Transport policies fail to adequately address the provision of transport to learners with disabilities. It is therefore recommended that provincial learner transport policies align themselves with the NLTP and engage specifically with the transport needs of disabled learners, either by amending current existing policies, or promulgating policies specifically designed to address this issue. This will minimise the risks attached to the children travelling on their own.
- 32.2. According to section 24 of the South African Schools Act, school governing bodies (“SGB”) of schools for learners with special needs must be comprised of certain categories of persons, which include experts in appropriate fields of special needs education. As many hostel staff members are appointed by SGBs, it is recommended that the Department of Education thoroughly investigate and monitor the school’s compliance with this section, to ensure that SGBs are properly constituted and able to make informed decisions regarding, for example, hostel appointments, and are well equipped to monitor and evaluate the management of special needs school hostels. This will assist in ensuring that appropriate hostel staff are employed by schools, which will in turn ensure that learners are more appropriately cared for.
- 32.3. Related to the above recommendation, section 20(1)(g) of the South African Schools Act states that the SGB is responsible for the administration and control of the school’s property, including school hostels. In light of this, the Department of Education must make greater effort to capacitate SGB’s and provide training on their roles and responsibilities in maintaining hostel infrastructure. This will of course minimise risks attached to inadequate infrastructure.

- 32.4. We further recommend that all special school hostels are immediately and urgently audited (which should include as a minimum site visits, as well as interviews with staff and affected learners) by a task-team convened for this purpose so that national government has first-hand knowledge of the infrastructure (and other) issues facing special school hostels. This will ensure government understands what *all* special school hostels require (for example, perimeter fencing) as well as what *individual* schools may require (a layout which is friendly to the learners' specific disability). This ensures that the hostel space is safe and user-friendly, thereby minimising any potential risks.
- 32.5. The Department of Education has not yet promulgated regulations for special school hostels. In fact, there is no law (or policy) at all which comprehensively surrounds and protects learners in special school hostels. As such, the EELC and CCL recommend that regulations for special school hostels are necessary and should be drafted in terms of section 61 of the Schools Act 84 of 1996. The CCL and EELC specifically recommend the drafting and promulgation of regulations as opposed to policy, as the latter does not hold the force of law and is therefore difficult to ensure compliance with.
- 32.6. In respect of the drafting of such regulations, the Department of Education should look to the regulations surrounding Child and Youth Care Centres for guidance. The regulations promulgated pursuant to the Children's Act, together with the norms and standards contained in Part V of the Annexure B of the Children's Act:
- 32.6.1. comprehensively delineates children's rights in CYCCs
 - 32.6.2. sets out appropriate procedures to discipline children,
 - 32.6.3. sets out complaints handling procedures for children and staff to follow,
 - 32.6.4. sets the minimum requirements for residential and recreational programmes,
 - 32.6.5. makes provision for application procedures for the registration of child and youth care centres;
 - 32.6.6. establishes minimum skills that staff at CYCCs must have (and sets out the process for interviewing them),
 - 32.6.7. requires that a central management board is established for CYCCs,

32.6.8. ensures that independent quality assurance processes are conducted,
and

32.6.9. ensures that individual development plans are drawn up for children

amongst others.

32.7. To the extent that regulations are drafted, stakeholder engagement and a period for comment will be necessary. Any regulations that are drafted must at a minimum ensure:

32.7.1. that there is regular independent oversight of special school hostels by a body or organisation which is adequately enabled to, at a minimum, conduct unhindered site visits to special schools, interview staff and learners, and make binding directives to those who have duties in respect of special school hostels,

32.7.2. that minimum qualifications for hostel staff are established, as well as additional special qualifications depending on the type of disability the staff member will be working with,

32.7.3. that the provincial Departments of Education and schools (or school governing bodies) are compelled to carry out appropriate checks on hostel staff to ensure their suitability to work with children,

32.7.4. that children's rights in the hostel environment are clearly delineated and that schools must explain these rights to the children,

32.7.5. that appropriate emergency procedures are put into place which take into account hostel layout and the children's disabilities, and which staff and children are aware of and trained in;

32.7.6. that adequate complaints procedures are put into place which children are aware of and which are accessible;

32.7.7. that adequate disciplinary procedures are put into place which children and staff alike are aware of; and

32.7.8. that adequate recreational programmes are put into place, as well as the support needed to run them.

32.8. In addition to the above, measures must be taken to ensure that abuse and corporal punishment is immediately and urgently halted, that shortages of staff are rectified so that there are appropriate numbers of staff members in hostels, that inadequate infrastructure is appropriately upgraded and that overcrowding in hostels is addressed.

32.9. In respect of infrastructure in hostels, we recommend that norms and standards are urgently established. This will go a far way to ensuring safety and security in hostels.

Conclusion

33. Learners with disabilities are an exceptionally vulnerable group that are often subject to discrimination and marginalisation. Within the context of school hostels, these learners are significantly dependent on the support and care of staff, and are greatly affected by the state of the facilities they reside in. The challenges raised above affect not only the quality of the lives of learners, but affect their dignity, emotional and physical well-being, and safety. Without serious and deliberate steps, these learners will continue to be exposed to harm by the very institution responsible for their care while away from home. The CCL and EELC therefore implore the SAHRC to consider its recommendations.