

A SPOTLIGHT ON THE WORK OF THE EELC LAW CLINIC 2022



The EELC runs a daily advice clinic which is available throughout the country and it is easy to access.



EELC

The Equal Education Law Centre provides a walk-in clinic which offers free legal advice and support on education related issues. EELC lawyers are hands on activists who provide legal materials, and strategic legal action to promote the fight for equal and quality education. The EELC champions legal and policy development in education, including sending submissions to relevant government institutions, conducting legal and policy research related to the objectives and where possible, assisting communities, community-based organisations and other institutions to formulate their own policy and legal perspectives.



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www.eelawcentre.org.za

OVERVIEW OF LAW CLINIC MATTERS RECEIVED IN 2022

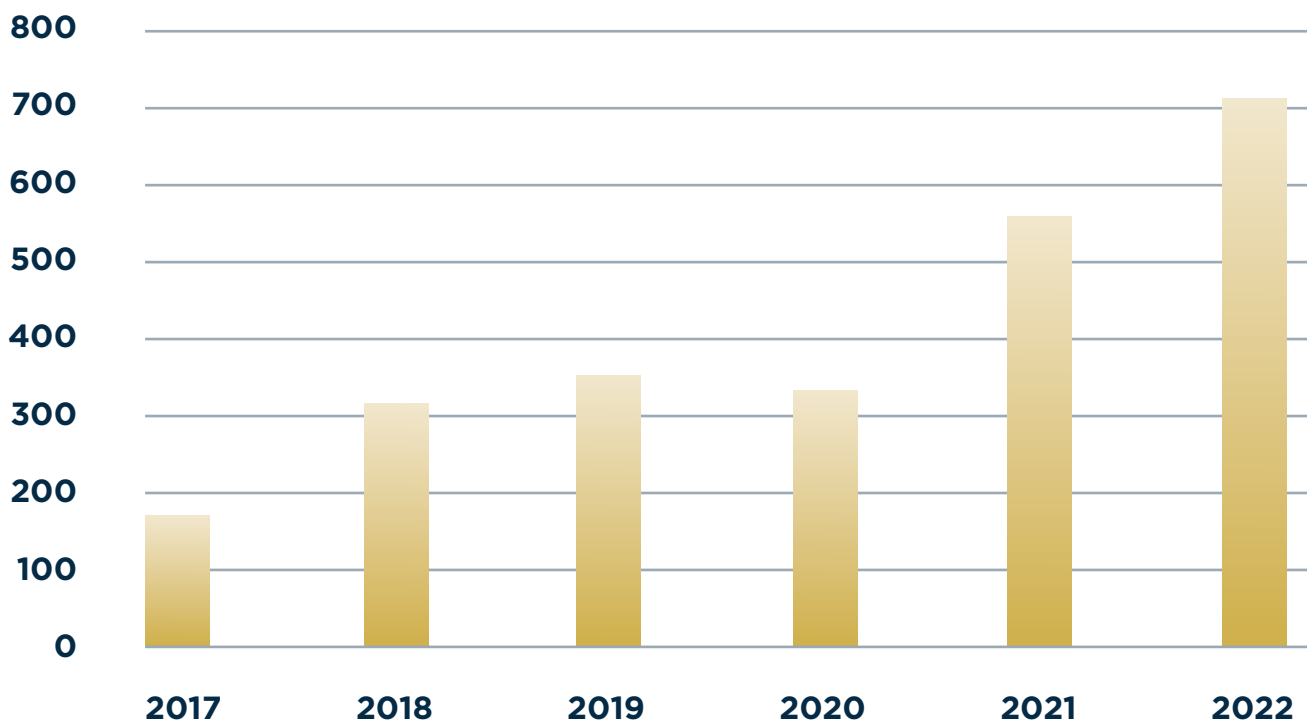
The Equal Education Law Centre (EELC) provides a pro bono specialist law clinic available to every person in South Africa, having particular regard to ensuring access to justice for persons who have been socially and economically disadvantaged. Through our law clinic, we seek to realise the potential of the law as a tool for social change. Our free-legal services are available on a daily basis to learners, parents, and communities across the country.

The issues we've dealt with during the course of 2022 have included matters such as unlawful school admission practices, school fee exemptions, unlawful disciplinary proceedings, and discrimination against learners in schools.

In 2022, we provided much needed access to education justice for over 700 people across the country.

After stable numbers in 2020- largely due to school closures during the COVID pandemic- we saw a 64% increase in matters received in 2021. We have received a further 30% increase in 2022. Our advice clinic numbers have therefore doubled in the past two years. Over the last 6 years, the EELC has provided access to justice to over 2000 clients across the country. These clients consisted of learners, parents, teachers, principals, school governing bodies, and communities.

NUMBER OF ENQUIRIES



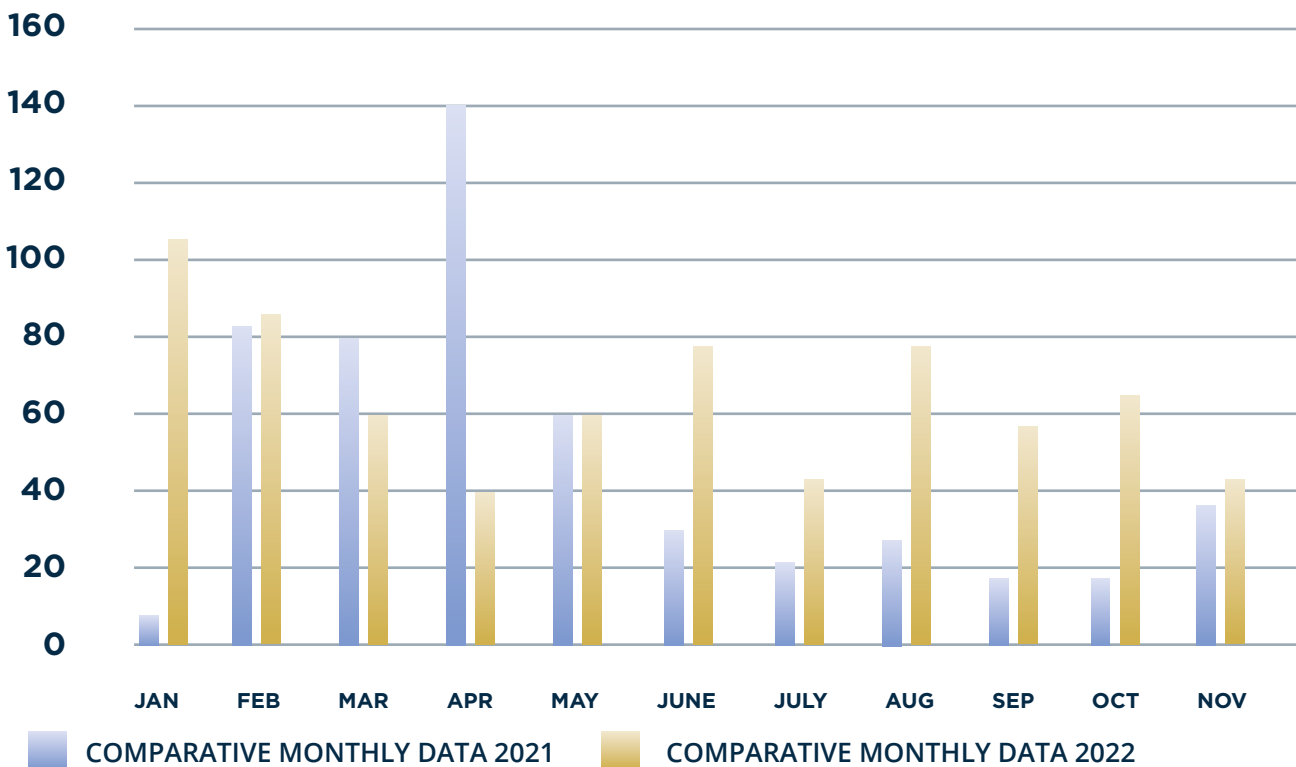
THE GRAPH ABOVE SHOWS A HISTORICAL COMPARISON OF THE TOTAL NUMBER OF MATTERS WHICH THE EELC HAS RECEIVED FROM 2017-2022.

BREAKDOWN OF MATTERS MATTERS RECEIVED IN 2022

Over the years, we've experienced a trend of high numbers in the first quarter of the year with numbers dipping mid-year and either remaining relatively low until the end of the year or beginning to increase again from around the month of September onwards. This year, however the numbers have remained consistent and high throughout the year, unlike in previous years.

An average of 63 matters were received each month as compared to the average of 48 in 2021. These consolidated monthly statistics are shown in the graph below:

COMPARATIVE MONTHLY DATA 2021-2022



VOICES OF THE LAW CLINIC



What I like most is the idea that we are not just a bunch of legal solutionists who receive a client, solve their problem and that's that. But we actually pride ourselves in taking the time to empower our clients, explain what their rights are, to simplify policies and processes for them to the extent that they are then capable of asserting their own rights. So, something as simple as empowering a client on what to do at any given situation makes all the difference for some people. For example, I had one matter with a client in Mpumalanga. I had just one consultation where I advised the client what their rights are, what procedure must be followed in the disciplinary hearing. The client later sent an email thanking me and told me that the advice I gave made all the difference in a young girl's life. Just the fact that one, simple consultation made such a big impact in another person's life makes me sure that legal empowerment is important, and I think it's fundamental to create social change. However small that may be because empowered people are able to empower others as well. That's the most important part of the law clinic for me.

EBRAHIEM DANIELS CANDIDATE ATTORNEY

VOICES OF THE LAW CLINIC



It warms my heart that we can restore dignity to the most marginalised. You'd often find that parents are disrespected by principals or teachers, but with us stepping in and assisting, we are able to restore dignity. Also, we can give them hope because sometimes, they never think that they have recourse, but with us stepping in, we give them hope in terms of resolving the issues that they face. And give their children, at most times, a second chance because you often find the children have been expelled unlawfully. We give them hope and we give the learners a second chance.

TASREEQ FERREIRA EELC LEGAL INTERN



The law clinic has always been the part of our work that I really enjoy because it gets us in contact or in touch with our clients. It gets us in touch with the ground and the realities of our clients and the challenges they face. It's always a pleasure to serve the people that we serve. What really warms my heart is seeing people that come to us hopeless have their hope restored when we successfully execute their mandate. It warms my heart even more when a parent sends me feedback, telling me that they are grateful for what we've done.

YOLISA PILISO CANDIDATE ATTORNEY



Working at the Law Clinic means changing people's lives and giving them a fighting chance, which would otherwise be stolen from them by the existing system. It's protecting one of the most important rights that one has.

PILA-SANDE MKUZO EELC ATTORNEY

WE WELCOME A NEW MEMBER TO OUR TEAM



In order to respond to the increasing numbers in our law clinic, in November we welcomed a paralegal to our team to assist with the work load and ensure quality assistance for as many people as possible. Please help us welcome our new team member, Phophi Madiehe.

Phophi is excited to use her skills and experience to make a positive impact in the fight for equal and quality education. She graduated with an LLB at the University of Free State and completed her Practical Vocational Training in 2021. She got admitted as an Attorney of the High Court at the Free State High Court in September 2022.

Phophi will be coordinating our law clinic administration and our client engagement.

DISCIPLINARY MATTERS 2022

“We need advice about **DISCIPLINARY ACTION** taken against our 13 year old son at his primary school as we feel that the correct procedure has not been adhered to.”

Concerned parent approaching the EELC

DISCIPLINARY PROCEDURES

IN SCHOOLS-KEY ISSUES AND
RECOMMENDATIONS FOR REFORM
ELC's Key recommendations:

Training and advocacy

Strengthening and clarifying existing provisions

Filling the gaps in the regulatory framework

DISCIPLINARY PROCEDURES IN SCHOOLS

Key issues and
recommendations
for reform

November 2022

From: [REDACTED]
Sent: Monday, 21 November 2022 07:40
To: EELC Intern2 <Intern2@eelawcentre.org.za>
Subject: Thank you..

Goodmorning I have been meaning to send you a Thank you note since last week but I have been busy

Thank you very much for assisting us with [REDACTED] placement I appreciate it if it wasn't for you I don't know what would have happened

We received an Sms stating that [REDACTED] will be attending school in [REDACTED] next

Thank you very much.

In 2021 our advice clinic saw a marked increase in parents and learners contacting us for advice on disciplinary proceedings and what to expect in a hearing. The specific issues parents and learners faced included 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.

Following targeted advocacy on our part- including an article by one of our attorneys- aimed at addressing these concerning trends, from April 2022 there was a significant spike in disciplinary matters, being either in the lead or the second highest number of new matters received – with 43% in April 2022; 38,1 % in May 2022; 29% in June 2022; and 19 % in July 2022, followed by a second spike

in August 2022 with a 60% lead for disciplinary matters. The disciplinary matters we received were from 6 of the 9 provinces.

These cases are of great concern as they result in learners being out of school for long periods of time without any access to basic education. A concerning trend in disciplinary matters is that schools tend to discipline learners who are clearly rather in need of help and support as envisaged by the SIAS policy. We see learners with drug problems being targeted and victimized until disciplinary cases are built against them. The same appears to happen with learners who have 'behavioral issues.' These issues are covered more extensively in our [Newsletter](#) and latest [Report](#) on Disciplinary Procedures in Schools. Our positive and robust engagement with the DBE and provincial education departments following the publication of our report is noteworthy.

EXPULSION MATTER

"In one of my matters, the actions and decisions of the school seriously prejudiced the learner, as the learner had been out of school for nearly five months, he did not write his June examinations and in that the learner remained unplaced at home. The EELC intervened in the matter by discussing the matter with the SGB chairperson, who reiterated the school's stance and refused to overturn their decision.

The EELC addressed a letter to the HOD in Kwa-Zulu Natal requesting urgent intervention and assistance in getting the learner back in to School immediately, that action be taken against all the members of the SGB and Disciplinary Committee who were involved in the process and further that action be taken against all educators that have been implicated.

The learner has since returned to school and is continuing with his education, while the department continues to investigate the matter." Pila-sande Mkuzo

TOWARDS SYTEMIC CHANGE IN ADMISSIONS TO SCHOOL

“DISRUPTIONS AND SCHOOL ABSENCE DISPROPORTIONATELY AFFECTS THE MOST VULNERABLE OF CHILDREN AND LEARNERS”
(Ursula Kate Hoadley, Professor University of Cape Town)

“OCCASIONALLY, I FIND HIM FITTING HIS SCHOOL UNIFORM IN FRONT OF THE MIRROR, REMINISCING ABOUT BEING IN THE CLASSROOM WITH HIS PEERS. HIS HOPES OF ACCESSING EDUCATION IN THE WESTERN CAPE HAVE BEEN DELAYED AS HE WONDERS AT HOME WITHOUT A SCHOOL PLACEMENT”
Fifth applicant

“SUBSTANCE ABUSE, AND TEENAGE PREGNANCIES ARE ALL PREVALENT IN OUR COMMUNITY. I AM WORRIED THAT IF SHE REMAINS OUT OF SCHOOL, SHE MAY GET ENTANGLED IN OUR COMMUNITY'S TROUBLES”
Third applicant

“The South Africa Schools Act requires all children of compulsory school going age to **“ATTEND SCHOOL FROM THE FIRST SCHOOL DAY OF THE YEAR”** yet some learners in the WCED are still at home.

Admissions matters, particularly from the Western Cape, have remained a dominant trend in our clinic accounting for over 40% of our matters. This led to the development of a strategic litigation matter aimed at addressing the systemic blockages to school admission in the Western Cape. At the commencement of each academic year, thousands of learners within the Western Cape find themselves without school placement. Inadequate year on year planning; weak administrative systems within education districts and an online system which is not fully accessible for all parents and caregivers contribute to this reality.

Given EELC's expertise in this area and our growing number of admission matters over the years we instituted strategic litigation in our own name alongside the caregivers of seven learners who remained without school placement well into the first term of the academic year. The seven parents/caregivers highlighted concerning practices which were taking place within the Metro East Education District. These included being

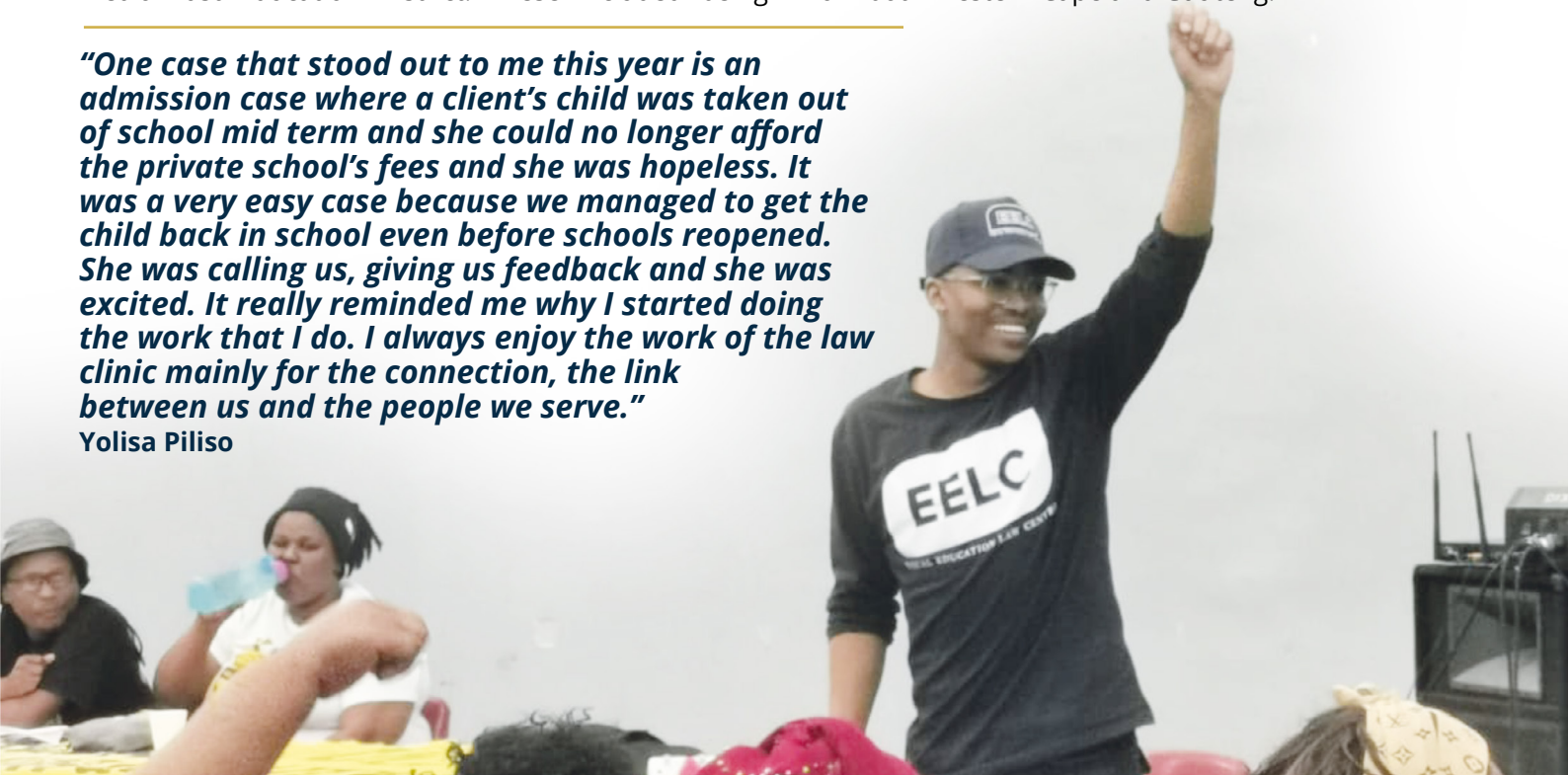
sent away without receiving any assistance, and/or simply being told to reapply for 2023, in contravention of the existing legislative framework and obligations. A favourable judgement was received directing the education department, to place the seven learners in school. The Court Order further instructed them to take all reasonable and necessary steps to ensure that all learners who are in a similar position having remained at home for the 2022 academic year, are also placed in school. The learners were, in terms of the court order, provided with Individual Support Plans to assist them due to the learning time which they had lost. Read more about this case on our [website](#).

Over 300 similarly placed learners who were out of school have been placed in school as a result of this matter!

In order to empower parents we also updated our [admissions Know your rights material](#) and held Know Your Rights Workshops with Equal Education Parents from both Western Cape and Gauteng.

“One case that stood out to me this year is an admission case where a client's child was taken out of school mid term and she could no longer afford the private school's fees and she was hopeless. It was a very easy case because we managed to get the child back in school even before schools reopened. She was calling us, giving us feedback and she was excited. It really reminded me why I started doing the work that I do. I always enjoy the work of the law clinic mainly for the connection, the link between us and the people we serve.”

Yolisa Piliso



DEVELOPMENT OF #KNOW YOUR RIGHTS MATERIAL



The formation of the EELC was borne out of a commitment to the crucial link between legal advocacy and social mobilisation. Consequently, through the trends which we identify from our law clinic, the EELC develops accessible legal materials, in addition to providing specialised legal services and advice to clients on a daily basis. This Know Your Rights material can be accessed on our [website](#).

SOME OF THE MATTERS WE ADDRESSED

Report-Cards and Fee-related issues

45 COMPLAINTS REGARDING REPORT CARDS and 23 SCHOOL FEE-RELATED MATTERS

Issues related to the withholding of learners' report cards and school fee-related issues remained high this year.

Many parents approach us seeking assistance with cases where schools, both public and private schools, make use of irregular or unlawful practices when collecting outstanding school fees. Issues have included the cancellation of contracts (in the case of private schools), withholding reports, exclusion of learners where parents are unable to pay school fees and not allowing learners to write exams. Anathi Canham and Tasreeq Ferreira wrote an article about this. Read [here](#)

Developing Equality Court Litigation

We have completed the drafting of papers which are to be filed in the Equality Court in a matter which involves a young 16-year-old Muslim learner who has been discriminated against on the basis of her religion and gender. This learner was forced by her school to wear a school skirt which she believes does not comply with her choice of expression and her religious obligations of dressing modestly. As such, she decided to wear school pants.

As a result of this, the school victimised her, made discriminatory comments against her, placed her in numerous detentions, forced her to sit outside the principal's office for a month (thereby missing classes) and held a disciplinary hearing against her as the school's disciplinary policy did not allow female learners to wear pants. The only exemption that the school was willing to grant was to force her to wear a long skirt up to her ankles – a concession which she was not comfortable with.

Our intervention started out by writing two letters to the school requesting them to refrain from victimising her and discriminating against her. The responses to our letters were not forthcoming, we decided on a meeting and met with the school in August 2022.

The school was not willing to compromise. We have proceeded to draft an application to the Equality Court which is due for filing. We are asking the court to declare the decisions by the school to constitute discrimination under the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), and that the decision and school policy infringes on the learners' rights to equality, dignity, freedom of religion, freedom of expression, best interests of the child, right to basic education and cultural rights. We are also asking the school to amend their policy as well, to remove all disciplinary sanctions from her record. The papers have been finalised and we intend to file in the first quarter of 2023.

ZOOM IN ON SOME OF EELC'S MILESTONES OF 2022

A DECADE, LITIGATION AND COURT ORDERS

- We celebrated 10 years since our formation! – see our 10-year booklet [here](#).
- We assisted over 700 walk in clinic matters (The highest number since our inception and a further 30% increase on our numbers from 2021. Matters were received from all 9 provinces, with an average of 63 matters being received each month).
- We litigated 5 strategic litigation matters
- We monitored implementation of 4 court orders through ongoing advocacy and engagement. See our litigation matters [here](#).
- Over 10 community engagement and legal empowerment workshops with paralegals, EE members and organisations

REPORTS, PUBLICATIONS AND SUBMISSIONS

- Publication of new Know your rights [material](#)
- 12 additions of our Education [Monitoring Brief](#)
- 9 submissions in respect of various South Africa laws and policies and 5 submissions to international and regional bodies. See our submissions [here](#)
- Publication of full version of the [“Let In or Left Out: a 20-year review of the regulatory framework for inclusive education and its implementation in South Africa”](#)
- Publication of report, titled [“Improvement in quality learning outcomes & equity in public education in South Africa: A spotlight on “underperforming” Schools](#)
- Publication of a report titled [“DISCIPLINARY PROCEDURES IN SCHOOLS: Key Issues and Recommendations for Reform”](#)

EELC IN THE MEDIA

over 25

TV and radio interviews

14

Op-ed's which can be accessed [here](#)

54

media mentions which can be accessed [here](#)

EELC

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