
REPORT NO. 22 OF 2009/10

REPORT ON AN INVESTIGATION INTO ALLEGED UNDUE DELAY ON THE PART OF THE WESTERN CAPE EDUCATION DEPARTMENT TO ADDRESS CONDITIONS AT THE DUNESIDE PRIMARY SCHOOL, MITCHELL'S PLAIN
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Executive Summary

(i) The Office of the Public Protector (OPP) conducted an investigation undertaken on own initiative regarding the alleged undue delay on the part of the Western Cape Education Department (WCED), to attend to conditions at the Duneside Primary School (School) in Mitchell’s Plain. The investigation emanates from a newspaper article published on 16 January 2009. In the article the following was reported:

(a) The principal of the School was frustrated with the alleged undue delay on the part of the WCED to assist after half of the school building was closed in August 2008 due to vandalism;

(b) Learners have access to only two toilets, one for boys and another for girls;

(c) The School was turned into a dumping place and posed a health threat to learners and educators, which was confirmed by a health inspector;

(d) The School has been one of the top primary schools in the Western Cape in a previous year, but registration at the School has since plunged; and

(e) Some money was given to the School Governing Body (SGB) for repairs and the way in which the money was used was under “formal” investigation.

(ii) From the investigation the following findings were made:

(a) The vandalism at the School started during the June/July 2007 school vacations, but during January 2009 the School was still not secured and was still experiencing the same problems.
(b) From April 2008 the WCED had been aware of the fact that the Department of Public Works would only attend to repairs when the School has been secured. Meanwhile, several officials visited the School, but the conditions perpetuated. The School eventually received money to secure the School on 14 December 2008, during school holidays. The School only secured the services of a service provider for burglar proofing during March 2009, which is more than a month after the re-opening of the schools on 21 January 2009. When the OPP visited the School on 1 April 2009 the service provider had not started with his work. This inaction over a period of almost a year is found to constitute undue delay on the part of the WCED.

(c) The Health Inspector's urgent recommendations of 20 August 2008 were not implemented despite the fact that they were aimed at ensuring that there is enhancement of the general environmental health conditions at the School. Failure by the WCED in this regard is also found to have been improper.

(d) The undue delay to address the dire conditions at the School infringed the learners' and educators' right to a clean and safe environment that is conducive to education.

(iii) It is recommended that:

(a) The WCED should ensure that the security and repairs at the School be concluded as soon as possible;

(b) The School should ensure that the health risks that were identified by the Health Inspector do not recur after the repairs and maintenance have been effected;
(c) The WCED should introduce measures to ensure that the delays experienced at the School do not recur at other schools in the Western Cape Province;

(d) In addition to burglar-proofing, the WCED should also consider upgrading the wire fence at the school in order to reduce unauthorised access to the school premises and to enhance the safety of learners and educators; and

(e) The WCED should ensure that a 24 hour security service provider be contracted to guard the premises, also after hours and during school holidays.
REPORT ON AN INVESTIGATION INTO ALLEGED UNDUE DELAY ON THE PART OF THE WESTERN CAPE EDUCATION DEPARTMENT TO ADDRESS CONDITIONS AT THE DUNESIDE PRIMARY SCHOOL, MITCHELL’S PLAIN

1. INTRODUCTION

1.1 This report is submitted to the Member of the Executive Council (MEC) responsible for Education in the Western Cape Provincial Government, the Head of the Western Cape Education Department (WCED), the Circuit Team Manager of the WCED: South Metropole, the Principal of Duneside Primary School (the School) in Mitchell’s Plain and the Regional Manager of the Department of Public Works, Cape Town in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 The report pertains to an investigation undertaken by the Office of the Public Protector (OPP) on own initiative of a matter emanating from media reports regarding the alleged undue delay on the part of the WCED to address conditions at the School after half of the School building had to be closed due to vandalism.

2. THE COMPLAINT

The complaint emanates from a media report on 16 January 2009, which reported, among other things, that:

2.1 The principal of the School was frustrated with the alleged undue delay on the part of the WCED to assist after half of the School building was closed due to vandalism;
2.2 The learners have access to only two toilets, one for boys and another one for girls;

2.3 Registration of learners at the School plunged. The principal attributed the decrease in registration to the condition of the School, because a previous year the School had apparently been one of the top primary schools;

2.4 The School was turned into a dumping place and posed a health hazard to the learners and educators, which was confirmed by a health inspector;

2.5 The principal expressed his frustration regarding the condition of the school and he indicated that "[w]e really feel deserted and abandoned by the Department and we are trying to stay positive, but for how long, because the situation is worsening."; and

2.6 In response to the problem the director of the South Metropole WCED said that the School was given money for repairs, and the manner in which the money had been used, was under investigation. He also said that the vandalism was being investigated.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE MATTER

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution and its additional operational requirements are governed by the Public Protector Act. It was established to strengthen constitutional democracy.

3.2 In terms of Section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice. Following an
investigation, the Public Protector can report on that conduct and take appropriate remedial action.

3.3 The complaint accordingly falls within the mandate of the Public Protector.

4. THE INVESTIGATION

The investigation was conducted in terms of section 7 of the Public Protector Act and comprised the following:

4.1 Consultation with the principal of the School and member of the School Governing Body (SGB)

4.1.1 On 1 April 2009 the OPP interviewed the principal of the School, Mr C Chateau and the treasurer of the SGB, Mrs Manuel. The chairperson of the SGB, Ms Toffe was not available and was represented by Mrs Manuel.

4.1.2 During the above meeting, the following facts emerged:

4.1.2.1 The funding that the School receives from the WCED is allegedly insufficient. The School has 356 children and the majority of learners are from very poor families. Most of the learners' families do not have any source of income except for social grant money. As a result, the majority of learners do not pay school fees. The School also has a feeding scheme.

4.1.2.2 Sometimes the School is unable to pay the SGB members or the temporary teachers. At one stage, the parents agreed to pay R5.00 each so that they can do something about the security at the School, but nobody paid.

4.1.2.3 The condition of the school started deteriorating during June 2007 because of vandalism. The vandalism is attributed to the social ill of drug addiction, which compels the addicts to steal anything that can be sold.
4.1.2.4 Apparently the principal first reported the problem to the WCED Circuit Team Manager, the Director for Safer Schools and the Department of Public Works (DPW): Provisioning Directorate during June/July 2007. The principal also reported the matter to the former MEC for Education. As a result the School was given an amount of R43 000.00 for installation of an alarm and intercom.

4.1.2.5 During October 2007 the alarm and intercom were installed, but the aforementioned measures did not secure the School because the burglars managed to damage them and vandalised the School again. The insurance company refused to settle the claim that the School submitted for the damages because the School premises are not secured e.g. the fence is very low, the fence has holes, there are no burglar bars etc.

4.1.2.6 Furthermore, during 2007 some officials from the WCED South Metropole and an inspector from the DPW visited the School on several occasions to inspect its condition. The principal was led to believe that the School was up for major maintenance during 2007/2008.

4.1.2.7 The DPW promised to repair the School only after it has been secured.

4.1.2.8 The rear block of the school is now infested with birds/pigeons, mice and lice.

4.1.2.9 On 20 August 2008 a Health Inspector issued a negative report about the conditions at the School. The Health Inspector emphasised that the WCED should urgently implement the action plan so as to enhance the general health conditions at the School. The report recommended, among other things, that:

4.1.2.9.1 Urgent steps should be taken to secure the provision of adequate temporary toilet facilities for boys;
4.1.2.9.2 The upgrade of the two available toilets should be prioritised;

4.1.2.9.3 There should be provision for a sanitary bin and removal service in the girls' toilets;

4.1.2.9.4 The ceiling areas and eaves should be cleared from all nests, offensive matter and bird carcasses prior to the repair and upgrading of all vandalised class rooms;

4.1.2.9.5 Openings that give pigeons access to the roof structures should be screened off; and

4.1.2.9.6 The administration of fumigation steps should be undertaken by an accredited pest control company.

4.1.2.10 There are 356 learners at the School, but they have access to only two toilets. The cleaners at the School are also unable to keep up with the cleaning of the toilets because of the high number of learners that use the toilets. However, the learners are sometimes allowed to use the two toilets that are used by the 14 educators.

4.1.2.11 At a later stage, the Safer Schools Local Co-ordinating office requested the principal to look for quotations to repair the School and the cheapest quote that the principal got was R161 000.00. The WCED advised the principal that they could only give the School R50 000.00. Apparently the integrity of the principal was questioned because of the aforementioned quotation of R161 000.00.

4.1.2.12 Subsequently the WCED allegedly accused the principal and some members of the SGB of misappropriating and misusing school funds. The principal is accused of having shared the money with one of the service providers that did some repairs/work at the School ostensibly on a previous
occasion. As a result an investigation has been initiated against him. The principal indicated that the service provider borrowed money from the School, but he denies that he shared any money with the service provider. There is apparently proof of the School’s financial transactions. The principal indicated that one of the SGB members spread rumours in Mitchell’s Plain that the principal was misappropriating the school funds.

4.1.2.13 Apparently the WCED has informed the principal that it cannot release the money to repair the school because he is under investigation. The principal is concerned about the children having to endure the conditions at the School whilst the WCED is trying to investigate unfounded allegations. He is also worried about his integrity.

4.1.2.14 During December 2008 the WCED deposited R74 000,00 into the School’s account and the principal was informed that the money was for burglar bars.

4.1.2.15 Some of the parents are concerned about the condition of the toilets and classes and have asked for the transfer of their children to other schools. From January 2009 more than 31 children have left the School.

4.2 Inspection in loco

4.2.1 An inspection in loco was conducted on 1 April 2009 and the following were observed:

4.2.1.1 The School is located on the outskirts of Mitchell’s Plain, next to an open field with long grass, illegal rubbish dump site and tall trees.

4.2.1.2 The School’s wire fence is low and has many holes.
4.2.1.3 The rear block of the School, which consists of 13 classrooms, was derelict and very filthy. Furthermore, the toilets could not be used. The OPP also observed, among others, that the burglars:

4.2.1.3.1 damaged water pipes, as a result of which there is no water supply;

4.2.1.3.2 removed electricity lights, water basins, urinals, water taps, aluminium chalk holders, ceilings, cupboards and meter boxes;

4.2.1.3.3 stole the gas stove frame that the school use to cook food for the soup kitchen;

4.2.1.3.4 damaged/stole the books that were in the small library that the school started; and

4.2.1.3.5 painted graffiti on the walls.

4.3 Consultation with the Circuit Team Manager and other WCED officials

On 20 April 2009 the OPP met with the WCED Circuit Team Manager: South Metropole and two Directors of the WCED: South Metropole. It emerged during this meeting, among other things, that:

4.3.1 The Circuit Team Manager started in his current position during August 2008 and during October/November 2008 he visited all schools in his area, including the School.

4.3.2 The WCED is apparently addressing issues raised in the newspaper article of 16 January 2009, from which the OPP investigation emanated.
4.3.3 The School was vandalised on several occasions and the DPW has renovated it in numerous instances. However, it appears that there are sometimes delays on the part of the DPW (Also see paragraph 4.3.9 infra).

4.3.4 The DPW requested that the School be secured first before it can repair damages caused by the vandalism. From April 2008 the DPW advised the WCED and the School that the repairs would only be effected when the School is effectively secured by burglar-proofing. DPW reiterated this fact in July/August 2008. This was a confirmation of the principal’s statement.

4.3.5 The School has already acquired the services of a person who will install the burglar bars. An amount of R74 200.00 was paid into the School’s account on 14 December 2008 by Safer Schools for purposes of securing the School.

4.3.6 There is an additional amount of R650 000.00 for unscheduled maintenance at the School.

4.3.7 An investigation referred to in the above newspaper article regarding the principal and other staff members was referred to DPW’s Forensic Department for further action.

4.3.8 The School will be renovated in three months’ time, viz. the end of May 2009, and the OPP can approach the School to conduct an inspection in loco.

4.3.9 However, at a later stage the WCED Circuit Team Manager indicated in writing that:

4.3.9.1 WCED never stated during a meeting with the OPP that there are sometimes delays on the part of the DPW.
4.3.9.2 The School has paid a deposit to Mr Ford (Service Provider) to start work on its security. Completion is expected during May 2009.

4.3.9.3 An official from DPW, Mr Albe Hart, visited the School to inform the principal that the School has been identified for scheduled maintenance worth R650 000.00. The bulk of these funds would be used to effect the repairs to the electrical damages, plumbing and ceilings. Completion date should be before the end of the second term (end of June 2009).

4.3.9.4 Mr Ford (Service Provider) completed his work on 19 May 2009 and received his final payment of R76 000.00 on 26 May 2009. The School only received R74 200.00 from Safer Schools. The School’s Governing Body paid the difference.

4.3.9.5 Approval was only given to the DPW in April 2009 to resume with the School’s project. The project of the School was advertised for tendering and the tendering process closed on the 29 June 2009.

4.3.9.6 The contract period for the above project is three months starting during August 2009 until October 2009.

4.4 Telephonic enquiries

Various telephonic discussions were held with the principal and various officials at the School.

4.5 Written correspondence

Written correspondence was exchanged between the OPP, the principal and the Circuit Team Manager of the WCED: South Metropole.
4.6 Legal framework relevant to the complaint

The legal rules dealing with safety in schools and other matters related to schools are derived from the Constitution as well as from national legislation, prescripts etc.

4.6.1 Legislation considered

4.6.1.1 The Constitution

(i) Section 24 of the Constitution provides, among other things, that everyone has the right to an environment that is not harmful to their health or well-being.

(ii) Section 28 of the Constitution further provides that every child has the right to family care or parental care or to appropriate alternative care when removed from the family environment. In terms of this provision a child's best interests are of paramount importance in every matter concerning the child.

(iii) Finally, in terms of section 29 everyone has a right to education.

4.6.1.2 The South African Schools Act, 1996

The above legislation provides, among others, in section 5A that:

"5A. Norms and standards for basic infrastructure and capacity in public schools

(1) The Minister may, after consultation with the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for—"
(a) school infrastructure; ...

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:

(a) In respect of school infrastructure, the availability of—

(i) classrooms;
(ii) electricity;
(iii) water;
(iv) sanitation;
(v) a library;
(vi) laboratories for science, technology, mathematics and life sciences;
(vii) sport and recreational facilities;
(viii) electronic connectivity at a school; and
(ix) perimeter security;

(b) in respect of the capacity of a school—

(c) utilisation of available classrooms of a school; ...

4.6.1.3 Regulations for Safety Measures at Public Schools

(i) Regulation 5 issued under Government Notice No. 1040 of 12 October 2001 in terms of the South African Schools Act (Regulations for Safety Measures at Public Schools), provides that:

"5. (1) Subject to the Constitution, laws and national and provincial policies, the HOD or principal of any public school may and for such timeframes as may be necessary-"
(a) Take such steps as he or she may consider necessary for the safeguarding of the public school premises, as well as for the protection of the people therein; ..."

4.6.2 Prescripts

4.6.2.1 During 2000 the WCED issued Circular 0099/2000. The circular indicated that the WCED’s Safe Schools Call Centre had established a telephone line. The aim is to assist educators and learners to teach and learn in a safe, crime free school environment. The centre forms part of the Safe Schools Programme. The circular called for reporting in, among others, arson, assaults, burglaries, corporal punishment, killings (gang- or traffic-related), vandalism etc.

4.6.2.2 Paragraph 4.6 of the Guidelines for the consideration of governing bodies in adopting a code of conduct for learners (Department of Education, 1998) states that "... learners have a right to a clean and safe environment that is conducive to education."

4.6.3 School Safety measures

4.6.3.1 In an article compiled by the Government Communication and Information System entitled "Education department committed to school safety" dated 7 February 2008; the national Department of Education reiterated its commitment to ensuring that schools are a safe and caring environment, after a report was issued naming South African schools as the most dangerous in the world. According to the report from the South African Institute of Race Relations (SAIRR), only 23 percent of pupils in the country said they felt safe at school. The Education Department's Director-General Duncan Hindle further remarked "The issue of school safety is a long-standing concern of the department, and over the past five years numerous steps have been taken to improve the situation." Among the steps taken by the department to address
safety in schools, Mr Hindle mentioned the recent launch of a programme to provide some schools with fences, lighting, security guards and metal detectors.

4.6.3.2 The former MEC for Education in the Western Cape indicated in the media report of 9 January 2008 that "We are looking for an integrated solution where the successful bidder provides a CCTV system that also links it to the Safe Schools system and is monitored 24 hours a day in co-operation with the SA Police Service."

5. **EVALUATION OF EVIDENCE**

5.1 Though the conditions at the School deteriorated since June/July 2007, half of the building was still closed when the OPP visited the School on 1 April 2009.

5.2 The information gathered during the investigation indicates that the WCED was trying to resolve the problems at the School, but the pace at which the WCED was dealing with the matter was too slow.

5.3 The rear block of the School is a serious health hazard for the learners and the educators, and this was confirmed by the Health Inspector. Though the rear block of the School is closed, the OPP observed that the learners still play next to that block.

5.4 It is an additional burden for the educators and other staff members to ensure at all times that all children are safe, particularly at the toilets. The cleaners at the School cannot cope with the cleaning of the toilets because of the high number of children that use the two toilets.
5.5 Considering the fact that the School had in the past been a top performer, it is imperative that the problems are attended to as a matter of urgency, because the negative media reports resulted in the transfer of a high number of learners to other schools, as well as a decline in the registration of new learners.

5.6 The delays in dealing with the problems may be attributed to a number of factors, for example the case involving the principal and the rumours spread by one of the SGB members regarding the manner in which the principal used the school funds. However, these factors do not justify the undue delay in addressing the situation at the School. From April 2008 the DPW advised the WCED and the School that the repairs would only be effected when the School is effectively secured by burglar-proofing. DPW reiterated this fact in July/August 2008. Consequently, a situation was allowed to prevail where almost a year elapsed before the conditions could be attended to.

5.7 The conditions at the School have the potential to expose the WCED to legal action, should any of the learners' health be affected by the hazardous conditions.

6. FINDINGS

6.1 The vandalism at the school started sometime during the June/July 2007 school vacations, but during January 2009 the school was still not secured and was still experiencing the same problems.

6.2 From April 2008 the WCED had been aware of the fact that the DPW would only attend to repairs when the School has been secured. Meanwhile, several officials visited the School, but the conditions perpetuated. The School eventually received money for its security on 14 December 2008, during school holidays. The School only secured the services of a service provider for burglar proofing during March 2009, which is more than a month
after the re-opening of the schools on 21 January 2009. When the OPP visited the School on 1 April 2009 the service provider had not started with his work. This inaction over a period of almost a year is found to constitute undue delay on the part of the WCED.

6.3 The Health Inspector’s urgent recommendations of 20 August 2008 were not implemented despite the fact that they were aimed at ensuring that there is enhancement of the general environmental health conditions at the School. Failure by the WCED in this regard is also found to have been improper.

6.4 The undue delay to address the dire conditions at the School infringed the learners’ and educators’ right to a clean and safe environment that is conducive to education.

7. RECOMMENDATIONS

In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act it is recommended that:

7.1 The WCED should ensure that the security and repairs at the School be concluded as soon as possible;

7.2 The School should ensure that the health risks that were identified by the Health Inspector do not recur after the repairs and maintenance have been effected;

7.3 The WCED should introduce measures to ensure that the delays experienced at the School do not recur at other schools in the Western Cape Province;

7.4 In addition to burglar-proofing, the WCED should also consider upgrading the wire fence at the school in order to reduce unauthorised access to the school premises and to enhance the safety of learners and educators; and
7.5 The WCED should ensure that a 24 hour security service provider be contracted to guard the premises, also after hours and during school holidays.

8. CONCLUSION

8.1 The OPP will monitor the implementation of these recommendations on a monthly basis.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 15/09/09

Assisted by: Adv M Leboko, Investigator: Western Cape