

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Before Ledwaba DJP in chambers
On 10 October 2023

CASE NO: 2020- 0573566

In the matter between:

SUID-AFRIKAANSE ONDERWYSERS UNIE

Applicant

And

THE MINISTER OF BASIC EDUCATION

Private Bag X67, Pretoria 0001

1st respondent

THE MINISTER OF FINANCE

2023-10-10
~~2023-07-04~~ h. man

2nd respondent

THE COUNCIL OF EDUCATION MINISTERS

GD-PRET-010

3rd respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
GAUTENG PROVINCE**

4th respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
WESTERN CAPE PROVINCE**

5th respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION, FREE
STATE PROVINCE**

6th respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
LIMPOPO PROVINCE**

7th respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
KWAZULU-NATAL PROVINCE**

8th respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
EASTERN CAPE PROVINCE**

9th respondent

THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,

10th respondent



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MPUMALANGA PROVINCE

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
NORTHWEST PROVINCE** 11th respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION,
NORTHERN CAPE PROVINCE** 12th respondent

THE HEAD OF DEPARTMENT OF EDUCATION, GAUTENG PROVINCE 13th respondent

**THE HEAD OF DEPARTMENT OF EDUCATION, WESTERN CAPE
PROVINCE** 14th respondent

THE HEAD OF DEPARTMENT OF EDUCATION, FREE STATE PROVINCE 15th respondent

THE HEAD OF DEPARTMENT OF EDUCATION, LIMPOPO PROVINCE 16th respondent

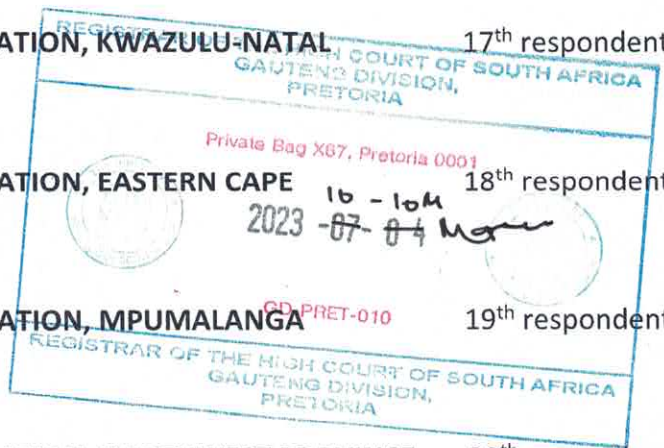
**THE HEAD OF DEPARTMENT OF EDUCATION, KWAZULU-NATAL
PROVINCE** 17th respondent

**THE HEAD OF DEPARTMENT OF EDUCATION, EASTERN CAPE
PROVINCE** 18th respondent

**THE HEAD OF DEPARTMENT OF EDUCATION, MPUMALANGA
PROVINCE** 19th respondent

THE HEAD OF DEPARTMENT OF EDUCATION, NORTHWEST PROVINCE 20th respondent

**THE HEAD OF DEPARTMENT OF EDUCATION, NORTHERN CAPE
PROVINCE** 21st respondent

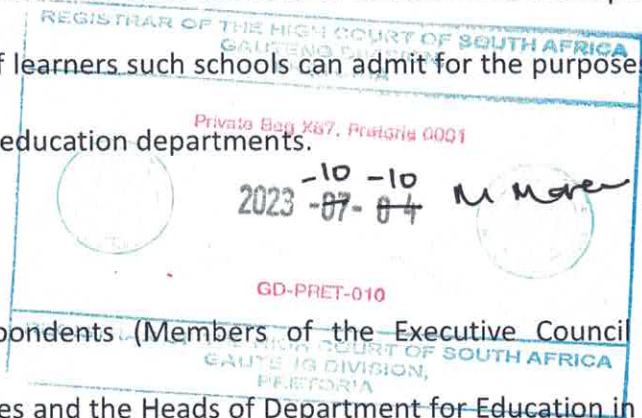


ORDER

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By agreement between the parties , it is ordered that:

1. Regulation 9 of the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, in Government Notice R920, Government Gazette 37081 of 29 November 2013 (Infrastructure Norms and Standards) does not constitute minimum uniform norms and standards for the capacity of a school in respect of the number of learners a public school can admit as contemplated in section 5A(1)(b) and 5(2)(b) of the Schools Act 84 of 1996 (Schools Act).
2. Regulation 9 of the Infrastructure Norms and Standards shall not be used by provincial education departments as norms and standards to evaluate or to determine the capacity of public schools and the number of learners such schools can admit for the purposes of placement of learners by provincial education departments.
3. The fourth to twenty-fourth respondents (Members of the Executive Council for Education in the respective provinces and the Heads of Department for Education in the respective provinces) are precluded from using and applying Regulation 9 for the purpose of determining the capacity of public schools in respect of the number of learners such schools can admit.



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- 3 Pending the issue of Norms and Standards for Capacity Determination by the first respondent in terms of section 5A(1)(b), read with section 5A(2)(b) of the Schools Act, and without derogating from the powers of School Governing Bodies of Public Schools to determine the capacity of a public school, the Guidelines attached as **annexure A** to this order shall be considered in the determination and evaluation of the capacity of any public school.
- 4 The first respondent shall bring this order to the attention of the fourth to the twenty first respondents.
- 5 The first respondent shall promulgate Regulations on minimum norms and standards for capacity of a school in respect of the number of learners a school can admit as contemplated in section 5A(1)(b) of the Schools Act, within a period of three years from the date of this order.

6 The first respondent is liable for the costs of the applicant in this application, including the costs of two counsel , one of whom is senior counsel.

M Ngwenya

By Order of Court

Registrar

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

2023-07-04 *M Ngwenya*

GD-PRET-010

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

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"A"

basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

Private Bag X895, Pretoria, Sol Plaatje House, 222 Struben Street, Pretoria, 0001, South Africa
Tel: 012 357 3000 Fax: 012 323 0601 www.education.gov.za

CIRCULAR

Ref No: 90389/1
Enquiries: Advocate Misser
Tel: 012 357 3769
Email: misser.s@dbe.gov.za

To: HEADS OF PROVINCIAL EDUCATION DEPARTMENTS
Cc: HEADS OF PROVINCIAL CURRICULUM BRANCHES
PROVINCIAL LTSM MANAGERS
DISTRICT DIRECTORS AND LTSM OFFICIALS
SCHOOL PRINCIPALS
SCHOOL GOVERNING BODIES



CIRCULAR 02 OF 2023

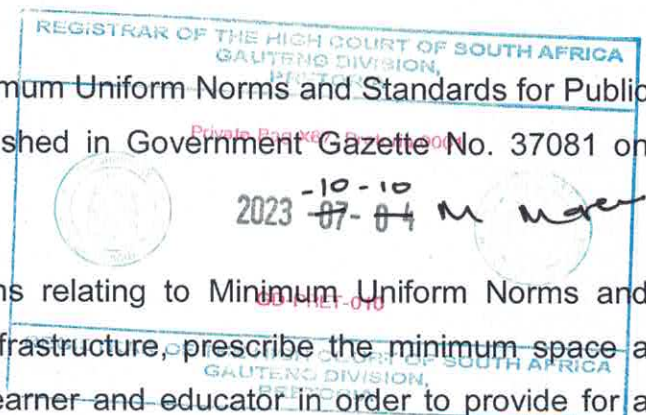
INTERIM ARRANGEMENTS FOR DETERMINING CAPACITY AT PUBLIC SCHOOLS

1. This circular revokes and replaces Circular 1 of 2023 dated 4 February 2023.
2. One of the overriding purposes of the South African Schools Act, 1996 (Act 84 of 1996) as stated in its preamble, is to provide an education of progressively high quality. In order to give effect to this purpose at grassroots level of public schools a proper capacity determination in respect of the number of learners a school can admit is required in order to prevent overcrowding in public schools.

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3. Section 5A(1) of the South African Schools Act, 1996 determines that the Minister may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-
- (a) school infrastructure;
 - (b) capacity of a school in respect of the number of learners a school can admit; and
 - (c) the provision of learning and teaching support material.

4. The Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure was published in Government Gazette No. 37081 on 29 November 2013.



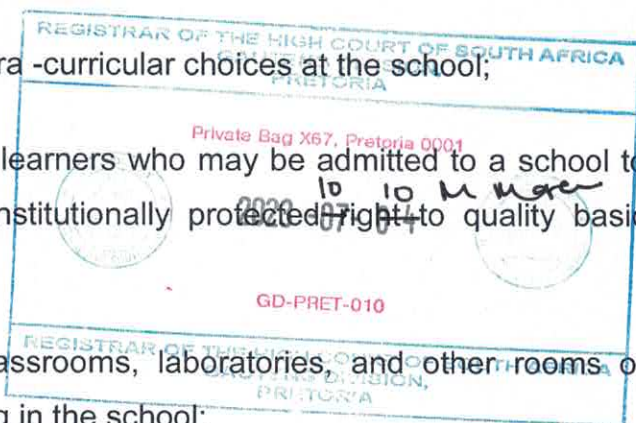
5. Regulation 9 of the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, prescribe the minimum space a school must allocate to each learner and educator in order to provide for a minimum norm and standard for the design and planning of classrooms for new public schools.

6. Whilst no regulations related to the minimum uniform norms and standards for capacity of a school in respect of the number of learners a school can admit have been published in terms of Section 5A(1)(b) of the South African Schools act, 1996 (Act 84 of 1996), Regulation 9 is not to be used and applied by Heads of Provincial Education Departments in the determination of capacity of public schools in respect of the number of learners such schools can admit as there are a number of factors as envisaged by section 5A(2)(b) of the of the South African Schools Act, 1996 that are to be taken into account in the determination of the capacity by governing bodies of public schools.

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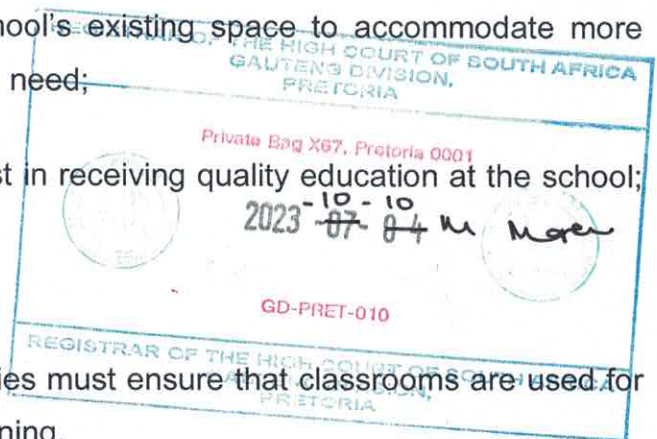
7. The purpose of this Circular is to recommend the following guidelines that may be applied in determining the capacity of a school and the resulting number of learners a school can admit:

- (a) the curriculum and subject offerings including extra-curricular choices of learners at the school;
- (b) the improvement or maintenance of quality academic performance of a school;
- (c) the extent to which the curriculum offering is streamlined and manageable taking into account factors such as the introduction of dual or parallel medium teaching and curriculum streaming. Dual medium refers to the Language of Learning and Teaching (LoLT) in a classroom being offered in two languages by the same teacher while parallel medium refers to the school offering two Languages of Teaching and Learning in separate classrooms by two different teachers;
- (d) other curriculum and extra-curricular choices at the school;
- (e) the impact of additional learners who may be admitted to a school to protect all learners' constitutionally protected right to quality basic education;
- (f) the condition of the classrooms, laboratories, and other rooms or spaces used for teaching in the school;
- (g) the allocation of classrooms to grades and specific subjects;
- (h) national Health and Safety Standards;
- (i) adequate ablution facilities;
- (j) the utilization of available classrooms of a school;



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- (k) the staff establishment allocated to the school by provincial departments and the workload of educators;
- (l) space available for the administrative needs and education support areas;
- (m) the number of appropriate classrooms available;
- (n) classroom sizes;
- (o) space required for sporting, cultural and recreational activities;
- (p) an analysis of each school's existing space to accommodate more learners where there is a need;
- (q) the learners' best interest in receiving quality education at the school; and
- (r) to avoid overcrowding.



8. All principals and governing bodies must ensure that classrooms are used for the purpose of teaching and learning.
9. This Circular is to be brought to the immediate attention of all Heads of Provincial Curriculum Branches, Provincial Learning and Teaching Support Material (LTSM) managers, District Directors, District LTSM officials, Principals Governing Bodies and Governing Body Associations.

Yours sincerely

(Signed)

MR HM MWELI
DIRECTOR-GENERAL
DATE:

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