

THE APPLICANT'S CASE ON THE RESPONDENTS' VERSION

1) EARLY CHILDHOOD DEVELOPMENT ("ECD")

DELIVERY AGREEMENT OBTAINED IN TERMS OF RULE 35(12)

Page: (number in the above-mentioned document itself)

- 3 "critical factors impacting on the achievement of" ... "improved quality of basic education" ... "legislative and regulatory regime, the institutional environment and decision-making processes and rights..."
- 4 SA context of high unemployment coupled with a widely recognised skills shortfall ... "reducing poverty is to a large extent a matter of giving South Africans a better educational start in life"
- 6 "expanding ECD has been a government priority for many years"
- 10 "learner performance in reading, writing and mathematics is well below what it should be"
- 10 "Improve ECD" heading and paragraph
- 18 "There will clearly have to be a stronger focus on consolidating the quality of Grade R and ECD generally..."
- 18 "...the Grade R curriculum is to be fully integrated into the national curriculum".
- 26 only about 60% of learners in ECD have access to the required textbooks and workbooks for the entire school year".

“DBE1” - ACTION PLAN TOWARDS 2014

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- 1284 Expanding ECD has been a government priority for many years.
- 1313 Output Goals – Increase the number of learners in Grade 3 who, by the end of the year, have mastered the minimum language and numeracy competencies for Grade 3.
- 1313 - 1314 UNESCO – it is not enough to focus on children into school. The learning outcomes achieved in the school system must be of an adequate standard and should, moreover, be measured.
- 1334 Output goal – Improve the access of children to quality Early Childhood Development below Grade 1.
***This goal is one of five priority goals for the period to 2014 reflecting the emphasis in the Minister’s Delivery Agreement.**
- 1429 Indicators with National Baseline and Target Values: Goal 11 – The percentage of Grade 1 learners who received Grade R. (ECD for children younger than 5 years?)

“DBE2” – STRENGTHENING FOUNDATION PHASE TEACHER EDUCATION PROGRAMME (STPTEP)

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- 1481 SA Research Association for ECD: overall progress – as at Feb 2013, there were 94 registered members.

“DBE3” – DRAFT POLICY FRAMEWORK FOR UNIVERSAL ACCESS (15 AUGUST 2013)

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- 1507 Written submissions called for from stakeholder bodies and the public, on the draft policy for universal access to grade R.

**“DBE4” – REPORT BY DEPARTMENT OF SOCIAL DEVELOPMENT FOR
20 YEAR REVIEW (MARCH 2013)**

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- 1529 Integrated Plan for Early Childhood Development: 2004
[The above report is dated 2013; the National Development Plan is dated November 2011 and envisages ECD being moved to DBE].
- 1533 ECD Services – compulsory ECD for children from rural areas and informal settlements, to ensure their right to education at an early stage of development.
- 1546 Current status of ECD:
- (i) Fragmented legislative and policy framework, resulting in uncoordinated service delivery
 - (ii) Limited access to ECD; inequalities in existing ECD provisioning; variable quality of ECD services;
 - (iii) Lack of adequate human and financial resources;
 - (iv) Limited interdepartmental / inter-sectoral collaboration to ensure adequate, efficient and quality provisioning of ECD services
 - (v) Lack of integrated Monitoring framework for ECD

“DBE14” – DIAGNOSTIC REVIEW OF THE ECD SECTOR (10 APRIL 2012)

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- 1976 “Window of opportunity” – assistance very important for children at early ages in low-resourced settings. Disadvantaged children who receive little or no support to catch up, tend to fall further behind their peers unable to bridge the widening gap between themselves and those who are forging ahead.

- 1979 Minister of Social Development in 2011 committed to expanding ECD access and quality for children 0 – 5 years of age.
- 1983 Only 20% of 0 – 4 years old children in the poorest 40% of households have access to some form of out-of-home care, including ECCE (Early Childhood Care Education) programmes and centres.
- 1984 Currently no government support for establishment of ECD (education) services in underserved areas. As a result of disadvantage, about a third of poor SA children reach school age stunted, many with health and learning disadvantages which they are unlikely to overcome.
- 1985 ECD tends to be area-based and small-scale
 Statistics: 5 million 0 – 4 year old children; [STATS SA = 5,3 mil]
 2,3 million of whom are poor;
 18,826 registered ECD facilities with 467,000 children receiving state subsidies;
 Poorest and most at-need children are not receiving ECD (education).
- 1986 State needs to put in place laws, infrastructure and programmes for ECD care and education services for 0 – 4 year old cohorts. Inequality is created because the State does not provide ensure infrastructure development and start-up costs, including in areas where the need is greatest.
- 2234 Undersupply of safe and affordable childcare. Poor children tend to have lower quality care, which does not necessarily promote their development.
- 2243 17% of 0-4 year olds of poorest households have access to ECD day care centres.
- 2244 Table 4: 50% Of 3-4 year olds are not receiving ECD in any educational institution.
- 2248 ECD sites are mainly run by private providers or NGOs.
- 2262 Poorest communities caught in vicious cycle: they either don't have ECD centres or they don't have finances to improve their

- infrastructure to meet the standards for registration (in order to qualify for 'per child subsidy'). Onerous registration requirements
- 2264 Major gaps in quality ECD learning opportunities in SA.
- 2266 Relationship to ECD – SACMEQ study of Grade 6 learners found significantly higher literacy and numeracy scores among those learners who attended pre-school.
- 2283 Figure 15: Domino effect of unattainable standards for ECD facilities in poor.
- 2284 Registration of ECD centre does not guarantee receipt of child subsidy; in some instances, despite registration, some centres wait more than two years to receive the subsidy.
- 2285 59% of children in registered ECD centres receive a subsidy.
- 2288 Half of the ECD practitioners are under-qualified or not qualified.
- 2292 40 to 50% of ECD centres do not have learner training and support materials
- 2341 Funding: Child subsidies for children from poor families is constrained by the availability and access to registered centres. The system does not reach children living in poverty and other vulnerable circumstances. Due to lack of funds, many ECD services fail to provide adequate infrastructure, thereby disqualifying them from the ability to register as such a facility, in order to access the 'per child subsidy'.
Where there are no charitable funds or parent fees, there is simply no service.
- 2343 UN Committee on Rights of the Child – obligations on South African government.
- 2344 National Planning Commission (NPC) – inadequate funding resulted in failure ECD for the most marginalised children in South Africa – especially for poor black communities where services are inadequate and implementation lags behind.
- 2345 Non-compliance with NIP requirements
- 2352 Key overarching funding concerns

- 2353 Access to, and the quality of, ECD services is insufficient is much poorer for children living in poverty and in rural areas, than their wealthier counterparts
- 2362 Spaul: strong relationship between attendance at preschool for a year or more, and reading scores.
- 2364 ECD improves children’s health, cognitive development and general well-being. The long-term benefits are valuable to the broader society – ECD can thus also be regarded as a public good. The magnitude of the long-term benefits of ECD is determined by the quality of the ECD services.
- 2365 Despite the above comments, investment in ECD remains low.

“DBE15” – TRACKING PUBLIC EXPENDITURE AND ASSESSING SERVICE QUALITY IN SOUTH AFRICA

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- 2470 “Description of situation in community based ECD facilities”
- 2482 “Background to ECD in SA”
- 2559 “Some conclusions regarding programme quality”
- 2567 “conclusion”
- 2573 Learning and Teaching Support Materials and educational toys

2) MOTHER TONGUE INSTRUCTION

“DBE1” - ACTION PLAN TOWARDS 2014

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1317 Output goal – Increase the number of learners in Grade 6 who, by the end of the year, have mastered the minimum language and mathematics competencies for Grade 6.

Grade 4 to 6 challenges – the greatest challenge is arguably the switch, for close to 70% of learners, from one of the nine African languages to English at the start of Grade 4.

1325 – 6 Output goal – Improve the average performance of Grade 6 learners in language. Results of PIRLS outcomes – Top 5% of South Africa’s Grade 5 performers in reading in PIRLS assessments performed poorly in comparison with the top 5% of Grade 4 learners in other developing countries, such as Iran, Trinidad and Tobago.

“DBE2” – STRENGTHENING FOUNDATION PHASE TEACHER EDUCATION PROGRAMME (STPTEP)

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1467 In order to do justice in the language-in-education policy and to ensure that African children can be taught in their home language in primary schools, as well as learn the home language, there is a need for universities to train teachers to use and to teach the African languages effectively.

**“DBE6” – THE INCREMENTAL INTRODUCTION OF AFRICAN
LANGUAGES IN SOUTH AFRICAN SCHOOLS**

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- 1558 Language and the constitutional provisions, including:
 C9 – promotion of equality of all SA citizens;
 C6(4) - all official languages must enjoy parity of esteem and be
 treated equitably;
 C29(2) - everyone has the right to receive education in the
 official language or languages of their choice in public
 educational institutions where education in that language is
 reasonably practicable.
 National Education Policy Act 27 of 1996
- 1559 Language-in-Education Policy – multilingualism; promotion of
 the use of learners’ home language and at the same time
 provide access to other languages

3) PROFESSIONALISATION OF TEACHERS

DELIVERY AGREEMENT - OBTAINED IN TERMS OF RULE 35(12)

Page: (number in the above-mentioned document itself:

- 4 SA context of high unemployment coupled with a widely recognised skills shortfall ... “reducing poverty is to a large extent a matter of giving South Africans a better educational start in life”
- 4 “schooling system performs well below its potential”
- 4 learners “need to be better prepared by their schools to read, write, think critically and solve numerical problems”
- 4 “insufficient quality improvements with respect to schooling of the poor”
- 5 “it is the quality of learning outcomes, where SA’s performance is the almost the lowest amongst all middle income countries.”
- 6 “the way teaching occurs must change ... teachers, textbooks and time”
- 6 “better in service training” to raise the status of teachers in society.
- 6 “programme completion is far too uncommon.
- 6 “too many administrative tasks on teachers”
- 7 “ there cannot be ‘business as usual’”
- 7 “essentially the challenge is on of making the current system run better”
- 7 “existing policies are not communicated well”
- 10 “there is a need for teaching and learning to improve”
- 11 “all actors should feel accountable”
- 11 “The capabilities and the level of motivation amongst teachers needs to improve”

- 12 “..bring about a more holistic human resources management approach with respect to teachers”
- 12 “the challenge lies in utilising existing institutions better”
- 12 “...the need for a comprehensive teacher policy has been discussed”.

“DBE 1” - ACTION PLAN TOWARDS 2014

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- 1257 Outcome 1 – Improved quality of basic education.
- 1274 Current structure of the schooling system – Compare with Nic Spaul’s ‘bimodality of school performance’ (“**EP25**”, to applicants’ founding affidavit).
- 1280 Improving quality of education in schools in the sense of improving learning outcomes stands out as greatest challenge. Need to focus rigorously on the quality of education.
- 1281 Cannot ‘make the cow fat’ simply by measuring it.
Support to individuals and institutions to deal with the full range of factors limiting human capacity is a vital ingredient of the change process.
- 1283 - 4 In many schools and classrooms the way that teaching takes place must change.
Teachers are to be in class, on time teaching.
Government’s commitment to in-service training.
- 1290 Continually emphasise what it is that we are trying to achieve.
Children can attend school for many years and yet not learn how to read properly.
- 1292 Teacher accountability – by demonstrating that the learners in the class have learnt something.
- 1299 DBE annual national sector review – the national department must explain what progress was made against the Action Plan and how problems and bottle-necks should be addressed.

- 1302 Vision of post-apartheid schooling system – teachers who received the training they require are continuously improving their capabilities.
- 1303 Annual National Assessments.
- 1315 2010 State of the Nation Address – 60% of learners should attain a basically acceptable level of performance in literacy and numeracy by 2014.
- 1319 Output goal – Increase the number of Grade 9 learners who, by the end of the year, have mastered the minimum language and mathematics competencies for Grade 9.
Drop-out rates – reflection of under-achievement, grade repetition and learners being over-aged relative to their peers – all of which contribute to a sense of hopelessness amongst learners and abandonment of school.
- 1321 Output goal – Increase the number of Grade 12 learners who become eligible for a Bachelors programme at a university.
Currently only about 1 in 8 youths obtain a Grade 12 qualification that fulfils the requirements for Bachelors studies at a university. This is not sufficient for the South African labour market. The low number of Bachelor graduates is reason behind the skills shortfall [See also Nic Spaul, in Patricia Martin at p. 2942 of the motion record].
Evidence suggests that key obstacles in poorer schools include insufficient access to the right textbooks in Grades 10 to 12, and poor teacher subject knowledge.
- 1323 Output goal – Increase the number of Grade 12 learners who pass mathematics.
Problem statement: The schooling system is clearly failing the country, both with respect to the number of mathematics passes and the number of learners who excell.
- 1324 Output goal – Increase the number of Grade 12 learners who pass physical science.
Problem statement: Performance in schools is well below where it needs to be for the critical skills shortages in the country.

- 1325 Research into secondary schooling is still lagging behind.
- 1328 – 9 Output goal – Improve the average performance of Grade 6 learners in mathematics.
 Problem statement – there seems to be an inability within the schooling system to harness learner enthusiasm for mathematics in a way that produces acceptable learning outcomes.
- 1330 Output goal – Improve the performance of Grade 8 learners in mathematics.
 In TIMSS, South Africa's inequality of mathematics results was greater than that of any other participating country.
- 1355 Output goal – Attract a new group of young, motivated and appropriately trained teachers into the teaching profession each year.
- 1362 Output goal – Improve the professionalism, teaching skills and subject knowledge of teachers throughout their entire careers * *
***This goal is one of five priority goals for the period to 2014 reflecting the emphasis in the Minister's Delivery Agreement.**
- 1363 Problem statement – many, and perhaps most, of South Africa's teachers did not receive all the training they need to cope with the responsibilities of teaching and the curriculum changes that have taken place since 1994.
 With regard to in-service training for the teachers – access to relevant training courses is widely regarded as inadequate.
 Whilst improvements amongst teachers are needed with respect to the specifics of classroom practice and subject knowledge, what is also important is to strengthen the right values as part of the professional development of teachers. Teachers need to understand the Constitution.
- 1364 Teacher in-service training poses an especially major challenge for any government wishing to improve schools.
 Government envisages much greater use of distance education, in particular, e-Education.

- 1368 Monitoring progress of gaps in teacher teachers' subject knowledge and teaching skills.
Time spent by teachers on professional development activities – educators should spend 80 hours per year on professional development activities; 30% of teachers admit having spent no time at all on such activities.
- 1370 Output goals – Strive for a teacher workforce that is healthy and enjoys a sense of job satisfaction.
Problem statement – it is generally accepted that job dissatisfaction is a widespread problem that requires focussed attention.
- 1372 Teacher absenteeism – 8.5% of teachers are away from school on a given day. Teacher absenteeism in South Africa is in line with pattern in developing countries, but twice as high as affluent countries.
- 1428 Indicators with national baseline and target values.
- 1440 Milestones by goal and year: Goal 16 – evaluation of teacher appraisal system. Comprehensive evaluation of impact of, and teacher responses to, recent teacher development initiatives, to be released by national government.
- 1450 Appendix A: Provincial indicator values

“DBE2” – STRENGTHENING FOUNDATION PHASE TEACHER EDUCATION PROGRAMME (STPTEP)

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- 1466 Specific goals of STPTEP: an improved initial teacher education system that attracts and delivers higher numbers of capable Foundation Phase teachers, particularly teachers who are able to teach in the indigenous languages.
- 1467 need for universities to train teachers to use and to teach the African languages effectively.

4) TEXTBOOKS (Learning and Teaching Support Materials – “LTSM”)

DELIVERY AGREEMENT - OBTAINED IN TERMS OF RULE 35(12)

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- 13 “under-prioritised in schools”
- 13 “However, in around a third of primary schools the learner to textbook ratio is greater than 1 ... statistics for secondary schools are not available”
- 14 “the key indicator is whether learners have access to the materials they need”
- 14 “Whether there should be a central national textbook procurement agency and whether the existing provincial textbook lists should be replaced by a national one are matters that are up for discussion”
- 14 “Currently around one third of schools buy textbooks”

“DBE1” - ACTION PLAN TOWARDS 2014

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- 1284 Minister emphasized that ‘the textbook is the most effective tool to ensure consistency, coverage, appropriate pacing and better quality instruction’.
- 1302 Vision of post-apartheid schooling system – Learning and teaching materials are in abundance and of a high quality.
- 1322 Output goal to improve number of Grade 12 learners being eligible for Bachelors programme at university – many required

interventions relate to ensuring adequate access to textbooks and teacher development (Inset).

1379 Output goal – Ensure that every learner has access to the minimum set of textbooks and workbooks required according to national policy.

***This goal is one of five priority goals for the period 2014 reflecting the emphasis in the Minister’s Delivery Agreement.**

Problem statement – not having enough textbooks at school is the most common reason why schools decide not to allow learners to take textbooks home. Approximately one third of primary school learners are in schools that do not allow textbooks to be taken home.

1380 - 1 Access to the full set of required learning materials for every learner can be regarded as non-negotiable. The financial and other difficulties relating to the provision of learning materials are, in fact, low relative to those associated with most other interventions. Teacher guides also important.

Many problems arise as to why learners don’t have their textbooks.

1382 - 3 Recommendations for textbook procurements.

Monitoring of progress: the percentage of learners having access to the required textbooks and workbooks for the entire year. Textbooks are to be delivered on time and according to the requirements of the school.

Minimum Schoolbag – minimum set of materials for a school child for a particular grade. Learner should have access to the *Minimum Schoolbag* from the day school opens at the beginning of the year.

1384 New national textbook = ‘National Catalogue’.

1430 Indicators with national baseline and target values: Goal 19 – Ensure that every learner has access to the minimum set of textbooks and workbooks required according to national policy.

[Refer to recent *Basic Education for All* judgment by Tuchten J, which requires every child to have the required textbooks].

1441 Milestones by goal and year: Goal 19: See above at page 1430. No goals are set for 2013 and 2014?

“DBE5” – PASA Press release

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1550 Common knowledge that supplying textbooks to learners countrywide is fraught with challenges. The successful delivery of textbooks relies on the cooperation of several role players – including the DBE and Provincial Education Departments. Well over 90% of textbooks ordered by DBE were delivered to government warehouses and other book suppliers.

“DBE11” – PUBLIC PROTECTORS’ FINAL REPORT: *LEARNING WITHOUT BOOKS*

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1902 - 3 The failure to deliver adequate number of school workbooks, timeously and in the correct language, constituted a violation of C29. This failure also constitutes maladministration in terms of section 6(4)(a)(i) of Public Protector Act.

Systems failure due to inadequate monitoring of procurement process.

1904 DBE failed to set uniform norms and standards in terms of SA Schools Act, 1996.

DBE failed to determine national policy and regulatory framework for provision of workbooks in Eastern Cape in terms of section 3 of National Education Policy Act, 1996.

- 1907 Learners who failed to receive work books were exposed to an inferior education in relation to counterparts elsewhere – violation of right to equality in terms of C9.
- 1910 – 11 Section 27 litigation.
Complaints received from a number of provinces regarding inadequacies in the delivery of schoolbooks, principally in Limpopo, Eastern Cape and Free State.
- 1912 Failure of Minister of Basic Education to respond to above complaints.
- 1924 Minister of Basic Education, Ms A. Motshekga, stated that delivering of textbooks is an administrative function and that it has nothing to do with her.
- 1933 Separate workbooks for the teachers were not delivered, requiring educators to share with learners.
- 1936 Bottom line – Eastern Cape Provincial Department did not have a plan to execute for the supply of school workbooks.
- 1937 DBE denials of failure to deliver schoolbooks are proved to be incorrect. Evidence shows gross incorrect supply and wrong supply of workbooks. Provincial DBE did not communicate with the accounting officers at the schools with regard to the supply and delivery of workbooks.
- 1938 – 9 No remedial systems were in place to accommodate growth in school numbers, considering in certain cases books were only delivered during second term of school; and then in the wrong languages.
No communication system is in place between schools and the department; appears no official has been assigned in the DBE to deal with the workbook ordering and distribution.
- 1943 Undisputed that schoolbooks are an essential component in current curriculum.
- 1944 Learners without workbooks exposed to inferior education; violation of C29.
Principle of progressive realisation is not applicable.

Corresponding right to basic education is that the state must provide the necessary resources and conditions for learners to enjoy such right.

- 1945 Requirements of C195(1)(b), (d) and (f)
- 1947 - 8 Requirement of section 5A of SA Schools Act; requirements of Eastern Cape Education Act 1 of 1999.
- 1949 Right to basic education viewed in case law as an imperative right and the failure to provide resources complementing the right (here, textbooks) constitutes a violation of right of basic education.
- 1957 Monitoring: a comprehensive and detailed action plan on the implementation of remedial action is required within 30 days of this final report of the OPP.