

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO. _____

In the matter between:

EQUAL EDUCATION LAW CENTRE

First Applicant

████████████████████

Second Applicant

████████████████████

Third Applicant

████████████████████

Fourth Applicant

████████████████████

Fifth Applicant

████████████████████

Sixth Applicant

████████████████████

Seventh Applicant

And

HOD: WESTERN CAPE EDUCATION DEPARTMENT

First Respondent

DIRECTOR OF THE METRO EAST EDUCATION DISTRICT

Second Respondent

MEC FOR EDUCATION, WESTERN CAPE

Third Respondent

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SIGNED AT **CAPE TOWN** ON THIS THE **9TH** DAY OF **MAY 2022**.

EQUAL EDUCATION LAW CENTRE

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C/o NDIFUNA UKWAZI

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 Cape Town

Ref: Daniella Louw

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
 35 Keerom Street,
 Cape Town

8001

AND TO: **THE STATE ATTORNEY, CAPE TOWN**
Attorneys for the First and Third Respondent
4th Floor, Liberty Life Centre
22 Long Street
Cape Town
8001
Per Email: edumin.edumin@westerncape.gov.za

AND TO: **HOD BRENT WALTERS**
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AND TO: **DIRECTOR OF METRO EAST EDUCATION DISTRICT**
Second Respondent
Belhar Rd & New Nooiensfontein Drive,
Kuils River
Cape Town
8001
Per Email: Landeka.Diamond@westerncape.gov.za

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO. _____

In the matter between:

EQUAL EDUCATION LAW CENTRE

First Applicant

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Seventh Applicant

And

HOD: WESTERN CAPE EDUCATION DEPARTMENT

First Respondent

DIRECTOR OF THE METRO EAST EDUCATION DISTRICT

Second Respondent

MEC FOR EDUCATION, WESTERN CAPE

Third Respondent

NOTICE OF MOTION

PART A

TAKE NOTICE THAT the Applicants intend to make application to the above court on **23 MAY 2022** at **10:00** or as soon thereafter as counsel may be heard for an order in the following terms:

- 1 The matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the forms and service provided for in the Rules are dispensed with to the extent necessary.
- 2 Directing the first and or second respondent(s) to place the learners whose names appear from annexure 1 to the Notice of Motion into schools for the 2022 academic year within 5 days of this Court's order.
- 3 Directing the first and second respondents to take appropriate remedial plans in respect of the learners in annexure 1 to the Notice of Motion designed to ensure that the affected learners can meet the academic requirements for the 2022 school year.
- 4 The remedial plan mentioned in paragraph 3 above must include all reasonable measures, and the following specific measures:
 - 4.1 Determine the Learners' academic and psycho-social needs in accordance with accordance with Department of Basic Education's Screening, Identification, Assessment and Support Policy ("**SIAS Policy**").

- 4.2 Provide the second to seventh applicants with copies of the Individual Support Plans (ISPs) for the Learners.
 - 4.3 The ISPs must be put into effect within 7 days of the placement of the Learners.
 - 4.4 The first respondent or its designated official(s) shall serve ISPs on the applicants and file at Court.
- 5 Directing the first and second respondents to:
- 5.1 Conduct an Audit to determine the number of unplaced learners within the Metro East Education District within two weeks of this Court's order.
 - 5.2 In completing the Audit referred to in paragraph 5.1, the first and second respondent must issue a notice calling on parents and caregivers with unplaced learners within the Metro East Education District to attend at the District office to complete a learner placement form and to be placed on the respondents' system.
 - 5.3 The notice is to be published in local newspapers and broadcast on local community radio stations in Xhosa and English.
 - 5.4 The Audit is to be provided to the Applicants within one week of its completion.
- 6 Any respondent opposing Part A of this application is directed to pay the applicants costs of Part A.

7 Further and or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **TSHEGOFATSO PHALA** and the annexures thereto, and the supporting affidavits of [REDACTED]

[REDACTED]

[REDACTED] will be used in support of this application.

TAKE NOTICE FURTHER that, should any of the respondents intend to oppose this application, they are required to:

- a) file a notice of intention to oppose by no later than 17:00 on 10 May 2022.
- b) file an answering affidavit, if any by no later than 12:00 on 13 May 2022.
- c) The applicants' replying affidavit to part A, if any, will be filed by no later than Thursday 17 May 2022.
- d) further, that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

PART B

TAKE NOTICE THAT the Applicants intend to make application to the above court on a date to be arranged with the Registrar for an order in the following terms:

- 1 Directing the first and second respondents to comply with their statutory and policy obligations in terms of the Schools Act, Admission Policy for Ordinary Public School promulgated in terms of section 3(4)(i) of the National Education Policy Act 27 of 1996 and the Western Cape Education Department Policy for the Management of Admission and Registration of Learners at Ordinary Public Schools and to place all eligible learners and those of compulsory school going age, who are similarly placed, in grade appropriate public schools.
- 2 Declaring to be unconstitutional, unlawful and reviewing and setting aside the failure by the first and second respondents to take a decision on the placement of the Learners in the 2022 academic year.
- 3 *In the alternative to 1* to the extent necessary:
 - 3.1 reviewing and setting aside the first and second respondents' decision to refuse the Learners placement in a public school for the 2022 academic year.
 - 3.2 Exempting the applicants from the obligation to exhaust any internal remedies in terms of section 5(9) of the Schools Act.
- 4 Declaring that the first and second respondents have subjected the Learners to repeated violations of their constitutional and statutory rights due to the delayed

processing of their placements in grade appropriate schools in the Metro East Education District.

- 5 Declaring that the first and second respondents failed in their constitutional and statutory obligations to administer the admission of unplaced learners in the Metro East Education District in a lawful manner.
- 6 Declaring that the third respondent has failed to comply with her statutory and constitutional obligations to diligently and without delay ensure the availability of sufficient school places for every learner that lives in the Western Cape.
- 7 Directing the first and third respondents to furnish the First Applicant with a plan on steps that will be taken by it to ensure that sufficient school places are available for learners at public schools by the commencement of the 2023 academic year.
- 8 Directing the second respondent to develop a plan to assist unplaced and late registration learners for the 2023 academic year.
- 9 Directing any respondent who opposes Part B of this application to pay the costs, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel.
- 10 Granting further and / or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **TSHEGOFATSO PHALA** will be used in support of this application together with the affidavits of [REDACTED]

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notice of motion and/or supplement their founding affidavit, by delivery of a notice and accompanying affidavit.

TAKE NOTICE FURTHER that the applicants have appointed the offices of their attorneys, **Ndifuna Ukwazi**, located at 18 Roeland Street, Cape Town, as being the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if the respondents intend to oppose this application they are required to –

- (a) within fifteen (15) court days after receipt of this notice of motion or any amendment of it, deliver notice to the applicants that they intend to oppose this application and appoint in such notice an address within fifteen (15) kilometers of the office of the Registrar of this Honourable Court at which they will accept notice and service of all process in these proceedings; and
- (b) within thirty (30) court days after the expiry of the time referred to in Rule 53(4) of the Uniform Rules of this Honourable Court, deliver any affidavits they may desire to answer the allegations made by the applicants.

TAKE NOTICE FURTHER that if no notice of intention to oppose is given, this application will be set down on the unopposed basis and proceed on a date to be determined by the Registrar of the above Honourable Court.

A9

DATED at _____ on this the _____ day of **MAY 2022**.

EQUAL EDUCATION LAW CENTRE

Attorneys for the Applicants

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8 Mzala Street

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TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

35 Keerom Street

Cape Town

8001

AND TO: HEAD OF DEPARTMENT, WESTERN CAPE EDUCATION

DEPARTMENT

First Respondent

1 North Wharf Square

2 Lower Loop Street

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A10

Per Email: edumin.edumin@westerncape.gov.za

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Second Respondent

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AND TO: THE STATE ATTORNEY, CAPE TOWN

Attorneys for the Third Respondent

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22 Long Street

Cape Town

Per Email: edumin.edumin@westerncape.gov.za

Annexure A A11



APPLICANTS – LEARNERS	GRADE
1. [REDACTED] on behalf of [REDACTED] (15 years old) and [REDACTED] (13 years old).	[REDACTED] (9), [REDACTED] (8)
2. [REDACTED] on behalf of [REDACTED] (14 years old)	10
3. [REDACTED] on behalf of [REDACTED] (15 years old).	9
4. [REDACTED] on behalf of [REDACTED] (17 years old)	11
5. [REDACTED] on behalf of [REDACTED] (12 years old)	5
6. [REDACTED] on behalf of [REDACTED] (19)	11

The Equal Education Law Centre is managed
By the Equal Education Law Centre Trust.

Trustees:

Adv. Michelle Norton SC Tatum Howie
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Justice Catherine O'Regan Michael Mbikiwa
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