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COMMENT

ON THE DRAFT REGULATIONS RELATING TO MINIMUM UNIFORM NORMS AND STANDARDS FOR PUBLIC SCHOOL INFRASTRUCTURE GG 36837, GN 932 OF 2013; 12 SEPTEMBER 2013

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A) INTRODUCTION

1. This is a joint comment prepared by Equal Education (EE) and the Equal Education Law Centre (EELC) in response to the Minister of Basic Education’s invitation for submissions on the Draft Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure (‘the Draft’).
2. The Draft was published on 13 September 2013 pursuant to an order-by-consent obtained at the instance of EE in the Bhisho High Court on 11 July 2013. By court order the Minister of Basic Education (‘the Minister’) has until 30 November 2013 to promulgate legally binding minimum uniform norms and standards on school infrastructure which must also contain timelines for compliance.
3. The Draft currently being commented on was released following widespread criticism of the Minister’s earlier draft on norms and standards relating to school infrastructure. This earlier draft was published on 8 January 2013 following a settlement agreement entered



into between EE and the Minister in terms of which a final draft was meant to be published by 15 May 2013.¹

4. However this date was missed because, as the Minister explained by way of letter to EE, the Minister had discerned that it was undesirable for her to finalise and promulgate the draft published in January this year as *“in the main, stakeholders objected to the fact that norms and standards lack substance and certainty, and that there is no clear framework or plan for implementing norms and standards.”*²
5. EE recognises that the Draft appears to be an attempt to engage with the criticisms flowing from the earlier 2013 Draft. In particular, EE welcomes the much needed introduction of accountability mechanisms. In the main, this comment serves to provide suggestions aimed at strengthening the accountability aspects of the Draft and ensuring sufficient prioritisation of those norms which require urgent redress. This will ultimately help to ensure that the regulations translate into tangible improvements in school infrastructure across the country and are capable of effecting real change in the schooling lives of learners.
6. During the previous round of comments on the January 2013 draft, EE provided an extensive submission³ detailing the context and history of EE’s norms and standards campaign, the dire need for norms and the broad support for norms and standards within the State and Chapter Nine institutions. These issues will not be re-canvassed in depth here, nevertheless EE’s 31 March 2013 comment provides an important vantage point from which to finalise the regulations.
7. During the current four week long comment period EE arranged learner workshops in the Eastern Cape, KwaZulu-Natal, Limpopo, Gauteng and the Western Cape for purposes of obtaining learner input on the Draft. Through this process EE was able to obtain over 285 individual learner submissions.

¹ Settlement agreement entered into between EE and the Minister on 19 November 2012. Accessible at: [http://www.equaleducation.org.za/sites/default/files/2012%2011%2019%20signed%20settlement%20agreement%20\(1\).pdf](http://www.equaleducation.org.za/sites/default/files/2012%2011%2019%20signed%20settlement%20agreement%20(1).pdf)

² Letter to EE from Minister Motshekga dated 9 May 2013.

³ EE’s 31 March submission is accessible at <http://www.equaleducation.org.za/content/2013/06/25/ee-comment-on-draft-min-norms-stds-31-march-2013.pdf>



8. In addition EE also conducted parent branch meetings in the Western Cape and received parents' written thoughts on the Draft. Whilst each of these individual contributions will also be submitted, the Appendix attached to this comment weaves together and provides an analysis on some of these profound testimonies and personal recommendations. The Appendix forms part of and should be read as being incorporated into this Comment.

B) BRIEF BACKGROUND

9. In the opening words of Mhlantla AJ's majority judgment in the recent Constitutional Court case of *MEC for Education in Gauteng Province v Governing Body of Rivonia Primary* she declares that:

*“Section 29 of the Constitution guarantees everyone the right to a basic education. That is the promise. In reality, a radically unequal distribution of resources – related to a history of systematic discrimination – still makes this constitutional guarantee inaccessible for large numbers of South Africans.”*⁴

10. Nowhere is the disparity the Judge writes of more visibly apparent than in the area of school infrastructure. The Department of Basic Education's (DBE) own report,⁵ published in May 2011, indicates that schools in the Eastern Cape and KwaZulu-Natal are in the worst condition but that the problem of poor infrastructure is also found in other provinces.
11. To illustrate, the DBE's own statistics show that whilst in the Eastern Cape 20.6% of public schools have no electricity supply, this figure drops dramatically in respect of Gauteng, standing at 0.6%, and the Western Cape where 0.1% of schools suffer this infrastructural deficit. In the Eastern Cape 9.7 % of public schools have no ablution facilities whatsoever whereas in Gauteng this figure stands at 0.3%.⁶ Similar trends are

⁴ MEC for Education, Gauteng and Others v Governing Body of the Rivonia Primary School and Others CCT 135/12 [2013] ZACC 34 at para 1.

⁵ The National Education Infrastructure Management System Report (NEIMS) published by the DBE in May 2011. NEIMS is a database kept by the DBE since about 2007 containing information pertaining to infrastructure at South African schools. Accessible at <http://www.equaleducation.org.za/sites/default/files/Annexure%20YD10.pdf>.

⁶ NEIMS, May 2011.



apparent across the board including in relation to water supply, libraries and laboratories. These statistics are a stark indication of how the right to an adequate basic education remains but a promise for large numbers of learners and that some of the provinces are particularly badly affected.

12. Mhlantla AJ in her judgment goes on to explain that *“the question we face as a society is not whether, but how, to address this problem of uneven access to education.”*
13. It was with this very question in mind, and armed with the knowledge that reputable international research highlights the correlation between the quality of school infrastructure and learner outcomes,⁷ that EE embarked upon its sustained campaign to ensure that the Minister promulgates meaningful regulations to establish minimum uniform norms and standards for school infrastructure. This is in line with the Minister’s responsibilities under section 5A of the South African Schools Act (SASA).
14. Since the inception of the campaign, EE members have marched, picketed, fasted, petitioned and written innumerable letters to the Minister. All of this was done in an attempt to implore the Minister to introduce clear and legally binding minimum standards for school infrastructure.
15. In addition, during the previous call for public participation on the January 2013 draft, EE received over 700 submissions from parents, teachers and community members across the provinces, documenting their personal testimonies of challenges experienced as a result of poor infrastructural conditions and containing their individual inputs and ideas for improvement on the proposed standards.⁸ Similar contributions were received during the current comment process and have provided immense assistance in shaping and informing this submission.

⁷ These points were made in EE’s Founding Affidavit in the norms case which resulted in the court settlement with the Minister. They are common cause. The DBE’s NPEP states *“... recent studies show, there is a link between the physical environment learners are taught [in], and teaching and learning effectiveness, as well as learning outcomes. Poor learning environment have been found to contribute to learner irregular attendance and dropping out of school, teacher absenteeism and the teacher and learners’ ability to engage in the teaching and learning process.”*

⁸ Appendix to EE’s 31 March 2013 comment. Accessible at: <http://www.equaleducation.org.za/content/2013/06/25/ee-appendix-to-comment-on-draft-min-norms-stds-31-march-2013.pdf>



16. EE welcomes this opportunity to assist the Minister in formulating clear and comprehensive norms and standards which will ultimately help to address the problem of uneven access to decent schooling environments.
17. This comment is divided into two sections, one aimed at assisting with strengthening the general provision in section 3 of the Draft and the other providing specific suggestions on the content of the proposed norms in relation to specific infrastructural aspects governed by the Draft.

C) REGULATION 3:

(i) **Timelines - Need for staggered deadlines**

18. The Draft proposes two timeframes for compliance, a 10 year period and a 17 year period. Classrooms, electricity, water, sanitation and perimeter security are to be “*phased in over a period of 10 years*” from the date of publication, by 30 November 2023, with the remainder of the norms to be achieved by 31 December 2030.⁹
19. EE welcomes that the Draft, in comparison to the 13 January draft, now commits to specific target dates for ensuring that all schools comply with norms and standards. We have always acknowledged that compliance will inevitably occur in a “*phased*” manner and that infrastructure norms, once introduced, would not be realised overnight. However, adequately crafted norms should aid in ensuring sufficient accountability so that all schools are ultimately brought into compliance over a reasonable period of time.
20. Whilst we do not take issue with the principle of setting outer timeframes for total compliance, we would strongly urge the DBE to set short and medium term binding deadlines leading up to final time periods for delivery. In addition to the extent that the currently proposed ten year period is applicable to the roll out of infrastructure essentials such as an adequate water supply, EE is of the opinion that this time period is unacceptable.

⁹ Draft at section 3(1)(b)(i) and (ii).

21. To do so will be universally beneficial: the public will be aware of what to expect and when, the provinces will be fully cognisant of its delivery responsibilities and the DBE will be assured that it will be able to carry out its statutory obligations as mandated by the norms themselves.
22. The objectives of good planning and adequate accountability would be profoundly improved by ensuring that outer time periods are supported by timely sequenced shorter legally binding benchmarks leading up to the end goal delivery dates. This will also help to guard against any likelihood of complacency which may creep in as a result of a legally demanded distant deadline only requiring compliance on a far-off future date.
23. The value of the grassroots accountability objectives of the norms and standards would be almost wholly undermined if learners are left with only this elusive promise of full delivery at an endpoint which will not occur in their schooling lifetime. As Tibatso, a learner from Tembisa West Secondary School explains, *“In 17 years I’ll be so old, having children, and they cannot learn under such conditions.”*
24. Similar despondent sentiments are echoed by a concerned EE parent member from Cape Town, *“[a] period of 10 years is way too long, it only means that those who are at school now will not benefit the changes of so many things e.g. Sanitation, Libraries etc.”*
25. Interim deadlines will provide tremendous assistance in ameliorating understandable concerns that delivery is only really promised to occur and will therefore only actually unfold in a generation’s time. Interim delivery obligations will not only serve to prevent complacency but will help to ensure that Government is not overburdened with attempting to meet deadlines towards the final stages of the phasing in periods.
26. The complacency point came out during EE’s public meetings with one learner from Sizwe Senior Secondary School relaying their anxiety that: *“Procrastination is the thief of time, if the Minister keeps on proposing too much time she will end up not providing any of the things she lists on the draft”*.
27. Comparable concerns are reflected by EE’s Western Cape parent member sentiments with one parent, Vathiswa Vinjwa of Mandela Park enquiring *“On your draft you tell us about the 10 years, what will happen between these years?”* And Nontuthuzelo Phakade



of Makhaza, Khayelitsha asking “*Then you start building those you promise us after ten year. Please give us exactly what will happen after you sign this draft”.*

28. The introduction of interim deadlines would undoubtedly go a long way towards allaying some of the fears expressed by parents and learners. Timeframes need to be linked to the needs of schools, the amounts of improvements needed, the government’s capacity and the speed at which it can deliver compliant schools.
29. It is not acceptable to simply legislate the end goal posts absent any other legally binding field markers as this would primarily serve to push compliance out as far as possible thereby sheltering government and officials from being held accountable for the proper provision of school infrastructure.
30. It is therefore strongly recommended that earlier deadlines are inserted as these would serve as significant flagged opportunities for reflection and reassessment of progress achieved and what is still required in order to meet the outer time periods. This will also aid MEC’s when fulfilling their annual planning and reporting obligations to the Minister both in terms of section 58C of SASA¹⁰ and through the mechanisms contained

¹⁰ Section 58C reads as follows:

1) The Member of the Executive Council must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), ensure compliance with—

a) norms and standards determined in terms of sections 5A, 6 (1), 20 (11), 35 and 48 (1);

(2) The Member of the Executive Council must ensure that the policy determined by a governing body in terms of sections 5 (5) and 6 (2) complies with the norms and standards.

(3) The Member of the Executive Council must, annually, report to the Minister the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply.

(4) Any dispute between the Minister and a Member of the Executive Council in respect of non-compliance with the norms and standards contemplated in subsection (1) must—

(a) be dealt with in accordance with the principles of co-operative governance referred to in section 41 (1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005); and

(b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.

(5) The Head of Department must comply with all norms and standards contemplated in subsection (1) within a specific public school year by—



in the Draft. These earlier binding obligations will further aid the Minister in discharging proper oversight.

31. The difficulty in implementing these regulations with the time periods as is, is explained by Luthando Louis Nkwenkwezi (a member of EE’s Victoria Mxenge Khayelitsha parent branch) as follows: *“the delaying techniques. . . are not helping us whatsoever. It is also difficult to implement these regulations norms and standards step-by-step, starting with one facility at time, within a particular financial year? Rather than waiting for a period of ten years for such important facilities (such as laboratories) to be provided?”*
32. Whilst it has never been EE’s position that norms and standards must be realised overnight, the norms and standards campaign is predicated on binding regulations as a vehicle that will inform proper planning processes and ensure accountability. These objectives can only be achieved through legally binding bench-marked delivery periods.
33. Without being too prescriptive possible options include marking particular periods with particular percentage delivery objectives including possibly setting a halfway mark for all norms indicating what must be achievable by then.

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- (a) *identifying resources with which to comply with such norms and standards;*
 (b) *identifying the risk areas for compliance;*
 (c) *developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;*
 (d) *developing protocols with the schools on how to comply with norms and standards and manage the risk areas; and*
 (e) *reporting to the Member of the Executive Council on the state of compliance and on the measures contemplated in paragraphs (a) to (d), before 30 September of each year.*

(6) *The Head of Department must—*

- (a) *in accordance with the norms and standards contemplated in section 5A determine the minimum and maximum capacity of a public school in relation to the availability of classrooms and educators, as well as the curriculum programme of such school; and*
 (b) *in respect of each public school in the province, communicate such determination to the chairperson of the governing body and the principal, in writing, by not later than 30 September of each year.*



(ii) **Timelines - need for 'emergency norms'**

34. Directly related to the need for staggered timeframes, is the need for the shortest of those time frames to speak specifically to urgent and hazardous situations.
35. It is prudent to recognise that there are schools across the country that are currently operating under hazardous conditions that pose an immediate threat to learners' safety and well-being and that require urgent redress.
36. This can be dealt with by making a separate provision for safety norms, a concept equated with emergency needs. Where schools do not meet infrastructural safety norms urgent action must follow.
37. Whilst the current draft mandates MEC's to prioritise certain infrastructure issues such as water and sanitation, it does not go beyond this by ensuring that any infrastructure conditions that subject learners to serious safety risks (and are therefore an unjustifiable violation of learners' rights) are addressed without delay.
38. The need for separate measures to address hazardous conditions have been vocalised by learners across the country:

Mbali Cezula from IQonce High School, Eastern Cape:

" [there is a] lack of proper classrooms in my schools. There are few buildings some look like township slums. They are not safe as they could fall anytime."

Mvelo Zondi, a grade 10 learner from Maceba Secondary School:

"learners who are learning under trees cannot wait for so long as they suffer a lot, 3 years should be the maximum time".

Lucy, a grade 11 learner from Mathukulula Secondary School:



“You provided us with something that can be achieved after a long period of time. In our schools we have urgent issues that can’t be able to wait 10 years before it can be achieved.”

39. EE therefore recommends that the Draft be amended so as to make provision for the delivery of “emergency”/ “safety norms” which require more urgent action and cannot be reasonably subject to a lengthy waiting period.

40. Emergency issues would include a lack of basic water supply that is able to be safely consumed, replacement of unsafe crumbling classrooms.

(iii) **Clause 3(3) – co-operative governance and co-ordinated delivery**

41. Clause 3(3) reads:

“The implementation of the norms and standards contained in these regulations is, where applicable, subject to the resources and co-operation of other government agencies and entities responsible for infrastructure in general and the making available of such infrastructure”

42. We recognise the reasoning underpinning the insertion of a clause referencing the multiple role players involved in infrastructure delivery and the need for co-operation of government agencies and entities in order for norms to be realised. However, the language in which this clause has been couched is particularly worrisome.

43. The need for co-operation across different sectors of government is a constitutionally mandated imperative. Section 41 of the Constitution requires all spheres of government and all organs of State to co-operate in good faith with each other in order to assist and support each other, consult with each other on matters of common interest and to co-ordinate actions and legislation with one another.

44. The norms once legislated will ultimately assist to ensure this co-ordinated effort. In fact section 58C of SASA itself contemplates the need for such co-operation by requiring MECs to adopt an implementation protocol in terms of the Intergovernmental



Framework Relations Act to ensure compliance with infrastructure norms and standards.¹¹

45. The norms, however, are rendered meaningless if government through the DBE could simply evade responsibility in ensuring delivery by citing a lack of co-operation from other role players such as Eskom, the Department of Public Works or the Department of Water Affairs. The provision is problematic as it allows for shifting of responsibility between government departments.

46. The DBE, as the overarching role-player, remains best placed to ensure co-ordinated efforts so that government as a whole (in the spirit of co-operative governance) is capable of meeting these minimum standards.

47. We therefore recommend that this clause be removed in its entirety. Alternatively, that it be reformulated in such a manner that it reflects the DBE's overarching responsibility to facilitate delivery. Any reformulation should also reiterate the responsibility of other role players to synchronise their actions according to these norms, as is constitutionally required.

(iv) **Planning and reporting – need for public to be continuously informed**

48. EE welcomes the planning and reporting accountability mechanisms which are contained in the Draft. This will further ensure that the Minister is capable of exercising proper oversight in respect of provinces and that proper monitoring takes place.

49. It is imperative that the MEC's detailed plans on the manner in which the norms and standards are to be implemented and the annual reports detailing the actual implementation thereof are made publicly accessible.

50. Individual school priority lists should also be accessible to principals, parents, teachers and community members. This will ensure that school communities are able to gauge

¹¹ Section 58C(1)(a) reads: “*The Member of the Executive Council must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005), ensure compliance with norms and standards determined in terms of sections 5A, 6 (1), 20 (11), 35 and 48 (1)*”.

the anticipated time periods involved and when their particular schools' minimum infrastructural needs will be met.

51. The need for this is borne out by the experiences of EE's attorney of record on the norms case, Cameron McConnachie:

“The LRC is repeatedly being informed by schools that they have no idea if or when they are scheduled to receive infrastructural improvements from the department of education. Due to the dire conditions that many schools are in, the schools' governing bodies often decide to fund desperately needed infrastructural improvements using a mixture of money raised by the community, and portions of the school's budget earmarked for other line items such as learner teacher support material, school nutrition, or non-education consumables.

This places extreme pressure on indigent rural communities that can ill-afford to make donations to school building projects. It also results in schools having to forego essential materials. While schools know this is against departmental policy and is possibly contrary to the Public Finance Management Act, the desperate infrastructure conditions or extreme overcrowding force them to take desperate measures to ensure that their students can be taught.

Equally concerning is that the school and the community's sacrifices are often unnecessary as infrastructural improvements arrive/are made unannounced soon after the school's own infrastructural efforts are completed, or when they are still underway.

Nyangilizwe High School on the outskirts of Mthatha is a good example. Parents made donations and the school rearranged its budget to build four classrooms. Weeks before completion contractors arrived and constructed six temporary classrooms on concrete slabs with shaded walkways. The school abandoned the classrooms they were building to avoid any further financial loss. The school estimates that it wasted over R200,000 because they were not informed of the department's building plans.”

52. Experiences such as the one documented above indicate the desperation of school communities whose learners are subject to appalling infrastructure conditions and the significant difference that can be made simply by ensuring that those most directly affected are kept in the communication loop and are therefore able to plan accordingly.
53. Reporting to the Minister must be done in the most comprehensible and transparent manner possible. Keeping the public informed of needs of schools, the government's progress in terms of addressing those needs and plans for addressing unmet needs is especially vital here where it will take significant time and expense to bring all schools into compliance.



54. Provinces should therefore be responsible for providing information to the Minister each year which lists

- all schools that do not comply with the regulations,
- the norms which have not been met for each noncomplying school, and
- the actions that must be taken to bring each noncomplying school into compliance with the regulations.

The information should also contain a schedule of specific school facilities that will be upgraded the following year as well as information showing whether that province has met its prior year's commitments and the reasons why previous commitments were not met.

55. It is only by providing a clear mechanism to ensure that this information is disseminated to the public that the regulations can serve the intended purpose of ensuring collective accountability.

(v) **Gap in relation to schools already planned.**

56. Sections 3(1)(a) and (b) delineate the scope of the regulations once published. These sections make it clear that the regulations will apply both in respect of schools already in existence and schools that are to be built post publication.

57. The Draft makes no provision for schools where planning has already started but do not yet exist at the date of publication.

58. We therefore recommend that this gap in the regulations be addressed.

(D) CONTENT OF THE NORMS

(i) Types of schools – Regulation 4



59. The Draft classifies schools into two types, primary schools offering grades R to 7 and secondary schools offering grades 8 to 12. The reality however is that hundreds, if not thousands of public schools in South Africa do not fall neatly into these two categories. There are many preparatory schools that offer grade R-3, Senior Primary Schools that offer grade R – 6, Junior Primary Schools that offer grade R - 8, and Senior Secondary Schools which only offer grades 10 – 12.
60. The Draft ought to state whether it is acceptable for schools to continue offering grades that do not fit into the categories set out in the norms, and if so, for how long? What process must schools follow to be exempted from complying with the norms and what issues will be considered when determining whether to allow deviations?
61. We submit that uniformity in this regard is desirable, that clear time frames should be set for achieving uniformity, but that deviations should be permitted in appropriate circumstances (for example it would be reasonable to allow a preparatory school of grade R-3 to exist in a rural area where the next nearest school is more than two kilometres away and it is not reasonable or desirable for small children to walk that distance.)

(ii) Universal Access – Regulation 5

62. The Draft requires all schools to “*adhere to the requirements of Universal Design... in new schools as well as to additions, alterations and improvements to existing schools.*”
63. It is recommended that the specifications of “*universal design*” should be attached as an annexure to the regulations so that the schools and the public in general know what is required of schools to meet this standard.
64. It is also recommended that the Draft ought to require existing schools to make any necessary alterations to ensure that physically disabled children are not prejudiced by infrastructure that does not allow them to access school infrastructure. Schools must make necessary alterations immediately, and can fully comply with universal design by the outer time limit set.



(iii) Site and Identification of school – Regulation 6

65. Regulation 6(1) reads:

The siting of schools should, as far as possible, recognise the need for appropriate topography and location related to access and demographic realities.”

66. This is too vague. What is important to educators and communities may not be important to planners or engineers when deciding on where to locate schools. Both the social and topographical issues to be considered should be enumerated. “*Appropriate topography*” should be spelt out in terms of angle of slope, distance away from hazards such as rivers, prevailing rock or soil conditions, size and shape of the land.

67. The regulations ought to also identify what entities a school should be located close to whenever possible (e.g. health clinics, hospitals or access roads), or far away from (bars or shebeens, highways, casinos, etc). There is a need to be more specific in the planning norms so that those involved in the planning, and construction of the school know exactly what factors should guide their decisions regarding where to site schools.

68. The Californian Department of Education (CDE) has a guidebook for the location of schools and the necessary criteria to consider when locating schools.¹² They use a set of criteria that have been developed by experts in the field. Some of these criteria include safety, location, environment, soils, topography, size and shape, accessibility, public services, utilities, cost, availability and finally public acceptance. The United States Environmental Protection Agency (EPA) has environmental guidelines on school sites and what should and should not be near a school.¹³ These should be considered and appropriately altered to fit the South African context.

69. It is suggested that the planning of the school and siting should be more specific and contain, at the least, the following indicators:

¹² California Department of Education, *School Site Selection and Approval Guide*. Available at <http://www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp>

¹³ United States Environmental Protection Agency, *School Siting Guidelines*. Available at <http://www.epa.gov/schools/siting/download.html>



- Safety
- Location to other features
- Environment surrounding the site
- Rock and soil type of the site
- Topography
- Size and shape of the site
- Accessibility to the site
- Public services and utilities
- Public acceptance

(iv) Regulation 8 – Classrooms

70. It is disconcerting that nothing in this section sets out what materials classrooms can be made from and that they must be safe and comply with relevant building regulations.

There must be a clear statement that “inappropriate” building materials such as wood, corrugated iron, mud, or dangerous materials such as asbestos, cannot be used.

71. Temporary or prefabricated classrooms as an interim measure are acceptable as long as they are maintained in a condition that does not pose a threat to the safety or comfort of learners and that this is not rendered a permanent solution.

72. Learners expressed an overwhelming sentiment that acceptable class sizes must be at a learner educator ratio of 30:1, on the basis that it is difficult to hear the teacher and that teachers struggle to control larger classes. In light of learners’ experiences, it is suggested that the DBE reviews its proposed capacity norms.

(v) Electricity – Regulation 9

73. The need for a sufficient, consistent and reliable supply of electricity has been reflected in learners’ concerns both in relation to the earlier draft and the current one. Without electricity learners explain that they are not able to access the internet and are inhibited from conducting research or that they are unable to use fans to ventilate classrooms. An



additional concern is that where generators are relied upon this requires fuel to operate, which schools can ill afford.

74. The Draft requires that all schools must have ‘some form of electricity.’ There is, however, no indication of how much electricity needs to be supplied by the source. The regulations should require that sufficient electricity be supplied to ensure that a school’s needs in terms of lighting, a photocopier, a fax, a telephone, an overhead projector, and a computer laboratory, etc. can be powered.

(vi) Water – Regulation 10

75. It is refreshing that the Current Draft deals with the quality of the water supply. It is also to be welcomed that the Current Draft now refers directly to the consistency of the supply by requiring water supply to be “*available at all times*”.

76. The majority of the learners’ individual submissions collected at EE’s public hearings on the January 2013 Draft spoke of a lack of access to a constant water supply at schools because of a dependence on rainwater tanks. Similar anxieties came through during the current learner workshops. According to learners Nontlanth Manyano, Dimpo Hopolang and Hlomobang the water at their schools is “*not healthy*” and the “*Minister should provide taps not rainwater harvesting because where we drink water when there’s no rain?*”

77. However rain water harvesting, for instance, is explicitly suggested in the Draft as a form of water supply that would suffice. It is important that if rain water tanks are used, the consistency of water supply is guaranteed by an alternative ‘back-up’ source. This would ensure constant water supply in the event of prolonged periods without rain.

78. The regulations should also include detailed amounts about what “*sufficient*” is. If a school is reliant on “*rain water harvesting*” the regulations should stipulate how much water capacity a school should have in relation to the number of pupils. (eg. 10 000 litres for every 50 children) and the minimum amount of water a school can ever have in store (e.g. 10 000 litres) in order to address legitimate concerns of a lack of supply where alternative sources of water are relied upon.



79. Further, it is untenable that it will take 10 years to achieve sufficient water supply in the forms currently proposed. Rain water tanks, for instance, can be readily installed in all schools. Being denied access to a basic water supply fit for drinking and hygiene purposes is a gross rights violation that needs to be addressed immediately. We suggest that all schools should meet this minimum standard within one year.

80. While the Current Draft does deal with the numbers for basins, this does not provide a minimum threshold for the number of water collection points such as taps per learner.

81. Individual learner testimonies gathered at EE's public hearings on the January 2013 norms described situations where 750 high school learners are made to share 2 taps and where an entire primary school were reliant on only one tap.¹⁴

82. This section could offer more concrete guidance to those tasked with ensuring a sufficient number of water collection points at a school. This would also provide better guidance to learners, teachers and community members as to what would constitute a failure to deliver in this regard.

(vii) Regulation 11 – Sanitation

83. EE notes and welcomes the explicit prohibition against the use of pit and bucket latrines. EE also welcomes the positive additions requiring that sanitation facilities must “*provide privacy and security*” and be “*easily accessible to all.*” These additions will serve to improve sanitation facilities at all schools.

84. We also applaud the requirement that there be a ‘*sufficient number of sanitation facilities*’ and the fact that there is now an attempt to elaborate and give clarity on what would constitute a minimum standard on ablution facilities through the introduction of Annexure D.

¹⁴ Appendix to EE's comment on January 2013 Draft – page 17.

85. Our understanding of Annexure D is that it would work as follows: A primary school with a total learner enrolment range of 135-320 where there are between 80 to 160 girls and 80 to 160 boys working on the maximum enrolment figure of 320 and assuming an even split between boys and girls (although in reality statistics would usually reflect more girls than boys) would amount to a norm of 4 basins for every 40 girls and 1 basin for every 80 boys. There would be a standard of 27 girls to a toilet. A maximum of 160 boys would be required to share 4 urinals and 2 toilets. Equalling 27 boys to a facility (either a toilet or a urinal). This same calculation working on the lowest enrolment figure of 135 and using a split of 68 girls to 67 boys (almost a 50/50 split) would equate to a ratio of 11 girls to one toilet.
86. However, as the enrolment range increases on Annexure D so does the ratio of learner to sanitation facilities. If one uses the maximum enrolment range for primary schools in Annexure D which is 1280 and again using a 50/50 approximation between the genders the number of girls to one toilet would increase from 1 toilet to 27 girls to 1 toilet for every 53 girls.
87. Whilst this is far more comprehensive than any of the previous drafts on sanitation the acceptability of the precise standards being proposed here ought to be re-evaluated in line with the recommendation of the World Health Organisation, which recommends a toilet to learner ratio of 1:30.¹⁵
88. In this regard, the Western Cape Education Department has indicated that all Western Cape schools need to meet the following basic sanitation standards:

“Schools should have sufficient toilets and hand washing facilities to meet learners’ needs, based on a recommended learner: toilet ratio of 35:1 and a learner: washbasin ratio of 60:1;

All toilets and washbasins should be in clean, working order;

Learners must be provided with access to proper toilet paper to prevent blockages;

Learners must be provided with soap and clean water to wash hands after using the toilet;

Sanitary bins should be provided in all female toilets to prevent blockages;

All schools must make provision for learners with special needs;

¹⁵ Southern and Eastern Africa Consortium for Managing Educational Quality (SAQMEQ) Policy Brief Number 6 (September 2011) Progress in Gender. Accessible at <http://www.education.gov.za/LinkClick.aspx?fileticket=ekxOq9DOYCE=&>.

Every effort should be made to ensure learners' personal safety and privacy when using the toilet facilities.”¹⁶

89. Guidance can also be gleaned from the UNICEF standard which is 1 toilet for every 25 girl learners and 1 toilet plus 1 urinal (or 50cm of urinal wall) per 50 boy learners.¹⁷

(viii) Regulation 12 – Libraries

90. The library norm as it appeared in the January 2013 draft merely required some form of a “*library or a laboratory or media space.*”

91. This is strikingly similar to the language of the Draft which reads that “*all schools must have a library facility or media centre facility or library stocks that are renewed whenever required and whenever circumstances permit*”.

92. The Draft goes on to say that a “*library facility or media facility may consist of one or more of the following models: (a) A mobile facility (b) a cluster facility (c) a classroom facility (d) a centralised school facility or (e) a school community facility.*”

93. A classroom library does not meet the standard of a library facility. This could easily translate into a minimal stock that, in the language of the Current Draft, would suffice as a ‘library or media facility’.

94. While the other forms of provision of a library will suffice in the short term, the long term goal should be to have a centralised school library in every school. Consequently, it is suggested that this clause be reformulated to indicate that all schools must have a centralised school facility provided within the targeted period where reasonably practicable.

¹⁶ Specialised Education Support minute 0010/2009 dated 20 November 2009 signed by MJ Theron. Accessible at http://wced.pgwc.gov.za/circulars/minutes09/IDCminutes/edse10_09.html

¹⁷ WHO/UNICEF *Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings, 2009* - by John Adams, Jamie Bartram, Yves Chartier, Jackie Sims at page 32.



95. Prior to this, one of the other demarcated forms of a library or media facility will suffice:
A library or a media facility may consist of one or more of the following models: a mobile facility, a cluster facility, or a school community facility.
96. There needs to be much more specificity around how many schools a “mobile facility” can cater for as an interim measure e.g. it will not serve more than 10 schools? The regulations should state how often a child will have access to a “mobile facility” e.g. once a week.
97. Regarding a “cluster facility” or a “centralised school facility”, the regulations should stipulate what the maximum distance it can be from a school as well as the maximum number of schools/children it can serve.

(ix) Regulation 13 – Laboratories

98. The Current Draft states that:

“all schools that offer science subjects must have the necessary apparatus and consumables to make it possible to conduct experiments and scientific investigations”.

It goes on to state that these apparatus and consumables *“may be housed in a laboratory, a mobile laboratory, a classroom or a safe container.”* It then deals with safe storage of such apparatus and consumables before concluding that *“a laboratory for science, technology, mathematics and life sciences may, where practicable be combined in one room”.*

99. Whilst the requirement that all schools offering science have the necessary materials to conduct experiments and investigations is positive, the concern remains that a failure to set a norm that would of necessity require a physical space for a laboratory at a school represents an omission in the draft.
100. It is recommended that at least one science laboratory is made a necessity for all schools. Whilst it is a valid concern that certain schools may be too small to justify having a separate laboratory, this could be addressed by providing that all schools must be provided with a dedicated laboratory where feasible or where reasonably practicable.

(x) Sports and Recreational Facilities – Regulation 14

101. The Draft does not make any commitment aimed at ensuring that future schools will at the very least have one sports field for sporting activities.

102. It is recommended that a commitment to ensuring that all new schools have space for a sports field for sporting facilities ought to be included in the Draft.

(E) CONCLUSION

103. Overall, the Draft represents an effort to improve on and elaborate on the January 2013 draft. However, significant concerns remain and these have been canvassed in detail above. Key concerns remain with the time period for implementation and the prioritising of areas where infrastructure concerns represent an immediate threat to learners. Issues remain with the accessibility of the information and the vital need for communication to flow to enable schools to plan accordingly, the public to be aware of what they are entitled to, and for proper oversight from the DBE to occur. Further, it is disconcerting that the Draft seeks to purport that reliance on other departments and entities could constitute an intractable basis for non-delivery.

104. EE trusts that these comments will be taken into consideration and that appropriate weight will be accorded to learners, parents and schools very real concerns about the poor infrastructural conditions in their schools.

105. Ultimately, this will go some way towards answering the question of how to ensure that the promise to an adequate basic education becomes a reality for all South African learners. This in turn remains the only way to realise the constitutional promise of a truly transformed South Africa.

