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REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF CRONYISM, MALADMINISTRATION, MISMANAGEMENT OF FUNDS AND IRREGULAR RECRUITMENT PROCESSES AT SCHOOLS IN DISTRICT 14 OF THE GAUTENG DEPARTMENT OF EDUCATION
# TABLE OF CONTENTS

Executive Summary ........................................................................................................... 3

1. INTRODUCTION ........................................................................................................... 18

2. THE COMPLAINT ......................................................................................................... 19

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR .............................. 21

4. THE INVESTIGATION ................................................................................................. 25

5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED 
   AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND 
   PRESCRIPTS .................................................................................................................. 33

6. FINDINGS ................................................................................................................... 90

7. REMEDIAL ACTION ................................................................................................... 100

8. MONITORING ............................................................................................................. 101
EXECUTIVE SUMMARY

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

(ii) The report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of cronyism, maladministration, mismanagement of funds and irregular recruitment processes at schools in District 14 of the Gauteng Department of Education (GDE).

(iii) The complaint was lodged with my office on 22 September 2016 by an anonymous complainant (the Complainant).

(iv) The investigation was conducted in terms of section 182(1)(a) of the Constitution which gives me the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, which regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

(v) In Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.¹ The Constitutional Court further held that: “When remedial action is binding, compliance is not optional,

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences".2

(vi) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the GDE or its officials mismanaged the school fees at the Winnie Mandela Primary School in contravention of the applicable legal prescripts;

(b) Whether Ms Mkhize, the Principal of Winnie Mandela Primary School improperly failed to hold Annual General Meetings and prepare budgets for the financial year 2015/16 at Winnie Mandela Primary School in contravention of the applicable legal prescripts;

(c) Whether Ms Seate, Director Johannesburg Central District 14 irregularly delegated her secretary to oversee renovations at Winnie Mandela Primary School at a cost of R 800 million (eight hundred million rands) from the Department of Infrastructure and Development while no work was done;

(d) Whether the GDE irregularly appointed the following officials in contravention of the Department’s recruitment and selection processes:

   (a) Mr W Molefe
   (b) Mr KG Mabuza
   (c) Ms S Mkhize
   (d) Ms H Biyela
   (e) Mr RR Nemukula; and

2 Supra at para [73].
(e) Whether the Complainant, or taxpayers in the circumstances suffered prejudice as a result of the alleged maladministration by the GDE.

(vii) The investigation process included an exchange of correspondence and an analysis of all relevant documents and application of all relevant laws, policies and related prescripts. Interviews were also conducted with the Complainant in person, through emails and telephone. Relevant officials of the GDE were also interviewed.

(viii) Key laws and policies taken into account to determine if there had been cronyism, maladministration, mismanagement of funds and irregular recruitment processes at schools in District 14 of the GDE and whether prejudice was suffered by the Complainant or taxpayers, were principally those imposing administrative standards that should have been complied with by the GDE. Those are the following:

(a) Constitution of the Republic of South Africa, 1996 (the Constitution);

(b) The Public Protector Act, 23 of 1994 (the PPA);

(c) The Public Finance Management Act, 1 of 1999 (PFMA);

(d) The South African Schools Act, 84 of 1996;

(e) The Employment of Educators Act, 76 of 1998;

(f) The General Notice 1457 of the Governing Body Regulations for Public Schools,1997;

(h) The Gauteng Department of Education Recruitment and Selection Policy, 2015; and

(i) The Winnie Madikizela Mandela School Finance Policy.

(ix) Having considered the submissions made and evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) Regarding whether the GDE or its officials mismanaged the school fees at Winnie Mandela Primary School in contravention of the applicable legal prescripts.

(aa) The allegation that the GDE or its officials mismanaged the school fees at Winnie Mandela Primary School (Winnie Mandela School) in contravention of the applicable legal prescripts, is substantiated.

(bb) The Winnie Mandela School fund’s receipt book was duplicated and defrauded under Ms S Mkhize’s (Ms Mkhize) administration as principal. By failing to place the receipt book in the school safe or an equivalent secure place as dictated to by Section 2 sub-subsection 2.1 of the Finance Policy and section 16A (2)(a)(i) and (k) of the South African School Act, Ms Mkhize did not promote or adhere to the said legal injunctions, thereby exposing the school to financial risk.

(cc) By failing to record in a distribution register, the serial numbers of the receipt books purchased and issued, Ms Mkhize further contravened Clause 2.3.15 of Circular 13/2000 of the GDE, since she did not realise/notice or even
become aware of the duplication and fraud which was happening in the receipt book of the Winnie Mandela School.

(dd) It was incumbent upon Ms Mkhize as the school principal to take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the School Governing Body (SGB) and to ensure the safe-keeping of school records, namely by placing the receipt book in the school safe or an equivalent secure place. Ms Mkhize did not show or demonstrate that she took all reasonable steps to keep the receipt book of the school funds safe as guided by policy.

(ee) The following cheques were signed by Mr Dan Phukubje: Cluster Leader for District 14 (Mr Phukubje) and Ms Mkhize in excess of an amount of R1 000.00 namely, *Cheque Number: 107794, Cheque Number: 107848, Cheque Number: 107873, Cheque Number: 107900 and Cheque Number: 107961.* By signing these cheques in excess of R 1 000.00, both Ms Mkhize and Mr Phukubje contravened Section 4 subsection 4.1 of the Finance Policy, which states amongst other things that: "An initial amount of R 1 000.00 will be made available for petty cash". All the above mentioned cheques indicate an amount of R2000.00 which is in excess of R1000.00 limit for petty cash which was issued and signed jointly by Mr Phukubje and Ms Mkhize without authorisation by the SGB as required by section 3 subsection 3.3 of the Finance Policy.

(ff) The requisition form for payment of Ms Mkhize's travel allowance was not approved by the Treasurer or Chairperson of the SGB. On 5 December, Ms Mkhize approved her own cheque payment of an amount of R 2, 874.96 for travel allowances, notwithstanding the lack of approval by the Chairperson of the SGB and Treasurer. By so doing, Ms Mkhize violated Section 3. Subsection 3.1 of the Finance Policy, which states amongst other things that:
"All payments by cheques to anyone should be accompanied by the signature of the Chairperson, Principal and Treasurer."

(gg) Accordingly, these violations amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether Ms Mkhize improperly failed to hold Annual General Meetings and prepare budgets for the financial year 2015/16 at Winnie Mandela School in contravention of the applicable legal prescripts.

(aa) The allegation that Ms Mkhize improperly failed to hold Annual General Meetings (AGM) and prepare budgets for the financial year 2015/16 at Winnie Mandela School in contravention of the applicable legal prescripts, is not substantiated.

(bb) On 11 September 2019, the GDE Head of Department, Mr Edward Mosuwe, furnished my office with attendance registers, budget plans and minutes as proof of AGMs for the 2015/2016 financial year, albeit after serving the GDE with a section 7(9) Notice issued in terms of the Public Protector Act.

(cc) Accordingly, this conduct by Ms Mkhize did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(c) Regarding whether Ms Seate irregularly delegated her secretary to oversee renovations at Winnie Mandela School at a cost of R 800 million (eight hundred million rands) from the Department of Infrastructure and Development, while no work was done.
(aa) The allegation that Ms Seate irregularly delegated her secretary to oversee renovations at Winnie Mandela School at a cost of R800 million (eight hundred million rands) from the Department of Infrastructure and Development (DID), while no work was done, is not substantiated.

(bb) All evidence currently in my possession indicates that restorative repairs and the refurbishment project at Winnie Mandela School was initiated and owned by the DID. The GDE was not involved in the financial aspects of the project.

(cc) Ms Seate did not contravene any policy or legislation nor appear to have been involved in any wrongdoing. In the circumstances, the GDE’s version is more probable than that of the Complainant.

(dd) Accordingly, the conduct of Ms Seate did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(d) Regarding whether the GDE irregularly appointed the following officials in contravention of the Department’s recruitment and selection processes.

Appointment of Mr W Molefe to the position of a Principal at Glenridge Primary School.

(aa) The allegation that the GDE irregularly appointed Mr W Molefe (Mr Molefe) without following the Department’s recruitment and selection processes, is substantiated.

(bb) Evidence at my disposal revealed that Mr JC Baloyi was a Principal at Glenridge Primary School from January 2013. He left this post six months
after assumption of duty namely, July 2013. The SGB wrote a letter dated 11 November 2013 to Ms Seate, recommending the appointment of Mr Molefe as the second candidate after Mr JC Baloyi had left without advertising the post again, contrary to the provisions of their policy that the position may only be offered to the second recommended candidate if it is vacated within three (3) months of the initial appointment. The resignation of Mr JC Baloyi was not therefore within three months of assuming duty. In fact, Mr JC Baloyi left after having worked for more than three months.

(cc) Mr Molefe was subsequently appointed as a Principal at Glenridge Primary School on 12 November 2013 as per appointment letter signed by Ms Seate.

(dd) It was expected of the GDE to advertise the post and follow ordinary recruitment processes in appointing Mr W Molefe as a Principal at Glenridge Primary School given the fact that the post did not become vacant within three months of assumption of duty by Mr Baloyi.

(ee) However, the GDE and in particular Ms Seate, improperly and wrongfully relied on Clause 11.3.5 of the GDE Recruitment Policy to irregularly appoint Mr Molefe without advertising the post, thereby violating the said Recruitment Policy.

(ff) Accordingly, such violation by the GDE amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
Appointment of Mr KG Mabuza to the position of a Circuit Team Manager

(gg) The allegation that the GDE irregularly appointed Mr KG Mabuza (Mr Mabuza) without following the Department’s recruitment and selection processes, is substantiated.

(hh) Upon perusal of Mr Mabuza’s qualifications and CV, it was observed that Mr Mabuza does not have a Degree or equivalent qualification. According to his CV in my possession, Mr Mabuza has a Secondary Teacher’s Diploma obtained in 1986 from Soweto College of Education as the highest academic qualification, including matric as well as other training certificates.

(ii) The advertisement for the post required a Degree qualification in management / administration or equivalent, plus a minimum of 5 years extensive education and management experience. An ordinary or standard Secondary Teacher’s Diploma may not be regarded as equivalent to a Degree, since the two are not graded the same in terms of the National Qualifications Framework (NQF) ratings as can be seen on the NQF Conversion Table.

(jj) Mr Mabuza’s Diploma does not have degree modules or courses and it is marked as such. As a result Mr Mabuza holds an ordinary Diploma and not an Advanced Diploma contemplated under NQF 7 or which is equivalent to a Degree as shown on the conversion table in evidence.

(kk) It follows therefore that, by shortlisting, recommending and subsequently appointing Mr Mabuza to the position of a Circuit Team Manager without the qualification required in terms of the advert, GDE officials and in particular Mr B Ngobeni (former HoD of GDE), Ms Seate, Mr E Ndlebe, Mr J Coetzee and Ms S Mashala who all recommended and approved the appointment, violated
Clause 11.3.4 of the Recruitment Policy which requires the verification of qualifications amongst other things before appointment.

(ii) Accordingly, such violation by the GDE amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

**Appointment of Ms S Mkhize to position of a Principal at Winnie Mandela Primary School**

(mm) The allegation that the GDE irregularly appointed Ms Mkhize as a Principal at Winnie Mandela Primary School without following the Department’s recruitment and selection processes, is not substantiated.

(nn) The position of a Principal at Winnie Mandela School was advertised in the GDE Vacancy Circular on 19 October 2015 with Post No: JC45CS1008A and the closing date was on 2 November 2015. Interviews were conducted on 4 December 2015 and the recommendation letter for appointment of Ms Mkhize was signed by the SGB Chairperson: Ms Dorothy Mothoane, on 7 December 2015.

(oo) My office was not provided with a copy of the actual advertisement for this post in order to determine exactly what the minimum requirements were. The Complainant also did not specify what exactly is alleged to be irregular or improper about Ms Mkhize’s appointment.

(pp) However, on 22 February 2018, Mr Mpho Maloka: Director of Legal Services of the GDE supplied my office with Ms Mkhize’s CV and academic qualifications. Upon perusal of Ms Mkhize’s qualifications, I observed that she possesses an Honours Degree in Education obtained from the University of
Witwatersrand in 2013 as the highest academic qualification. Ms Mkhize's CV currently in my possession also discloses that she has more than twenty years of relevant experience in the field of teaching and acted for more than two years in the same post as Principal of Winnie Mandela School.

(qq) Evidence in my possession indicates that the GDE adhered to all the provisions of its Recruitment and Selection Policy in the appointment of Ms Mkhize as the principal of Winnie Mandela School.

(rr) Accordingly, the appointment did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(l) of the Public Protector Act.

Appointment of Ms H Biyela to position the of a Deputy Director: Transversal Human Resource Services for Johannesburg Central District.

(ss) The allegation that the GDE irregularly appointed Ms Biyela (Ms Biyela) to a position of a Deputy Director: Transversal Human Resource Services for Johannesburg Central District without following the Department's recruitment and selection processes, is not substantiated.

(tt) Evidence received indicates that the position of Deputy Director: Transversal Human Resource Services for Johannesburg Central District with Ref No: 2014/05/1020, was advertised in the GDE Vacancy Circular on 25 May 2014 with the closing date of 9 June 2014.

(uu) The Complainant's allegation that Ms Biyela was strategically placed in Human Resources to manipulate the employment process of educators, selling of posts and backdating appointments in an attempt to defraud state
funds together with Ms Seate and Ms Mkhize, was not supported or corroborated by any evidence. The appointment of Ms Biyela as a Deputy Director: Transversal Human Resources Services in Johannesburg Central District was consistent with the GDE Recruitment & Selection Policy.

(vv) Accordingly, the appointment did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Appointment of Mr RR Nemukula to the position of Deputy Chief Education Specialist.

(ww) The allegation that the GDE irregularly appointed Mr RR Nemukula (Mr Nemukula) as a Deputy Chief Education Specialist without following the Department’s recruitment and selection processes, is not substantiated.

(xx) Evidence revealed that the position of Deputy Chief Education Specialist (DCES): Human Resource Planning and Systems with reference No. 70262128 was advertised in the Star Workplace newspaper on 6 April 2011. Mr Nemukula went through the selection process, met the requirements for the post and was validly appointed.

(yy) Subsequent to his appointment, Mr Nemukula was charged with misconduct during the 2015/2016 financial year. He was found guilty and dismissed by the Head of Department (HOD), Mr E Mosuwe, on 4 August 2017. The dismissal of Mr Nemukula was not related to his appointment and he has never been re-appointed by the GDE as alleged by the Complainant.
Accordingly, the appointment did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Regarding whether the Complainant or the taxpayers suffered prejudice as a result of the alleged maladministration by the GDE.

The allegation that the Complainant or the taxpayers suffered prejudice as a result of the alleged maladministration by the GDE, is substantiated.

The GDE suffered financial prejudice as a result of cheques that were approved irregularly, duplication and forgery of the school fund receipt book, irregularly approved travel claims and allowances and the irregular appointments as explained in evidence.

The conduct of Ms Mkhize, Mr Phukubje, Mr Maphunye, Mr Ngobeni, Ms Seate, Ms Mashala, Mr Coetzee and Mr Ndlebe were in contravention of section 195 of the Constitution, Section 16A of the South African Schools Act, 1996, Section 2 sub-subsection 2.1 and Section 3, Subsection 3.1 of the Finance Policy, Clause 2.3.15 of Circular 13/2000 of the GDE, Clause 11.3.4 and 11.3.5 of the Recruitment Policy and other applicable legal prescripts.

An irregular appointment shall negatively impact the GDE's finances due to the continuous payment of salaries to employees appointed in contravention of applicable legal prescripts. Such payments amount to irregular expenditure which is prohibited under sections 38 and 45 of the PFMA. On the other hand, candidates with relevant qualifications and potential were also improperly
prejudiced when they were ignored in favour of less qualified candidates, hence it is crucial for management to apply its mind when making appointments. A “bad hiring decision” could also harm internal employees’ morale and result to time loss due to grievances, disputes and litigation processes.”

(ee) Accordingly, such violations by the GDE amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(x) The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

**The HoD of the GDE must take appropriate steps to ensure that:**

(aa) Within thirty (30) working days from the issuing of this report take appropriate disciplinary action against all implicated employees who are still within the employ of the GDE;

(bb) Within sixty (60) working days from the date of this report provide training to all GDE Human Resource Management staff and other officials who are involved in the GDE’s Recruitment and Selection processes;

(cc) Within sixty (60) working days from the date of this report, initiate a judicial review process contemplated in terms of sections 6 and 7 of PAJA to set aside the appointment of Mr Mabuza on the basis that he was irregularly appointed to a post of a Circuit Cluster Manager without having the required minimum academic qualification, namely a degree or equivalent qualification for the post,
(dd) Within sixty (60) working days from the date of this report, initiate a judicial review process contemplated in terms of sections 6 and 7 of PAJA to set aside the appointment of Mr Molefe on the basis that he was irregularly appointed to a post of a Principal at Glenridge Primary School without the post being advertised as required.

(ee) Within sixty (60) working days from the date of this report, disclose all the irregular expenditure to the Provincial Treasury and to the Auditor General incurred by the GDE in connection with the irregular appointments, and other financial irregularities relating to the school receipt book and travel costs.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF CRONYISM, MALADMINISTRATION, MISMANAGEMENT OF FUNDS AND IRREGULAR RECRUITMENT PROCESSES AT SCHOOLS IN DISTRICT 14

1. INTRODUCTION

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation and implement remedial action:

1.2.1 The Minister of Basic Education: Mrs Angie Motshekga;

1.2.2 The Director-General of the Department of Basic Education: Mr Hubert Mathanzima Mweli;

1.2.3 The Member of the Executive Committee of the Gauteng Department of Education: Mr Panyaza Lesufi;

1.2.4 The Head of Department of the Gauteng Department of Education: Mr Edward Mosuwe;

1.2.5 A copy of the report is also provided to the Complainant to inform him/her about the outcome of the investigation.
2. THE COMPLAINT

2.1 The complaint was lodged with my office by an anonymous complainant (the Complainant) on 22 September 2016.

2.2 The Complainant alleged inter alia that:

2.2.1 Mr Kenneth Mabuza, the Principal of Ibhongo Secondary School (Mr Mabuza) was appointed as a Senior Cluster Manager by Ms Seate despite a previous record of underperformance at Ibhongo High School. There were other candidates who were better qualified and experienced, with longer service records in the District than Mr Mabuza. He had no tertiary qualifications and no experience. Mr Mabuza was also accused of sexual abuse, harassment and impregnating female students at Ibhongo High and Thabo Secondary Schools and then kept the learners at his home, giving them money or buying them groceries to cover up the scandal;

2.2.2 Ms Seate appointed Ms Sthembile Mkhize (Ms Mkhize) as a Principal of Winnie Madikizela-Mandela School (Winnie Mandela School) without following proper procedures after dismissing the previous Principal. At this school, there was widespread maladministration and abuse of state funds, including lack of teaching, supervision and monitoring of learners; high absenteeism by staff; skills centers for intellectually challenged learners not functioning for over two years; the audited financial statements had not been submitted to head office for two years; receipt books were duplicated in order to defraud the school fees paid by parents. Annual General Meetings for parents have not been held since Ms Mkhize was appointed and a budget has not been drawn for two years and passed onto parents for adoption;
2.2.3 Ms Hlengiwe Biyela (Ms Biyela), the Assistant Director, and Mr Roilet Nemukula (Mr Nemukula), the GDE’s Deputy Chief Education Specialist, were strategically placed in the Human Resources Department at Winnie Mandela School to manipulate issues of employment of educators, selling posts and backdating appointments in an attempt to defraud state funds, together with Ms Seate and Ms Mkhize;

2.2.4 Mr Wayne Molefe (Mr Molefe) was irregularly appointed by Ms Seate as a Principal at Glen Ridge Primary School without the post being advertised after the Principal, Mr Baloyi, accepted the offer at another school;

2.2.5 Mr Nemukula was previously charged and dismissed for ghost posts, but was reinstated by Ms Seate to continue heading the same department where he continued with his improper conduct;

2.2.6 Mr Dan Phukubje (Mr Phukubje) was appointed as a Cluster leader of District 14 and he and Ms Mkhize were signing cash cheques for personal use and without cheque description and companies’ names which contravenes Circular 13/2000. He failed to provide support, supervision and development for schools and continued the practice knowing that Ms Seate would protect him;

2.2.7 Mismanagement of funds occurred when Ms Mkhize claimed monthly travelling allowances for using her own car which amounted to R3000.00 per month and expenditure in purchasing school furniture to the value of R55 000.00 without following procurement procedures and School Governing Body (SGB) members reporting to school daily for signing cheques and then receiving daily allowances of R100.00 per visit;

2.2.8 Ms Mkhize undertook an excursion overseas to Hong Kong on 30 September 2016 and the SGB was not informed of the trip details. The trip was neither
budgeted for nor approved by the parents at the Annual General Meeting (AGM).

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that: "The Public Protector has the power as regulated by national legislation:

(a) 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;

(b) To report on that conduct; and

(c) To take appropriate remedial action".

3.3 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given the power to resolve disputes through mediation, conciliation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken
by the Public Protector has a binding effect. The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."

3.6 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68).

3.7 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69).

3.8 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70).

3.9 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71).
3.10 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (paragraph 71(a)).

3.11 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)).

3.12 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.13 The remedial action taken by the Public Protector has a binding effect (para 76). The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences (para 73)."

3.14 The GDE is an organ of state and its conduct amounts to conduct in state affairs, as a result of this, the matter falls squarely within the ambit of the Public Protector's mandate.

3.15 The jurisdiction of the Public Protector was not disputed by the GDE in this matter.

3.16 Regarding the exercise of my discretion in terms of section (9) to entertain matters which arose more than two (2) years from the occurrence of the
incident, and in deciding what constitute 'special circumstances', some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, include the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident (s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the Complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of the Constitution; whether my remedial action will redress the imbalances of the past. What constitute 'special circumstances' depends on the merits of the each case.

3.17 Admittedly, in terms of section 6(9) of the Public Protector Act, I am barred from entertaining complaints reported after two years from the date of an incident unless special circumstances exist. However, the mere fact that the incident occurred more than two years before being reported to my office does not, in itself, bar me from investigating. Instead, it is mainly the interests of justice that dictate whether I should investigate the matter or not. In this case, I submit that there is a huge public interest in the manner in which public administration or governing of public affairs are handled.

3.18 The appointment of public officials to senior positions and the management of expenditure of public funds in government departments like the GDE would inordinately generate huge public interest and scrutiny. The community, other applicants and public servants themselves would be keen to know or enquire into the just, fairness or transparency of the processes followed in the filling of such key and strategic positions or procurement within Provincial government departments such as the GDE.
3.19 Realising the importance of promoting accountability and openness which lies at the core of the founding provisions of our Constitution. Mindful of the need to strengthen constitutional democracy and driven by an inclination towards promoting basic values and principles governing public administration as envisaged both in sections 181 and 195 of our Constitution apiece. Appreciating the importance of advancing Promotion of Administrative Justice Act\(^3\) (PAJA) and its corresponding section 33 of our Constitution, I duly decided to exercise my discretion in favour of this complaint. For all these reasons I conclude that it is in the interests of justice to investigate and determine the merits or demerits of this complaint.

4 THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of sections 182(1)(a), (b) and (c) of the Constitution which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.

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\(^3\) Act 3 of 2000.
4.2 **Approach to the investigation**

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration or other improper conduct?

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. The Supreme Court of Appeal⁴ (SCA) made it clear that it is the Public Protector's duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

4.2.3 In this particular case, the factual enquiry primarily focused on whether or not there is cronyism, maladministration, mismanagement of funds and irregular recruitment processes at schools in District 14.
4.2.4 The enquiry regarding what should have happened, focuses on the applicable legal prescripts that regulate the standard that should have been met by the GDE to prevent improper conduct and/or maladministration as well as prejudice. In this case, key laws and policies taken into account to determine if there had been cronyism, maladministration, mismanagement of funds and irregular recruitment processes at schools in District 14 and prejudice to the Complainant and the GDE were principally those imposing administrative standards that should have been complied with by the GDE or its officials.

4.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of cronyism, maladministration, mismanagement of funds and irregular recruitment processes at schools in District 14 and improper conduct. Where a complainant and the GDE has suffered prejudice, the idea is to place them as close as possible to where they would have been had the GDE complied with the regulatory framework setting the applicable standards for good administration.

4.2.6 In the case of conduct failure as was the case in this matter, remedial action seeks to right or correct identified wrongs while addressing any systemic administrative deficiencies that may be enabling or exacerbating identified maladministration or improper conduct.

4.2.7 The substantive scope of the investigation focused on compliance with the law and prescripts regarding the complaint and allegations.
4.3 On analysis of the complaint, the following issues were identified and investigated:

4.3.1 Whether the GDE or its officials improperly mismanaged the school fees at Winnie Mandela School in contravention of the applicable legal prescripts.

4.3.2 Whether Ms Mkhize improperly failed to hold Annual General Meetings and prepare budget for the financial year 2015/16 at Winnie Mandela School.

4.3.3 Whether Ms Seate irregularly delegated her secretary to oversee renovations at Winnie Mandela School at a cost of R800 million (eight hundred million rands) from the Department of Infrastructure and Development while no work was done.

4.3.4 Whether the Gauteng Department of Education irregularly appointed the following officials in contravention of the Department’s recruitment and selection processes:

(i) Mr Molefe  
(ii) Mr Mabuza  
(iii) Ms Mkhize  
(iv) Ms Biyela  
(v) Mr Nemukula

4.3.5 Whether the Complainant, the GDE itself or any other party suffered any prejudice as a result of the alleged maladministration.
4.4 The Key Sources of information

Correspondence sent and received

4.4.1 A complaint letter from the Complainant dated 21 September 2016;

4.4.2 A request for information letter dated 21 November 2016 from the Public Protector addressed to the HOD of the GDE;

4.4.3 Acknowledgement of receipt dated 31 January 2017 from Mr Mhlengi Sithole, Legal Officer;

4.4.4 A response letter from the District Director of Johannesburg Central District, Ms T Seate dated 15 February 2017;

4.4.5 An additional complaint letter from the Complainant dated 18 May 2017;

4.4.6 A copy of the Circular 13/2000 of the Gauteng Department of Education from the Complainant;

4.4.7 Copies of school funds’ receipt books from the Complainant;

4.4.8 A copy of a Notice issued in terms of Section 7(4) of the Public Protector Act dated 20 June 2017;

4.4.9 A further request for information letter dated 15 August 2017 from the Public Protector addressed to the HOD of the GDE;

4.4.10 A copy of a Notice issued in terms of Section 7(4) of the Public Protector Act dated 14 August 2017;
4.4.11 A response letter from the Director: Legal Services of the GDE, Mr Mpho Maloka dated 9 November 2017;

4.4.12 A request for information letter dated 22 August 2018 from the Public Protector addressed to the station Commander of Moroka SAPS, Brigadier B Govindsamy;

4.4.13 An additional complaint email from the Complainant dated 22 January 2019;

4.4.14 A response letter from the Director: Legal Services of the GDE, Mr Mpho Maloka dated 19 February 2019;

4.4.15 Copies of quotations for the purchase of office furniture at Winnie Mandela School;

4.4.16 Copies of the minutes and attendance register of the Winnie Mandela School SGB meeting, held on 22 June 2016;

4.4.17 Copies of the minutes and attendance register of the Winnie Mandela School SGB meeting, held on 20 September 2016;

4.4.18 Copies of the Winnie Mandela School cheque requisition forms, cheques, petty cash vouchers and invoices;

4.4.19 Copies of the Winnie Mandela School financial statements for 2014 and 2015 financial years;

4.4.20 A copy of a letter from the GDE as proof that the case of theft was opened at Winnie Mandela School, dated 23 August 2017;

4.4.21 A copy of a case docket for theft from Moroka SAPS;
4.4.22 A copy of the letter from Glenridge Primary School, SGB Chairperson to the District Director requesting the appointment of a school principal, dated 11 November 2013;

4.4.23 A copy of a letter of appointment to Mr Molefe as the Principal of Glenridge Primary School, dated 12 November 2013;

4.4.24 A copy of a letter of appointment to Mr Mabuza as a Circuit Team Manager dated 26 February 2015;

4.4.25 A copy of a certificate of acceptance by Mr Mabuza, for the appointment as the Circuit Team Manager, dated 27 February 2015;

4.4.26 Copies of curriculum vitae and educational qualifications of Mr Mabuza;

4.4.27 Copies of Mr Nemukula’s disciplinary hearing and disciplinary hearing outcome reports, dated 4 August 2017; and

4.4.28 Copies of an acknowledgement of receipt by the GDE officials of notices issued in terms of section 7(9)(a) of the Public Protector Act, dated 23, 24, 26 and 27 August 2019.

4.5 Laws and other legal prescripts

4.5.1 The Constitution of the Republic of South Africa, 1996 (the Constitution);

4.5.2 The Public Protector Act, 23 of 1994 (the PPA);

4.5.3 The Public Finance Management Act 1 of 1999 (PFMA);

4.5.4 The South African Schools Act 84 of 1996;

4.5.5 The Employment of Educators Act 76 of 1998;
4.5.6 The General Notice 1457 of the Governing Body Regulations for Public Schools, 1997;


4.5.8 The Gauteng Department of Education Recruitment and Selection Policy, 2015; and

4.5.9 The Winnie Madikizela Mandela School Finance Policy

4.6 Case law

4.6.1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);

4.6.2 Gamede MA vs The Public Protector (992646/2015) [2018] ZAGPPHC 865; 2019(1) SA 491(GP);

4.7 Interviews/Meetings conducted

4.7.1 Several telephonic interviews with the Complainant, from 20 October 2016 throughout the investigation;

4.7.2 A meeting with Mr D Phukubje, Ms S Mkhize and Mr M Sithole of the GDE, held on 3 August 2017; and

4.7.3 A meeting with Mr M Sithole, Ms S Mkhize, Mr D Phukubje and Ms T Seate of the GDE held on 5 September 2017.
4.8 Notices issued in terms of section 7(9) of the Public Protector Act

4.8.1 A notice was issued to the Minister of Basic Education Mrs Angie Motshekga, on 26 August 2019;

4.8.2 A notice was issued to the Head of the Gauteng Department of Education Mr Edward Mosuwe, on 23 August 2019;

4.8.3 A notice was issued to the Member of the Executive Committee of the Gauteng Department of Education, Mr Panyaza Lesufi, on 23 August 2019;

4.8.4 A notice was issued to the Director-General of the Department of Basic Education Mr Hubert Mathanzima Mweli, on 23 August 2019;

4.8.5 A notice was issued to the District Director of the Gauteng Department of Education Ms Tshepo Seate, on 23 August 2019;

4.8.6 A notice was issued to Mr Dan Phukubje, on 26 August 2019;

4.8.7 A notice was issued to Ms Sethembile Mkhize, on 26 August 2019;

4.8.8 A notice was issued to Mr M Maphunye, on 26 August 2019;

5 THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO APPLICABLE LAW AND PRESCRIPTS.

5.1 Regarding whether the GDE or its officials mismanaged the school fees at Winnie Mandela School in contravention of the applicable legal prescripts.

Common cause issues

5.1.1 On 1 June 2015 Justice Tsotetsi who is a learner at Winnie Mandela School paid an amount of R 250.00 (two hundred and fifty rands) for school fees and was issued a receipt with reference number 15770 as proof of payment.
5.1.2 On 2 October 2015 Tiro Kenosi who is also a learner at Winnie Mandela School paid an amount of R 250.00 (two hundred and fifty rands) for school fees and was issued a receipt with reference number 15770 as proof of payment.

5.1.3 On 3 August 2017, Mr Maloka submitted to my office copies of cheque requisition forms and cheques that were all signed by Mr Phukubje and Ms Mkhize during 2015.

5.1.4 Ms Mkhize completed and submitted a Claim Form\(^5\) for an amount R 2, 874.96 in connection with travel allowances following the use of her private vehicle for official duties, from 1 October 2014 to 30 November 2014.

5.1.5 On 20 July 2016 Mr Maphunye: SGB Treasurer and Ms Mkhize approved a cheque requisition form and cheque to the value of R 21 995.00 (twenty one thousand nine hundred and ninety five rands) to Fulufulu Trading and Projects for the purchase of school office furniture for Winnie Mandela School.

5.1.6 On 10 August 2016 Mr Maphunye and Ms Mkhize approved a cheque requisition form and a cheque to the value of R 29 000.00 (twenty nine thousand rands) to Fulufulu Trading and Projects for the purchase of school office furniture.

5.1.7 On 5 July 2016 Ms Mkhize approved a cheque payment of R 39 400.00 (thirty nine thousand four hundred rands) to Team Tek (Pty) Ltd for South African National Association for Specialised Education (SANASE) Leadership & Management Summit 2016.

\(^5\) The Claim Form is dated 03 December 2014 and the payment was approved Mr Phukubje on 05 December 2014.
5.1.8 On 27 September 2016, the SGB Treasurer, Mr Maphunye approved a cheque payment of R 30 000.00 (thirty thousand rands) to Ms Mkhize for Hong Kong conference allowance and travel claims.

5.1.9 On 3 October 2016 Ms Mkhize undertook a trip to Hong Kong to attend a SANASE Leadership & Management Summit 2016.

Issues in Dispute

5.1.10 The Complainant argued that school fund’s receipt books at Winnie Mandela School were fraudulently duplicated in order to defraud school fees paid by the parents of learners.

5.1.11 In order to corroborate the above allegations, The Complainant provided my office with a copy of Winnie Mandela School fund’s receipt number 15770 for the amount of R 250.00 (two hundred and fifty rands) received from Justice Tsotetsi with affixed Winnie Mandela School stamp dated 1 June 2015.

5.1.12 The Complainant further provided my office with a copy of Winnie Mandela School fund’s receipt number 15770 for the amount of R 250.00 (two hundred and fifty rands) received from Tiro Kenosi with affixed Winnie Mandela School stamp dated 2 October 2015.

5.1.13 According to the Complainant, both these payments that were received by Winnie Mandela School from two different learners on different dates but were fraudulently captured under one receipt number, namely: 15770.

5.1.14 The Complainant also submitted that Mr Phukubje was appointed as a Cluster leader for District 14 and that together with Ms Mkhize, were illegally signing
cash requisition forms and cheques for personal use and without following the Finance Policy of the school.

5.1.15 The Complainant argued that Ms Mkhize wrote a cash cheque amounting to R3000.00 (three thousand rand) for herself which she claimed for travelling allowances.

5.1.16 In a letter dated 27 March 2017, Ms Seate denied the above allegation and submitted that transport claims were made at the rate of R3.46 for a 1.6i engine capacity as per Provincial Transport Circular. She used a vehicle with a 2.0i engine capacity vehicle for the same rate. Ms Seate argued that figures as high as R3000.00 (three thousand rands) per month have never been claimed even when the claim was for a period of over two (2) months.

5.1.17 Ms Seate further responded to the allegations in a letter dated 27 March 2017 addressed to my office and disputed that the receipt book was fraudulently duplicated at Winnie Mandela School in order to defraud the school.

5.1.18 During a meeting held between my investigation team and GDE on 3 August 2017, the two duplicated receipts were presented to the GDE officials namely, Ms Seate, Mr Phukubje, Ms Mkhize and Legal Services Personnel (Mr Sithole) to confirm the authenticity thereof. However, the authenticity could not be verified but Ms Mkhize undertook to verify the duplicated receipts against the original receipt book.

5.1.19 Furthermore, Mr Mpho Maloka, Director: Legal Services at GDE, submitted in a letter dated 3 August 2017 that the original receipt books were stolen at Winnie Mandela School and the incident was reported at Moroka Police Station as per CAS 559/08/2017 and Occurrence Book Number:1987/08/2017 which was opened on 23 August 2017.
5.1.20 In terms of an affidavit dated 23 August 2017\(^6\) submitted by Ms Mkhize, the school fund’s receipt book resides in her office. Both of the above receipts,\(^7\) indicate that the school fees were received and signed for by the Principal/Treasurer. However, the signatures appended on each receipt is unidentifiable save to say that it should have been a Principal or Treasurer.

5.1.21 With regard to the allegation relating to the illegal signing of cheques by Mr Phukubje and Ms Mkhize, the GDE submitted through Ms Seate as per letter dated 15 February 2017, that there are no reports or complaints of cash cheques for personal use by Mr Phukubje.

5.1.22 However, in a response as per the letter dated 3 August 2017 from Mr Maloka, the GDE provided my office with copies of the cash cheques signed by Mr Phukubje and Mr Mkhize but the SGB Chairperson did not sign same. Upon perusal of the supplied cheque requisition forms,\(^8\) I observed that some cheque requisition forms were signed by either Ms Mkhize or Mr Phukubje without the signature of the authorised signatories such the Chairperson of the SGB or Treasurer.

5.1.23 The Complainant argued further that Ms Mkhize purchased office furniture to the value of R 55 000.00 (fifty five thousand rands) during August 2016 without following procurement procedures and without the approval of the SGB. The amount paid for the procurement of the furniture was not budgeted for.

5.1.24 Ms Mkhize responded to the above allegation during an interview held on 3 August 2017 with my investigation team that, three quotations were sourced

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\(^{6}\) As per Moroka CAS 559/08/2017.
\(^{7}\) Receipt number 15770
\(^{8}\) For example Cheque requisition Form dated 2014/11/26.
for the procurement of the furniture and that all other related procurement and financial procedures were followed at Winnie Mandela School.

5.1.25 The Complainant also argued that Ms Mkhize undertook an excursion overseas to (Hong Kong) on 30 September 2016 and the SGB was not informed about the trip. The Complainant alleged that the trip was neither budgeted for nor approved by the parents in the AGM.

5.1.26 On 5 September 2017 during an interview with my investigation team, Ms Mkhize disputed that the SGB was not informed about the trip to Hong Kong and that the trip was not budgeted for nor approved by the parents. The GDE undertook in the same interview to provide me with all relevant information regarding Ms Mkhize’s trip to Hong Kong, including the purpose of the trip, SGB and parents’ approval of the trip, budget and the minutes of the meetings held, which they did not provide.

5.1.27 The Complainant also alleged that the audited financial statements of Winnie Mandela School were not submitted to the HOD of Education for two consecutive years i.e. 2015 and 2016.

5.1.28 The GDE responded in a letter dated 15 February 2017 and submitted through Ms Seate that Ms Mkhize was the Principal at Winnie Mandela School between 2014 and 2015 financial years and that during that time, the audited financial statements were submitted to the District Office in line with policies.

Application of the relevant legal prescripts

5.1.29 Section 195 of the Constitution of the Republic of South Africa Act, 1996 provides amongst other things, that:
“(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained
(b) ..............
(c) ..............
(d) ..............
(e) ..............
(f) Public administration must be accountable
(g) Transparency must be fostered by providing the public with timely, accessible and accurate information”.

5.1.30 It was expected of the GDE to adhere to the constitutional requirements of promoting and maintaining a high standard of professional ethics and accountable public administration as envisaged in section 195 of the Constitution in dealing with finances of Winnie Mandela School. When school fees are paid, a receipt is issued and the receipt reflects the payer, amount paid and received, date, reference number, school stamp and the signature of the person issuing the receipt, amongst other things.

5.1.31 In this case, two payments from different learners were captured under one receipt number namely, 15770 thereby defrauding Winnie Mandela School. As a result, only one payment of R 250.00 is reflected whereas another payment of R 250.00 is unaccounted for. Such conduct does not find resonance with the dictates of accountability, professional ethics and transparency envisaged in section 195 of the Constitution.

5.1.32 Section 217(1) of the Constitution provides that:
"When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective”.

5.1.33 In the case of the allegation that furniture was purchased without following proper procurement procedures, my investigation found that the GDE sourced three (3) quotations from at least different service providers before purchasing the office furniture, in line with the spirit of the constitution. Quotations were obtained from:

(a) Fulufulu Trading and Projects (Pty) Ltd with an amount of R 50 995.00.

(b) Siyangakhona Trading and Projects (Pty) Ltd with an amount of R67 814.00.

(c) Phakanyo Building Contractors with an amount of R 68 565.03.

5.1.34 Section 3 subsection 3.3 of Winnie Madikizela Mandela School Finance Policy (Finance Policy), states amongst other things that:

(a) “.......;

(b) ........;

(c) Payments should not be made for items not included in the budget or where the budget will exceed unless prior approval from the governing body has been obtained”.

5.1.35 In this instance, Ms Mkhize and Mr Maphunye adhered to the provisions of Section 3 paragraph 3.3 of the Finance Policy, during the procurement of the
office furniture in the sense that such purchase was budgeted for and approved by the SGB as prescribed in the policy. Proof of budget (R 54 410.2) and approval by SGB was furnished to my office by Ms Mkhize. Fulufulu Trading and Projects was recommended and approved by the GDE⁹ as the successful service provider.

5.1.36 Equally, Ms Mkhize’s trip to Hong Kong SANASE Leadership & Management Summit 2016 was budgeted for and included in the annual budget approved by parents at the AGM as the requisition form shows that the payment was made from school fund. The GDE, namely Mr Mosuwe/HoD provided my office with a budget plan, minutes of the meeting and attendance register where the budget was presented and approved by the SGB and parents when replying to my section 7(9) Notice on 11 September 2019.

5.1.37 Section 16A of the South African Schools Act, 1996 provides amongst other things, that:

“(1) (a) The principal of a public school represents the Head of the Department in the governing body when acting in an official capacity as contemplated in section 23 (1)(b) and 24(1)(j).

(2) The principal must—

(a) in undertaking the professional management of a public school as contemplated in section 16(3), carry out duties which include, but not limited to—

(i)...........................................

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⁹ As is evident from the SGB minutes of the meeting dated 07 June 2016 which was submitted to my office by Mr Mpho Makola: Director Legal Services.
(ii) ........................................
(iii) ......................................
(iv) .................................
(v) the safekeeping of all school records;

(h) assist the governing body with the management of the school's funds, which assistance must include —

(i) the provision of information relating to any conditions imposed or directions issued by the Minister, the Member of the Executive Council or the Head of Department in respect of all financial matters of the school contemplated in Chapter 4; and

(i) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school;

(j) .................................

(k) report any maladministration or mismanagement of financial matters to the governing body of the school and to the Head of Department”.

5.1.38 In this matter, Ms Mkhize was and is still the school Principal at Winnie Madikizela Mandela School. It was therefore incumbent upon her to take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school and to ensure the safe-keeping of school records. However, the school fund’s receipt book was duplicated or defrauded under Ms Mkhize’s administration. It follows therefore that the above legislative injunctions namely, section 16A (2)(a)(i) and (k) of the South African Schools Act was not promoted in this instance.
5.1.39 Section 2 sub-subsection 2.1 of the Finance Policy provides amongst other things that:

(a) "All monies should be placed in the school safe or an equivalent secure place together with the receipt book;

(b) The principal shall on a daily basis bring into account all monies received on behalf of the school, and as far as possible deposit all monies on the day of receipt or at the earliest opportunity, but no later than five days of receipt thereof into the school bank account held with a registered commercial bank concerned".

5.1.40 Ms Mkhize did not show or demonstrate that she took all reasonable steps to keep the receipt book of the school funds safe. By not placing the receipt book in the school safe or in an equivalently secure place as prescribed in the Finance Policy, ultimately led to it being stolen and subsequently forged or defrauded. The subsequent theft and forgery of the school fund's receipt book cannot be reconciled with the provision of Section 2 sub-subsection 2.1 of the Finance Policy which demands that it must be kept by the principal in the school safe or an equivalent secured place.

5.1.41 Clause 2.3.15 of Circular 13/2000 of the GDE dated 25 February 2000, provides that-

"The principal shall record, in a distribution register, the serial numbers of all receipt books purchased and issued".

5.1.42 Ms Mkhize did not record in a distribution register, the serial numbers of the receipt books purchased.  

Page 43 of 102
5.1.43 **Section 4 subsection 4.1 of the Finance Policy**, states amongst, other things that:

(a) “...............;

(b) An initial amount of R1 000.00 will be made available for petty cash;

5.1.44 Evidence in my possession shows the following Cheques whose purpose was regarded as Petty Cash, which were signed by Mr Phukubje and Ms Mkhize in excess of R1 000.00:

(a) Cheque Requisition Form with **Cheque Number: 107794, which is dated 29 January 2015, cashed on 30 January 2015** indicates an amount of R2000.00 which was in excess of R1000.00, was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(b) Cheque Requisition Form with **Cheque Number: 107848, which is dated 12 March 2015** indicates that an amount of R 2000. 00 which was in excess of R1000.00, was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(c) Cheque Requisition Form with **Cheque Number: 107873, which is dated 15 April 2015 and cashed on 17 April 2015** indicates an amount of R2000. 00 which is in excess of R1000. 00, was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(d) Cheque Requisition Form with **Cheque Number: 107900, which is dated 04 May 2015 and cashed on 14 May 2015** indicates an amount of R2000.00 which is in excess of R1000.00, was issued and signed jointly by Mr Phukubje and Ms Mkhize.
(e) Cheque Requisition Form with Cheque Number: 107961, which is dated 26 June 2015 indicates an amount of R2000.00 which is in excess of R1000.00, was issued and signed jointly by Mr Phukubje and Ms Mkhize.

5.1.45 All of the above indicated cheques that were in excess of R1000.00 and thereby in contravention of Section 4 subsection 4.1 of the Finance Policy.

5.1.46 **Section 3. Subsection 3.1 of the Finance Policy**, states amongst, other things that: "All payments by cheques to anyone should be accompanied by the following: -

(a) Cheque requisition form;
(b) Proof of payment (Invoice);
(c) Signature of chairperson, Principal and Treasurer;
(d) Three quotations (where applicable)".

5.1.47 Evidence in my possession clearly indicates that Mr Phukubje and Ms Mkhize did not adhere to the provisions of the above GDE Circular 13/2000. The Treasurer of the SGB: Mr Meshack Maphunye did not sign the above cited cheque requisition forms when cash cheques were made. Similarly, the requisition form for payment of Ms Mkhize’s travel allowance was not approved by the Treasurer or Chairperson of the SGB. However, on 5 December 2014, Ms Mkhize approved her own cheque of an amount of R2,874.96 for travel allowances.

5.1.48 **Section 1 subsection 1.1 of the Finance Policy**, comprising of the financial principles states amongst, other things, that the School Governing Body must ensure that:
“Annual financial statements and other financial records of the school are audited by a suitable and qualified person who is duly in terms of the Public Accountants and Auditors Act of 1991 or duly appointed as such by the HOD of Education; and

Send a copy of audited annual financial statements to the Head of Education as soon as possible within six months after the end of the school year and make copies of the same available to parents at the annual general meeting”.

5.1.49 It appears from evidence in my possession namely, financial statements handed to my office that the GDE fully complied with the Finance Policy in that the annual financial statements for 2014 and 2015 financial years and other financial records of Winnie Mandela were audited by Mongezi Sangelo Financial and Accounting Services CC and submitted to the District as required. Ms Mkhize therefore complied with the provisions of the Finance Policy in this instance.

5.1.50 It has to be noted also that when the Complainant reported this matter to my office on 22 September 2016, the financial year had not come to an end. The allegation by the Complainant may have been premature or hasty.

Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994

5.1.51 On 23 August 2019, I signed off and subsequently issued Mr Edward Mosuwe HoD of GDE with a notice in terms of section 7(9)(a) of the Public Protector Act, with a view to afford him an opportunity to respond to my provisional findings. Section 7(9)(a) of the Public Protector Act provides that:
"If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances".

5.1.52 I now turn to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice). I have however, not dealt with each and every aspect raised in the responses but that should not be misconstrued as an admission of any kind of the averments contained therein.

5.1.53 A response was received by my office on 11 September 2019 from the GDE signed by Mr Mosuwe. The GDE disputed my provisional findings that the GDE and/or its officials mismanaged the school fees at Winnie Mandela School. The dominant theme of the GDE’s challenge to my provisional finding on this issue was basically on the point of law and policy provisions. GDE sought to dispute my application of the law to this issue. However, in an attempt to do so, the GDE cited non-existent\textsuperscript{10} as well as irrelevant provisions of the South African School’s Act 84 of 1996 to support their argument on this issue. The GDE further cited non-existent provisions of the GDE Circular 13/2000 namely, Paragraph 2.3.22. I am therefore, inclined to submit that this legal challenge by the GDE is misplaced or misleading and as such stands to be rejected.

\textsuperscript{10} Namely, section 16A(3).
Conclusion

5.1.54 According to the evidence at my disposal, it is clear that Ms Mkhize only kept the receipt books in the office and not in the school safe or equivalent secure place as required by the applicable Finance policies. It further reveals that Ms Mkhize failed to bring into account all monies received on behalf of the school on a daily basis, as she only realised after a year and three months that the receipt books were stolen. This is reasonably inferred from the fact that Ms Mkhize only reported the loss of the receipt books after a meeting with my investigation team.

5.1.55 Based on the evidence discussed and the applicable legal prescripts quoted above, it can be concluded that Ms Mkhize did not adhere to the provisions of the South African Schools Act, the Finance Policy and the GDE Circular number 13/2000. As a result, an amount of R 250.00 for school fees was lost or stolen and the cheques were irregularly cashed in contravention of the Finance Policy.

5.1.56 Regarding whether Ms Mkhize improperly failed to hold Annual General Meetings and prepare budget for the financial year 2015/16 at Winnie Mandela School in contravention of the applicable legal prescripts.

Common cause issues

5.1.57 That the Annual General Meetings (AGM) must be held by the School between July and November of each year.
5.1.58 The annual budget should be drawn up by the School Governing Body (SGB) and tabled at the AGM for adoption by the parents.

Issues in dispute

5.1.59 The Complainant submitted that an AGM for parents was not held and the budgets for 2015 and 2016 were not drawn and submitted to parents for adoption since Ms Mkhizes’ inception as Winnie Mandela School Principal.

5.1.60 Ms Seate in her response letter to my office dated 15 February 2017, submitted that AGMs were held on 5 December 2015 and 26 November 2016, respectively and that the budgets were presented, discussed and adopted in those AGMs.

5.1.61 Ms Seate further indicated that attendance registers and minutes of the AGMs can be availed to my office on request. Subsequently, the GDE had a meeting with my investigation team on 3 August 2017 in which Ms Mkhize was requested to avail the attendance registers and minutes of the AGMs but failed to do so despite her undertaking.

5.1.62 My office further requested the attendance registers and minutes of the AGMs from GDE as per letter dated 15 August 2017 which was addressed to Mr Edward Mosuwe: Head of Department at the GDE. However, the GDE failed to avail same until I issued a section 7(9) notice in terms of the Public Protector Act against the GDE on 23 August 2019. The GDE only furnished my office with the long awaited proof of attendance registers and minutes of the AGMs, when replying to my notice on 11 September 2019.
Application of the relevant legal prescripts

5.1.63 **Section 181(3) of the Constitution** provides amongst other things that other institutions must assist the Public Protector.

5.1.64 It follows therefore that the GDE and its officials had a legal duty to cooperate or assist my office with its investigation. In this case, Ms Mkhize and Mr Edward Mosuwe furnished my office with attendance registers and minutes of the AGMs, albeit only on 11 September 2019 after I had issued my provisional report.

5.1.65 **Section 38 of the South African Schools Act, 1996** provides that:

1. “A governing body of a public school must prepare a budget each year according to prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.

2. Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days’ notice, for consideration and approval by a majority of parents present and voting.

3. The notice contemplated in subsection (2) must also inform the parents that the budget will be available for inspection at the school at least 14 days prior to the meeting”.

11 1996 Constitution of South Africa.
5.1.66 From the submission made by the GDE on 11 September 2019, it appears that Ms Mkhize as the principal complied with the above legal provision. My office was furnished with proof of AGM for 2015 and 2016 financial years at Winnie Mandela School in order to draw up budgets in accordance with the vote of the department and the main divisions within the vote.

5.1.67 **Section 6 subsection 6.1 of the Finance Policy** provides that:

> "The annual budget should be drawn up by the governing body or persons duly appointed by the governing body to perform this task and should be tabled at the annual general meeting for approval by parents".

5.1.68 At all material times during the period under review, Ms Mkhize was the school principal vested with the duty to draw up the school budget and to convene an AGM in order to table it for approval by parents. It does appear from evidence at my disposal that Ms Mkhize discharged this duty during the 2015/2016 period.

5.1.69 **Regulation 41 of the General Notice 1457 of 1997 of the Governing Body Regulations for Public Schools**, as amended, provides amongst other things that:

1. "A governing body shall, between July and November of each year, convene in accordance with the provisions of this regulation an Annual General Meeting of parents at the school at which—

   (a) The principal and the Chairperson of the governing body shall submit a joint written report or separate written reports on the school for previous year;

   (b) The latest audited financial statements as have been produced in terms of regulation 53 shall be made available;"
(c) The budget referred to in regulation 50 shall be presented;
(d) ................................
(e) ................................"
Public School in relation to convening AGMSs in 2015 and 2016 financial years.

5.2 **Whether Ms Seate irregularly delegated her secretary to oversee renovations at Winnie Mandela School at a cost of R 800 million (eight hundred million rands) from the Department of Infrastructure and Development and no work was done**

*Common Cause Issues*

5.2.1 It is not in dispute by the GDE that in 2014, the Department of Infrastructure Development (DID) initiated restorative repairs and refurbishment of existing school buildings, including electrical, structural and civil works project at Winnie Mandela School. The contract for such work commenced on 19 November 2014 and completed on 18 July 2015.

*Issues in dispute*

5.2.2 The Complainant argued that Ms Seate appointed her secretary to oversee renovations at Winnie Mandela School at a cost of R 800 million (eight hundred million rands) for the DID. These funds disappeared since they did not cover the scope of the project, namely the removal of the old sewage system, replacement of leaked roofs and electrical piping. The Complainant contended that no work was done.

5.2.3 Ms Seate disputed in her response to my office, as per the letter dated 15 February 2017, that the selection of Winnie Mandela School to be renovated was done at GDE Head Office. Ms Seate submitted that the District Office does
not know the scope nor how much was put aside for the refurbishment of the school. Ms Seate further indicated that she had not monitored the project nor delegated any official from the District to oversee the project. This function does not lie in the District office.

5.2.4 On 5 September 2017, during an interview in my office, Ms Seate further emphasised that the project was initiated and owned by the DID and that she never appointed her secretary to oversee the project. The GDE further provided my office with the minutes of the Site Meeting and Attendance Registers which show that the GDE attendees were Ms Mkhize and Ms ER Dire from Winnie Mandela School.

5.2.5 Ms Mkhize also emphasised in the same interview with my investigation team that the refurbishment at Winnie Mandela School was the initiative of the DID not GDE and as such the issue of funding was also handled by the DID and the work was done as per the project scope.

*Application of the relevant legal prescripts*

5.2.6 **Section 56 of the Public Management Finance Act, 1999 (PFMA),** provides that:

(1) "The accounting authority for the public entity may-

(a) In writing delegate any of the powers entrusted or delegated to the accounting authority in terms of the Act, to an official in that public entity; or
(b) Instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.

5.2.7 My investigation confirmed that the DID was the project owner and the GDE was the beneficiary of this project. Therefore, Ms Seate could not have possibly delegated powers she did not have. At all material times during the subsistence of this project, such powers rested with the DID as the owners of the project. The evidence in my possession indicate that the GDE’s involvement was only in relation to site meetings wherein progress reports regarding the refurbishment were given. The DID appointed Mr Mziyanda Mgolozeli as their project manager and not Ms Seate’s secretary as alleged by the Complainant. The Complainant did not furnish my office with any form of evidence to substantiate this allegation, neither did my office discover any corroborating evidence.

5.2.8 In response to my section 7(9) Notice on this issue the GDE concurred with my provisional findings that Ms Seate as a District Director was not involved in infrastructure project.

Conclusion

5.2.9 The evidence in my possession indicate that restorative repairs and refurbishment project at Winnie Mandela School was initiated and owned by the DID. Further that the GDE was not involved in the financial aspects of the project.

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13 Public Protector Act.
5.2.10 It can be concluded from the available evidence that Ms Seate did not contravene any policy or legislation nor appear to have been involved in any wrongdoing. In the circumstances, the GDE's version is more probable than that of the Complainant.

5.3 Regarding whether GDE irregularly appointed the following officials in contravention of the Department's recruitment and selection processes:

Appointment of Mr W Molefe to the position of Principal at Glenridge Primary School

Common Cause Issues

5.3.1 A position of Principal at Glenridge Primary School (Glenridge) became vacant and it was advertised in GDE's Vacancy Circular on 06 August 2012 with Post No: JC32CS1002A. The interviews were conducted on 19 November 2012.

5.3.2 The interview panel recommended the following first three candidates in order of their performance:

(a) Mr JC Baloyi (Mr Baloyi)
(b) Mr W Molefe (Mr Molefe)
(c) Ms NL Motshobile (Ms Motshobile)

5.3.3 Mr Baloyi was consequently appointed as the Principal of Glenridge on 13 December 2012 as per appointment letter signed by Ms Seate. Mr Baloyi assumed duty on 1 January 2013 until he left the post six months later.

5.3.4 The SGB wrote a letter dated 11 November 2013 to Ms Seate recommending the appointment of Mr Molefe as the second candidate after Mr Baloyi had left.
Mr Molefe was subsequently appointed as the Principal at Glenridge on 12 November 2013 as per appointment letter signed by Ms Seate.

5.3.5 In terms of the appointment letter, Mr Molefe was appointed permanently with a commencing salary notch of R328 284.00 per annum.

_Issues in dispute_

5.3.6 The Complainant submitted that Mr W Molefe was irregularly appointed by Ms Seate as a Principal at Glenridge Primary School without the post being advertised after Mr Baloyi left the post vacant.

5.3.7 Ms Seate argued that Glenridge Primary School was opened in 2013, the post was advertised and a legitimate process of shortlisting and interviews were conducted. Mr Molefe was recommended as the second best candidate. The first candidate (Mr Baloyi) left through a promotion after he was appointed at another school, thus Mr Molefe was offered the post.

_Application of the relevant legal prescripts_

5.3.8 **Clause 11.3.5 of the GDE Recruitment and Selection Policy (Recruitment Policy) dated 19 July 2015, provides amongst, other things, that:**

(a) “……………

(b) ………………

(c) _Should the recommended candidate tender his/her termination or resignation within three months of assuming duty, the Department may appoint a second or third candidate who was recommended as an alternate candidate_.”
5.3.9 It is clear that Mr Baloyi left Glenridge and accepted an offer at another school on 1 July 2013 as submitted on the email dated 12 September 2018 from Mr Mhlengi Sithole of Legal Services at the GDE. It follows therefore that Mr Baloyi left the post after six months of assumption of duty. The resignation of Mr Baloyi was not therefore within three months of assuming duty. It was expected therefore of the GDE to advertise the post and follow ordinary recruitment processes in appointing Mr Molefe. However, the GDE improperly and unlawfully relied on the above policy to irregularly appoint Mr Molefe without advertising the post.

5.3.10 In response to my section 7(9) Notice\(^{14}\) on this issue the GDE disputed my provisional findings in that Mr Molefe was irregularly appointed. GDE argued that the Recruitment Policy\(^ {15}\) provides and allows for deviation as long as such prior approval for the deviation was obtained in writing from the HoD or his/her delegate. The GDE further provided my office with a letter referred to in 5.3.4 (supra) as an equivalent of the deviation contemplated in Clause 11.13 of the Recruitment Policy of the GDE. I respectfully submit that this contention by GDE is misplaced and is premised on the wrong application of the Clause 11.13 of its Recruitment Policy.

5.3.11 Clause 11.13 of Recruitment Policy of GDE provides that:

"Any deviation from this policy must receive the prior approval in writing from the HoD or person delegated by him or her".

5.3.12 The above Clause envisaged that any deviation from this policy would be pre-approved by the HoD or a delegated person in writing. In casu, there is no approval by the HoD or by a delegated person. Instead, my office was provided with a letter from the chairperson of the SGB, Mr E Sadiki who is

\(^{14}\) Public Protector Act.
\(^{15}\) Clause 11.13 of the Recruitment Policy of GDE.
not an employee of the GDE, wherein he was requesting the appointment of the school principal at Glenridge Primary School. This letter was addressed to the District Director: Ms Seate. This letter does not equate or amount to a pre-approval of deviation from policy by the HoD or delegated person as contemplated.

5.3.13 The principle of legality in South African law is enshrined in section 2 of the Constitution, which provides that:

"This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it, must be fulfilled".

5.3.14 The constitutional principle of legality requires that a decision maker exercises the power conferred upon her/him lawfully, rationally and in good faith.

5.3.15 In Affordable Medicines Trust & Others v Minister of Health & Others\(^\text{16}\) the Constitutional Court held that:

"The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. In this sense the Constitution enshrines the principle of legality and provides the foundation for the control

\(^{16}\) 2005 (6) BCLR 529 (CC) [paras 49, 75 and 77].
of public power. [...] The exercise of such power must be rationally related to the purpose for which the power was given."

5.3.16 It follows therefore in the circumstances that, the Constitution requires all GDE officials to exercise their powers/duties within the regulatory framework governing the recruitment and selection appointment of staff when handling this matter. No function or power that is not conferred or authorised by applicable law/policy should have been arbitrarily implemented during this process.

Conclusion

5.3.17 I am inclined to conclude that due and proper recruitment processes were not followed by the GDE in the appointment of Mr Molefe as the principal of Glenridge. The GDE violated and circumvented its Recruitment policy in the appointment of Mr Molefe. Only the HoD or his/her delegate is clothed with power to approve deviation from the Recruitment Policy and in this case it was not approved by the HoD or his/her delegate.

Appointment of Mr M Mabuza to a position of a Circuit Team Manager

Common Cause Issues

5.3.18 The four (4) positions of Circuit Team Managers for Johannesburg Central were advertised on the GDE website on 19 October 2014 with Ref No: 2014/10/1005 with the closing date of 31 October 2014.

5.3.19 According to the advertisement for the position of Circuit Team Management and Support in Johannesburg Central District the requirements for the positions were, inter alia: ;
“(a) an appropriate relevant Degree qualification in management / administration or equivalent plus a minimum of 5 years extensive education management experience;

(b) Proven management skills and conflict resolution in education management or equivalent;

(c) Effective communication to District Director, Chief Director and other managers in the department;

(d) Effective communication to managers and other sub-ordinates in circuit management;

(e) Advance analytical skills and extensive knowledge of prescripts of the Public Service, Education Policies and strategies;

(f) Good understanding of the curriculum policies and implementation”.

5.3.20 The following shortlisting criteria was agreed upon and approved by the panel:-

(a) Qualification;
(b) Management experience;
(c) Communication skills;
(d) Curriculum Management;
(e) Finance and Management;
(f) DCES with special management experience; and
(g) Previously Deputies and Principals.

5.3.21 Fifteen (15) candidates were shortlisted and four (4) were recommended as suitable candidates for appointment.

5.3.22 Mr Mabuza was appointed as one of the four Circuit Team Managers of Johannesburg Central District on 26 February 2015 by the former Head of
Department of GDE Mr B Ngobeni (Mr Ngobeni) who signed and approved the appointment. In terms of the appointment letter, Mr Mabuza was appointed permanently with an all-inclusive salary of R 705 381.00 per annum.

Issues in dispute

5.3.23 The Complainant argued that Mr M Mabuza was appointed as a Senior Cluster Manager by Ms Seate despite a previous record of underperformance at Ibhongo High School. There were other candidates who were better qualified and experienced with longer service records in the District.

5.3.24 The Complainant further submitted that Mr Mabuza has no degree and experience. The Complainant argued that Mr Mabuza has also been accused of sexual abuse, harassment and impregnating female students at Ibhongo and Thabo Secondary Schools and then kept the learners at his home, giving them money or buying them groceries to cover up the scandal.

5.3.25 In a letter dated 15 February 2017, Ms Seate responded and submitted that when she came to Johannesburg Central District as a Senior Manager, Mr Mabuza was appointed in 2009 as a Deputy Chief Specialist, managing the Labour Relations Sub Directorate. In 2013 when the GDE implemented a re-aligned structure, Mr Mabuza, like many other officials, re-located to the new structure. He served in Circuit 6, in the position of Cluster Leader, which is the same post level for Deputy Chief Education Specialist. The District had four (4) Circuit Manager vacancies.

5.3.26 Ms Seate further indicated that there were similar Circuit Manager vacancies in other Districts as well. The Head Office appointed independent panel members for all the fifteen (15) Districts, including for Johannesburg Central.
Mr Mabuza applied for the post and was shortlisted and interviewed. The process was observed by two unions, South African Democratic Teachers Union (SADTU) and National Professional Teachers' Organization of South Africa (NAPTOSA). There was no grievance lodged related to the processes of appointing any of the four (4) candidates.

5.3.27 She further submitted that at the time of appointment as a Circuit Manager, Mr Mabuza had already served the GDE as:

(a) A school Principal at Ibhongo Secondary School for seven (7) years, from July 2001 to October 2008;

(b) In 2008 he was seconded to the District Labour Relations office for a period of six (6) months from October 2008 to April 2009 at the request of the previous District Director, Mr Lawrence Jacobs;

(c) In April 2009 Mr Mabuza was transferred to the post of Deputy Chief Education Specialist (DCES) Labour Relations office on a permanent basis. This post was equivalent to the Principal post that he was appointed on.

(d) Mr Mabuza served as the DCES Labour Relations Officer until April 2013 which was a total of five (5) years;

(e) He served as a Cluster Leader for two (2) years;

(f) Mr Ngobeni approved the appointment of the four (4) recommended officials as Circuit Managers, including Mr Mabuza;

(g) At the time he applied for the post, he had served the GDE for twenty nine (29) years in different capacities and levels;
(h) There were no allegations of sexual abuse, harassment or impregnating female students raised by any person with her office. According to Ms Seate none of the above allegations were dealt with in her time as a District Director.

5.3.28 In a letter dated 9 November 2017 addressed to my office, Mr Maloka, the Director: Legal Services, responded to the allegations of sexual harassment and indicated that the GDE has searched in their archives and they do not have in their possession such a record of sexual harassment against Mr Mabuza. Mr Maloka further submitted that the complainant should provide my office with sufficient information regarding such an allegation.

5.3.29 In a letter dated 19 February 2019, Mr Maloka submitted that Mr Mabuza was a school principal at Ibhongo Secondary School for seven years from July 2001 to October 2008. The issue of underperformance as a principal was not substantiated by the complainant. It was just a bare allegation that is in dispute.

5.3.30 Mr Mhlengi Sithole further submitted an undated letter annexed to the response above indicating that Mr Mabuza joined the Department of Education and Training (DET) in 1986 as an Educator at Thabo Secondary School. Mr Mabuza served at that school for sixteen (16) years. Mr Mabuza then served as a Principal at Ibhongo Secondary School from July 2001 until 2008. He then served as a Labour Relations Officer at Johannesburg Central District from 2008 until March 2015. He was then appointed to the position of Circuit Team Manager from April 2014 to date.

5.3.31 Mr Mabuza himself also wrote an undated clarity letter which was submitted to my office by Mr Mhlengi Sithole and highlighted further that the allegations of sexual harassment were unfounded. Mr Mabuza was charged and taken through a disciplinary hearing process in 2003. He maintained his innocence and pleaded not guilty through the disciplinary hearing. The employer dismally
failed to prove their case against him. He was found not guilty by an independent disciplinary hearing conducted by the Department of Education in 2003. According to Mr Mabuza, he only received the formal written outcome of this matter in 2005 and he regarded the matter as finalised.

5.3.32 Upon perusal of Mr Mabuza’s qualifications and CV, I observed that Mr Mabuza does not have a Degree. According to his CV in my possession, Mr Mabuza has a Secondary Teacher’s Diploma obtained in 1986 from Soweto College of Education as the highest academic qualification, including matric and other training certificates.

5.3.33 The advertisement for the post as shown above required a Degree qualification in management / administration or equivalent plus a minimum of 5 years extensive education management experience. An ordinary Secondary Teacher’s Diploma may not be regarded as equivalent to a Degree since the two are not graded the same in terms of National Qualifications Framework (NQF) ratings.

5.3.34 In terms of the current NQF levels and designations\(^\text{17}\), a Degree and the Diploma are rated completely different as per the conversion table below:

<table>
<thead>
<tr>
<th>Description of qualification found on NQF levels</th>
<th>NQF level</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Diploma and Advanced certificates.</td>
<td>NQF 6</td>
</tr>
</tbody>
</table>

\(^{17}\) This is readily available on the official website of SAQA.
5.3.35 It is worth noting that Mr Mabuza's Diploma does not have degree modules or courses and it is marked as such. As a result it is an ordinary Diploma and not an Advanced Diploma contemplated under NQF 7 as shown in the table above.

5.3.36 When replying to my section 7(9) Notice issued in terms of the Public Protector Act, the GDE refuted my findings on this issue and deliberately sought to mislead my investigation team by providing a wrong advertisement. The advertisement handed in by the GDE as Annexure 4 of their response is a new advertisement for 2019 post and it is completely different from the advert in my possession which was submitted by the GDE earlier. I duly reject this submission and further denounce any deliberate effort to mislead an investigation by my office.

Application of the relevant legal prescripts

5.3.37 Section 38 of PFMA which regulates the general responsibilities of accounting officers provides as follows—

(1) The accounting officer for a department, trading entity or constitutional institution—

(c) must take effective and appropriate steps to—
(i) …

(ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and

(g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board.

(h) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who—

(i) contravenes or fails to comply with a provision of this Act;
(ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution;

or

(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure.”

5.3.38 **Clause 11.3.4 of the Recruitment Policy** dated 19 July 2015, provides amongst other things, that:

(a) “all the SMS and MMS applicants shall be subjected to a competency assessment in line with DPSA prescripts;

(b) Reference and background checks shall be conducted by the Recruitment & Selection Directorate: Consulting (Head Office), Sub-Directorate: Transversal HR: HRP Unit (District Office) on recommended candidates.

(c) ………………………………

(d) the background checks shall include the following:
(i) criminal record checks;
(j) ......................................;
(k) Qualifications verification;
(l) Previous employment verification”.

5.3.39 In this case, Mr Mabuza did not have the required qualification namely, a Degree in management / administration or equivalent which may be an Advanced Diploma. By shortlisting, recommending and subsequently appointing Mr Mabuza without the qualifications required in terms of the advert, the GDE and in particular Mr Ngobeni as the accounting officer of the GDE at the time violated section 38 of the PFMA as well as Clause 11.3.4 of the Recruitment Policy. The appointment was therefore made in contravention of applicable policy framework as shown, thus invariably amounts to irregular expenditure.

5.3.40 Section 6(1) and (2) of PAJA provides for a Judicial Review of Administrative Action as follows:

“(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.
(2) A court or tribunal has the power to judicially review an administrative action if
   —
   (a) the administrator who took it —
   (i) ...
   (ii)... or
   (iii) was biased or reasonably suspected of bias;
   (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
   (c) the action was procedurally unfair;
(d) the action was materially influenced by an error of law;
(e) the action was taken –
(i) for a reason not authorised by the empowering provision;
(ii) for an ulterior purpose or motive;
(iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
(iv) because of the unauthorised or unwarranted dictates of another person or body;
(v) in bad faith; or
(vi) arbitrarily or capriciously;
(f) the action itself –
(i) contravenes a law or is not authorised by the empowering provision; or
(ii) is not rationally connected to –
(aa) the purpose for which it was taken;
(bb) the purpose of the empowering provision;
(cc) the information before the administrator; or
(dd) the reasons given for it by the administrator;
(g) the action concerned consists of a failure to take a decision;
(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or
(i) the action is otherwise unconstitutional or unlawful”.

5.3.41 Section 7(1) of PAJA provides for a Judicial Review of Administrative Action as follows:

“Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date–”
5.3.42 Section 158(1)(h) of the Labour Relations Act which regulates the powers of the Labour Court provides as follows:

"The Labour Court may- review any decision taken or any act performed by the State in its capacity as employer, on such grounds that are permissible in law".

5.3.43 It stands to reason therefore that the GDE may have to initiate a judicial review process in order to rectify any irregularity, bias, procedural unfairness or unlawfulness which may have been committed by its administrators during the recruitment of staff.

Conclusion

5.3.44 It can be concluded therefore that the GDE violated its Recruitment Policy in appointing Mr Mabuza without the required qualification, namely a Degree or at least Advanced Diploma as contemplated by NQF level 7 rating.

Appointment of Ms S Mkhize to the position of a Principal at Winnie Mandela Primary School

Common Cause Issues

5.3.45 The position of a Principal at Winnie Mandela School was advertised in the GDE Vacancy Circular on 19 October 2015 with Post No: JC45CS1008A with the closing date of 2 November 2015. The interviews were held on 4 December 2015 with the top three (3) candidates recommended in their order of performance, namely:
(a) Ms Mkhize
(b) Mr Sibusiso Vilakazi
(c) Ms Bernadette Ratilodi

5.3.46 A memorandum recommending the appointment of the above three candidates was signed by the SGB Chairperson of Winnie Mandela School, Ms Dorothy Mothoane on 7 December 2015. Ms Mkhize was then appointed as the principal of Winnie Mandela School on 8 March 2016 by the HOD, Mr Edward Mosuwe.

Issues in dispute

5.3.47 The Complainant submitted that Ms Seate appointed Ms Mkhize as a Principal of Winnie Mandela School without following proper procedures.

5.3.48 Ms Seate responded to my office in a letter dated 15 February 2017 and indicated that proper procedures in the appointment of Ms Mkhize were followed and the post was advertised in the Government Gazette on 19 October 2015. The shortlisting and interviews were conducted and observed by SADTU and that there was no grievance that was lodged in connection with this appointment.

5.3.49 My office was not provided with the copy of the actual advertisement for this post in order to determine the exact minimum requirements. The complainant also did not specify what exactly was irregular or improper about Ms Mkhize’s appointment.

5.3.50 However, on 22 February 2018, Mr Maloka of the GDE supplied my office with Ms Mkhize’s CV and academic qualifications. Upon perusal of Ms Mkhize’s qualifications, I observed that Ms Mkhize possesses an Honours Degree in
Education obtained from the University of Witwatersrand in 2013 as the highest academic qualification. The CV of Ms Mkhize also indicates that she has more than twenty years of relevant experience in the field of teaching and acted for more than two years in the same post as principal of Winnie Mandela School.

Application of the relevant legal prescripts

5.3.51 Chapter 3 of the Employment of Educators Act, 1998 states that;

(a) "Any appointment, promotion or transfer to any post on the educator establishment of a public school or a further education and training institution, may only be made on the recommendation of the governing body of the public school or the council of the further education and training institution, as the case may be, and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school or further education and training institution due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are so in excess and suitable for the post concerned".

5.3.52 In this case, a recruitment process was undertaken by the Department resulting in the appointment of Ms Mkhize as principal of Winnie Mandela School. The SGB Chairperson, Ms Dorothy Mothoane recommended her appointment on 7 December 2015 on prescribed Form C to the HOD: Mr Mosuwe dated 4 December 2015.
5.3.53 **Clause 11.1.2.1 of the GDE Recruitment Policy** dated 19 July 2015 provides that:

“To ensure that the objectives of advertising are met, the following principles shall be adhered to:

(a) “............;
(b) ............;
(c) The vacancy shall be advertised to attract the widest pool of the applicants especially the designated group in a cost effective manner:

5.3.54 The position of a Principal at Winnie Mandela School was duly advertised in the GDE Vacancy Circular on 19 October 2015 with Post No: JC45CS1008A and the closing date was on 2 November 2015. Interviews were conducted on 4 December 2015 and the recommendation letter was signed by the SGB Chairperson on 7 December 2015. Evidence in my possession clearly indicates that the GDE adhered to all the provisions of its Recruitment and Selection Policy in the appointment of Ms Mkhize as the principal of Winnie Mandela School.

**Conclusion**

5.3.55 It can be concluded in the circumstances that the GDE complied with the provisions of the Employment of Educators Act, and its own Recruitment Policy in the appointment of Ms Mkhize as a principal of Winnie Mandela School. There is no indication of wrongdoing from the available evidence.
Appointment of Ms H Biyela to the position of a Deputy Director: Transversal Human Resource Services

Common Cause Issues

5.3.56 The position of Deputy Director: Transversal Human Resource Services (HRT) for Johannesburg Central District with Ref No: 2014/05/1020 was advertised in the GDE Vacancy Circular on 25 May 2014 with the closing date of 9 June 2014.

5.3.57 According to the advertisement the minimum requirements for the position were, inter alia:

(a) An appropriate three year tertiary human resource (or equivalent) qualification and/or more than 3 to 5 years human resources administration experience, with four years thereof being at supervisory level;
(b) Knowledge and understanding of the current education and public service legislations, regulations and policies;
(c) Excellent communication (verbal & written) and interpersonal skills;
(d) Demonstrative ability to use human resource information systems for planning, monitoring and reporting;
(e) Ability to work under pressure, use PERSAL and provide expert advisory support to business;
(f) Computer literacy in MS Excel, MS Word, MS Access and MS Office;
(g) A valid South Africa driver’s license is an added advantage.

5.3.58 The following shortlisting criteria were approved by the panel:-

(a) Appropriate three year tertiary human resource (or equivalent) qualification;
(b) 4 years supervisory experience in human resource;
(c) Relevant Transversal Human Resource experience.

5.3.59 In response to this advertisement, a total of five hundred (500) applications were received from internal and external applicants and twenty six (26) candidates were shortlisted.

5.3.60 The interviews were held on 30 September 2014.

5.3.61 Ms H Biyela (Ms Biyela) was appointed as a Deputy Director: Transversal Human Resources Services on 27 January 2015 as per the letter signed by the former HOD of GDE, Mr Ngobeni.

5.3.62 According to Ms Biyela’s CV and qualifications currently in my possession, she has Matric obtained in 1989 and National Diploma in Personnel Management obtained from Mangosuthu Technikon in 1992 as the highest academic qualification. The CV indicates that Ms Biyela also acted as Deputy Director from 2006 until 2011.

**Issues in dispute**

5.3.63 The Complainant submitted that Ms Biyela was strategically placed by Ms Seate in Human Resources to manipulate issues of employment of educators, selling posts and backdating appointments in an attempt to defraud state funds together with Ms Seate and Ms Mkhize.

5.3.64 Ms Seate responded to the above and submitted to my office as per the letter dated 15 February 2017 that the appointment of Ms Biyela into HRT Unit was
before her term of office at Johannesburg Central District and she had no involvement in the appointment of Ms Biyela as alleged by the Complainant.

*Application of the relevant legal prescripts*

5.3.65 **Clause 11.1.2.1 of the GDE Recruitment Policy** dated 19 July 2015 provides that:

“To ensure that the objectives of advertising are met, the following principles shall be adhered to:

(d) “..........; 
(e) “..........; 
(f) The vacancy shall be advertised to attract the widest pool of the applicants especially the designated group in a cost effective manner;”

5.3.66 Evidence in my possession indicates that the position of Deputy Director: Transversal Human Resource Services for Johannesburg Central District with Ref No: 2014/05/1020 was advertised in the GDE Vacancy Circular on 25 May 2014 with the closing date of 9 June 2014.

*Conclusion*

5.3.67 It can be concluded that the appointment of Ms Biyela as a Deputy Director: Transversal Human Resources Services in Johannesburg Central District was consistent with the GDE Recruitment & Selection Policy. The Complainant’s allegation that Ms Biyela was strategically placed in Human Resources to manipulate issues of employment of educators, selling posts and backdating
appointments in an attempt to defraud state funds together with Ms Seate and Ms Mkhize was not supported or corroborated.

Appointment of Mr RR Nemukula to the position of Deputy Chief Education Specialist (DCES): Human Resource Planning and Systems

Common Cause Issues

5.3.68 The position of Deputy Chief Education Specialist (DCES): Human Resource Planning and Systems with reference No. 70262128 was advertised in the Star Workplace newspaper on 06 April 2011 with the closing date of 21 April 2011.

5.3.69 According to the advertisement for the position DCES: Human Resource Planning and Systems the requirements for the position were, inter alia:;

(a) An appropriate, recognised 3-year degree/Teaching diploma or a minimum of REQV 13 which must include 7 years minimum teaching experience plus relevant management experience;
(b) Must be registered with South African Council for Educators (SACE);
(c) Proven management & leadership abilities;
(d) Demonstrate understanding of the Public Service Regulations (PSR), Employment of Educators Act (E of EA), Employment Equity, Labour Relations Act, Personnel Administration measures etc;
(e) Knowledge of and experience in project and financial management;
(f) Ability to manage projects, communicate at all levels, work with a team, and good interpersonal relations;
(g) Excellent communication skills (verbal and written), computer skills and a valid driver’s license.
5.3.70 The panel for the interview comprised of the CES: HRM (JC): Ms Baartman, CES: IDS (JC): Ms Luthuli and DCES: HROS: Mr Mametse.

5.3.71 The shortlisting was done on 15 July 2011 and the interviews were conducted on 27 July 2011. Mr RR Nemukula (Mr Nemukula) was appointed as the DCES: Human Resource Planning and Systems on 24 August 2011.

**Issues in dispute**

5.3.72 The Complainant submitted that Mr Nemukula DCES was strategically placed by Ms Seate in Human Resources to manipulate issues of employment of educators, selling posts and backdating appointments in an attempt to defraud state funds together with Ms Seate and Ms Mkhize.

5.3.73 The Complainant also submitted that Mr Nemukula was previously charged and dismissed for ghost posts but later re-instated by Ms Seate to continue heading the same department where he continued with his ill formed activities.

5.3.74 According to the Complainant, Mr Nemukula was charged with misconduct in terms of item 5 of the Disciplinary Code and Procedures for Educators in that he recommended the irregular appointment of Mr MS Ramavhale and that he also pressurised the principal of Freedom Park Secondary School to absorb Mr Ramavhale. The disciplinary hearing of Mr Nemukula was set down and finalised on 09 June 2017.

5.3.75 Ms Seate submitted to my office as per the letter dated 15 February 2017 that the appointment of Mr Nemukula as DCES into the HRT unit was before her term of office at Johannesburg Central District and was not involved in this appointment process.
5.3.76 With regard to allegations of charges for misconduct, Ms Seate further clarified that Mr Nemukula went through a disciplinary process through the Dispute Management Office.

5.3.77 In a report dated 4 August 2017 from GDE’s HOD: Mr Mosuwe stated that Mr Nemukula was charged with misconduct in terms of item 5 of the Disciplinary Code and Procedure for Educators and was dismissed on 4 August 2017. As a result, Mr Nemukula is no longer in the employ of GDE and was never reappointed as alleged or implied by Complainant.

*Application of the relevant legal prescripts*

5.3.78 **Clause 11.1.2.1 of the GDE Recruitment Policy** dated 19 July 2015 provides that:

“To ensure that the objectives of advertising are met, the following principles shall be adhered to:

(g) “..............;

(h) ..............;

(i) The vacancy shall be advertised to attract the widest pool of the applicants especially the designated group in a cost effective manner.

5.3.79 Evidence in my possession indicates that the position of the DCES: Human Resource Planning and Systems with reference No. 70262128 was duly advertised in the Star Workplace newspaper on 6 April 2011 with the closing date of 21 April 2011 as required by the above mentioned legal prescript. Mr Nemukula went through the selection process and met the post requirements.
5.3.80 Subsequent to his appointment, Mr Nemukula committed an act of misconduct during the 2015 and 2016 financial year, was then found guilty and dismissed by the HOD Mr Mosuwe.

**Conclusion**

5.3.81 The investigation confirmed that Mr Nemukula applied for the post as advertised by the GDE, met all the requirements, shortlisted, interviewed and appointed as the suitable candidate to the post.

5.3.82 It is also clear from the Disciplinary Hearing Report given to my office by Mr Maloka on 22 February 2018 that Mr Nemukula was later charged for misconduct for recommending an irregular appointment of Mr MS Ramavhale at Glenridge. The latter was subsequently dismissed from the GDE on 4 August 2017. However, this dismissal of Mr Nemukula was not related to his own appointment.

5.4 **Regarding whether the Complainant, the GDE itself or taxpayer in the circumstances suffered any prejudice as a result of the alleged maladministration by the GDE:**

**Common Cause Issues**

5.4.1 Two payments from different learners as explained above were duplicated and captured under one receipt number namely, 15770 at Winnie Mandela School and as a result, only one payment of R 250.00 is reflected on the school fund receipt book whereas another payment of R 250.00 from another learner is unaccounted for.
5.4.2 Fulufulu Trading and Projects was recommended and approved by the GDE as the successful service provider in order to procure office furniture for a total amount of R50 995.00.

5.4.3 The following Cheques were signed by Mr Phukubje and Ms Mkhize in excess of R 1000.00, contrary to the policy:

(a) Cheque Requisition Form with Cheque Number: 107794, dated 29 January 2015, cashed on 30 January 2015 indicates that an amount of R 2000.00 which was in excess of R1000.00 was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(b) Cheque Requisition Form with Cheque Number: 107848, dated 12 March 2015 indicates that an amount of R 2000.00 which was in excess of R1000.00 was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(c) Cheque Requisition Form with Cheque Number: 107873, dated 15 April 2015 and cashed on 17 April 2015 indicates an amount of R2000.00 which is in excess of R1000.00 was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(d) Cheque Requisition Form with Cheque Number: 107900, dated 04 May 2015 and cashed on 14 May 2015 indicates an amount of R2000.00 which is in excess of R1000.00 was issued and signed jointly by Mr Phukubje and Ms Mkhize.

(e) Cheque Requisition Form with Cheque Number: 107961, dated 26 June 2015 indicates an amount of R2000.00 which is in excess of R1000.00 was issued and signed jointly by Mr Phukubje and Ms Mkhize.
5.4.4 Ms Mkhize completed and submitted a Claim Form for an amount R 2 874.96 in connection with travel allowance following the use of her private vehicle for official duties, from 1 October 2014 to 30 November 2014.

5.4.5 Ms Mkhize approved a cheque payment of R 39 400.00 (thirty nine thousand four hundred rands) to Team Tek (Pty) Ltd for South African National Association for Specialised Education (SANASE) Leadership & Management Summit 2016.

5.4.6 On 27 September 2016, the SGB Treasurer, Mr Maphunye approved a cheque payment of R 30 000.00 (thirty thousand rands) to Ms Mkhize for Hong Kong conference allowance and travel claims.

5.4.7 Mr Molefe was appointed by the GDE as Principal at Glenridge on 12 November 2013 with a commencing salary notch of R328 284.00 per annum.

5.4.8 Mr Mabuza was appointed by the GDE as Circuit Team Manager of Johannesburg Central District permanently with an all-inclusive salary of R705 381.00 per annum.

Issues in Dispute

5.4.9 The Complainant contended that school funds receipt books at Winnie Mandela School were fraudulently duplicated in order to defraud school fees paid by the parents of learners.

5.4.10 The Complainant also submitted that Mr Phukubje together with Ms Mkhize were illegally signing cash requisition forms and cheques for personal use and without following the Finance Policy of the school.
5.4.11 The Complainant also argued that Ms Mkhize undertook an excursion to Hong Kong on 30 September 2016 and the SGB was not informed about the trip. The Complainant further alleged that the trip was neither budgeted for nor approved by the parents in the AGM.

5.4.12 The Complainant argued that Ms Mkhize wrote a cash cheque amounting to R3000.00 (three thousand rand) for herself which she claimed for travel allowances.

5.4.13 The Complainant argued further that Ms Mkhize purchased office furniture to the value of R 55 000.00 (fifty five thousand rands) during August 2016 without following procurement procedures and without the approval of the SGB. The amount paid for the procurement of the furniture was not budgeted for.

5.4.14 The Complainant further alleged that the GDE irregularly appointed certain officials as mentioned above without following the GDE’s recruitment and selection processes.

5.4.15 With regard to the allegation relating to illegal signing of cheques by Mr Phukubje and Ms Mkhize, the GDE, submitted through Ms Seate as per the letter dated 15 February 2017, that there are no reports or complaints of cash cheques for the personal use by Mr Phukubje.

5.4.16 Ms Seate denied the above allegation and submitted that transport claims were made at the rate of R3.46 for a 1.6i engine capacity as per the Provincial Transport Circular. Currently the car she uses has a 2.0i engine capacity vehicle but she is paid at the rate of a 1.6 engine capacity. Ms Seate argued that figures as high as R3 000.00 (three thousand rands) per month have never been claimed even when the claim was for a period of over two (2) months.
5.4.17 With regard to the duplication of receipt books, Mr Mpho Maloka: Director Legal Services at the GDE, submitted in a letter dated 3 August 2017 that the original receipt books were stolen at Winnie Mandela School and were reported at Moroka police station as per CAS 559/08/2017 and Occurrence Book Number: 1987/08/2017 which was opened on 23 August 2017.

5.4.18 On 5 September 2017 during an interview with my investigation team, Ms Mkhize disputed that the SGB was not informed about the trip to Hong Kong and that the trip was not budgeted for nor approved by the parents. On 11 September 2019, GDE provided my office with proof of budgets, attendance registers and all relevant information regarding Ms Mkhize’s trip to Hong Kong, including the purpose of the trip, SGB and parents’ approval of the trip, minutes of the meetings held in which this item formed part of the agenda.

5.4.19 With regard to allegations of irregular appointments of certain officials, Ms Seate responded to my office in a letter dated 15 February 2017 and indicated that proper procedures in the appointment of officials were followed and the posts were advertised. Shortlisting and interviews were conducted and were observed by SADTU and that there was no grievance that was lodged in connection with the appointments.

Application of the relevant legal prescripts

5.4.20 Section 195(1) of the Constitution provides, amongst others, that Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

a) A high standard of professional ethics must be promoted and maintained.

b) Efficient and economic use of resources must be promoted.
c) 

d) Services must be provided impartially, fairly, equitably and without bias.

e) Public administration must be accountable

f) Transparency must be fostered

g) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

5.4.21 The GDE or its officials had to adhere to the above constitutional requirements of promoting and maintaining a high standard of professional ethics and accountable public administration as envisaged in terms of section 195 of the Constitution in dealing with the finances of Winnie Mandela School. When school fees are paid, receipts are issued reflecting the amount paid and received, date, reference number, school stamp and the signature of the person issuing the receipts.

5.4.22 The seminal case of Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal18 raised an important constitutional issue relating to the state’s obligation to comply with the requirements of the rule of law under section 1(c) of the Constitution in the context of public-sector employment. This case followed after the Task Team report sanctioned by the MEC found that Mr Khumalo did not meet the minimum requirements relating to supervisory experience stated in the advertisement of the post he was appointed to. The MEC subsequently approached the court to set aside the appointment of Mr Khumalo.

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18 (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013).
5.4.23 The Labour Court further held that section 195 of the Constitution compelled the MEC, in the public interest, to avoid and eliminate illegalities in public administration. The principle of legality is applicable to all exercises of public power and not only to "administrative action" as defined in Promotion of Administrative and Justice Act (PAJA).¹⁹ The rule of law is a founding value of our constitutional democracy.

5.4.24 **Section 16A of the South African Schools Act, 1996** provides amongst other things, that:

"(1) (a) The principal of a public school represents the Head of the Department in the governing body when acting in an official capacity as contemplated in section 23 (1)(b) and 24(1)(j).

(2) The principal must—

(a) in undertaking the professional management of a public school as contemplated in section 16(3), carry out duties which include, but not limited to—

(i) ................................

(ii) ................................

(iii) ................................

(iv) ...............................  

(v) the safekeeping of all school records;

(h) assist the governing body with the management of the school's funds, which assistance must include —

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(ii) the provision of information relating to any conditions imposed or directions issued by the Minister, the Member of the Executive Council or the Head of Department in respect of all financial matters of the school contemplated in Chapter 4; and

(ii) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school;

(j) ...................

(k) report any maladministration or mismanagement of financial matters to the governing body of the school and to the Head of Department."

5.4.25 In this matter, Ms Mkhize was and is still the school principal at Winnie Mandela School. It was therefore incumbent upon her to take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school and to ensure the safe-keeping of school records. However, the school funds receipt book was duplicated under Ms Mkhize's administration. It follows therefore that the above legislative injunctions namely, sections 16A (2)(a)(i) and (k) of the South African Schools Act was not promoted in this instance.

5.4.26 **Section 2 sub-subsection 2.1 of the Finance Policy** provides amongst other things that:

(c) "All monies should be placed in the school safe or an equivalent secure place together with the receipt book;"
(d) The principal shall on a daily basis bring into account all monies received on behalf of the school, and as far as possible deposit all monies on the day of receipt or at the earliest opportunity, but no later than five days of receipt thereof into the school bank account held with a registered commercial bank concerned”.

5.4.27 Ms Mkhize did not show or demonstrate that she took all reasonable steps to keep the receipt book of the school funds safe. By not placing the receipt book in the school safe or an equivalent secure place as dictated in the Finance Policy, ultimately led to it being stolen and subsequently forged or defrauded. The subsequent theft and forgery of the school funds receipt book cannot be reconciled with the provisions of Section 2 sub-subsection 2.1 of the Finance Policy which demands that it must be kept by the Principal in the school safe or an equivalent secured place.

5.4.28 Clause 2.3.15 of Circular 13/2000 of the GDE dated 25 February 2000, provides that-

“The principal shall record, in a distribution register, the serial numbers of all receipt books purchased and issued”.

5.4.29 Ms Mkhize did not record in a distribution register, the serial numbers of the receipt books purchased and issued as she did not realise or become aware of the duplication and fraud which was happening in the receipt book of the Winnie Madikizela Mandela School.

5.4.30 Section 4 subsection 4.1 of the Finance Policy, states amongst other things that:

(c) “.........
(d) An initial amount of R 1 000.00 will be made available for petty cash;

5.4.31 Evidence in my possession shows that certain cheques that were approved by Ms Mkhize and Mr Phukubje as indicated above were in excess of R1000.00 and thereby in contravention of Section 4 subsection 4.1 of the Finance Policy.

5.4.32 **Section 3. Subsection 3.1 of the Finance Policy**, states amongst other things that: "**All payments by cheques to anyone should be accompanied by the following:**-

(e) Cheque requisition form;
(f) Proof of payment (Invoice);
(g) Signature of chairperson, Principal and Treasurer;
(h) Three quotations (where applicable).

5.4.33 Evidence in my possession clearly indicates that Mr Phukubje and Ms Mkhize did not adhere to the provisions of the above GDE Circular 13/2000. The Treasurer of the SGB: Mr Meshack Maphunye did not sign the above cited cheque requisition forms when cash cheques were made. Similarly, the requisition form for payment of Ms Mkhize’s travel allowance was not approved by the Treasurer or Chairperson of the SGB. However, on 5 December 2014, Ms Mkhize approved her own cheque for an amount of R 2 874.96 for travel allowances.

**Conclusion**

5.4.34 It follows therefore that the GDE was financial prejudiced as a result of the cheques that were irregularly approved, duplication and forgery of the school fund receipt book, irregularly approved travel claims and allowances and irregular appointments of employees as explained above.
5.4.35 Such breaches of administrative processes are in contravention of the Constitution, the Finance Policy, the Recruitment Policy and other applicable legal prescripts as indicated above namely GDE Circular 13/2000.

6. FINDINGS

Having regard to the evidence, and the regulatory framework setting the standard that should have been upheld by the GDE and the impact on the complainant, I am making the following adverse findings against the GDE:

6.1 Regarding whether the GDE or its officials mismanaged the school fees at Winnie Mandela Primary School in contravention of the applicable legal prescripts.

6.1.1 The allegation that the GDE or its officials mismanaged the school fees at Winnie Mandela Primary School (Winnie Mandela School) in contravention of the applicable legal prescripts, is substantiated.

6.1.2 The Winnie Mandela School fund’s receipt book was duplicated and defrauded under Ms S Mkhize’s (Ms Mkhize) administration as the principal. By failing to place the receipt book in the school safe or an equivalent secure place as dictated to by Section 2 sub-subsection 2.1 of the Finance Policy and section 16A (2)(a)(i) and (k) of the South African School Act, Ms Mkhize did not promote or adhere to the said legal injunctions, thereby exposing the school to financial risk.

6.1.3 By failing to record in a distribution register, the serial numbers of the receipt books purchased and issued, Ms Mkhize further contravened Clause 2.3.15 of Circular 13/2000 of the GDE, since she did not realise/notice or even
became aware of the duplication and fraud which was happening in the receipt book of Winnie Mandela School.

6.1.4 It was incumbent upon Ms Mkhize as the school principal to take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the School Governing Body (SGB) and to ensure the safe-keeping of school records, namely by placing the receipt book in the school safe or an equivalent secure place. Ms Mkhize did not show or demonstrate that she took all reasonable steps to keep the receipt book of the school funds safe as guided by policy.

6.1.5 The following cheques were signed by Mr Dan Phukubje: Cluster Leader of District 14 (Mr Phukubje) and Ms Mkhize in excess of R1 000.00 namely, Cheque Number: 107794, Cheque Number: 107848, Cheque Number: 107873, Cheque Number: 107900 and Cheque Number: 107961. By signing these cheques in excess of R1 000.00, both Ms Mkhize and Mr Phukubje contravened Section 4 subsection 4.1 of the Finance Policy, which states amongst other things that: “An initial amount of R1 000.00 will be made available for petty cash”. All the above mentioned cheques indicate an amount of R2000.00 which is in excess of R1000.00 limit for petty cash which was issued and signed jointly by Mr Phukubje and Ms Mkhize without authorisation by the SGB as required by section 3 subsection 3.3 of the Finance Policy.

6.1.6 The requisition form for payment of Ms Mkhize’s travel allowance was not approved by the Treasurer or Chairperson of the SGB. On 5 December, Ms Mkhize approved her own cheque payment of an amount of R 2 874.96 for travel allowances, notwithstanding the lack of approval by the Chairperson and Treasurer of the SGB. By so doing, Ms Mkhize violated Section 3. Subsection 3.1 of Finance Policy, which states amongst other things that: “All
payments by cheques to anyone should be accompanied by the signature of the Chairperson, Principal and Treasurer”.

6.1.7 Accordingly, these violations amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2 Regarding whether Ms Mkhize improperly failed to hold Annual General Meetings and prepare budgets for the financial year 2015/16 at Winnie Mandela School in contravention of the applicable legal prescripts.

6.2.1 The allegation that Ms Mkhize improperly failed to hold Annual General Meetings (AGM) and prepare budgets for the financial year 2015/16 at Winnie Mandela School in contravention of the applicable legal prescripts, is not substantiated.

6.2.2 On 11 September 2019, the GDE Head of Department, Mr Edward Mosuwe, furnished my office with attendance registers, budget plans and minutes as proof of AGMs for the 2015/2016 financial year, albeit after serving the GDE with a section 7(9) Notice issued in terms of the Public Protector Act.

6.2.3 Accordingly, this conduct by Ms Mkhize did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.3 Regarding whether Ms Seate irregularly delegated her secretary to oversee renovations at Winnie Mandela School at a cost of R800 million (eight hundred million rands) from the Department of Infrastructure and Development, while no work was done.
6.3.1 The allegation that Ms Seate irregularly delegated her secretary to oversee renovations at Winnie Mandela School at a cost of R800 million (eight hundred million rands) from the Department of Infrastructure and Development (DID), while no work was done, is not substantiated.

6.3.2 All evidence currently in my possession indicates that restorative repairs and the refurbishment project at Winnie Mandela School was initiated and owned by the DID. The GDE was not involved in the financial aspects of the project.

6.3.3 Ms Seate did not contravene any policy or legislation nor appear to have been involved in any wrongdoing. In the circumstances, the GDE’s version is more probable than that of the Complainant.

6.3.4 Accordingly, the conduct did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.4 Regarding whether the GDE irregularly appointed the following officials in contravention of the Department’s recruitment and selection processes.

Appointment of Mr W Molefe to the position of Principal at Glenridge Primary School

6.4.1 The allegation that the GDE irregularly appointed Mr W Molefe (Mr Molefe) without following the Department’s recruitment and selection processes, is substantiated.
6.4.2 Evidence at my disposal reveals that Mr JC Baloyi who was a Principal at Glenridge Primary School from January 2013 left this post six (6) months after assumption of duty namely, on July 2013. The resignation of Mr JC Baloyi was not therefore within three (3) months of assuming duty as prescribed in the policy to enable the appointment of the second recommended candidate without undertaking another recruitment process. In fact, Mr JC Baloyi left after having worked for more than three (3) months.

6.4.3 The SGB wrote a letter dated 11 November 2013 to Ms Seate recommending the appointment of Mr Molefe as the second candidate after Mr JC Baloyi had left without advertising the post again. Mr Molefe was subsequently appointed as a Principal at Glenridge Primary School on 12 November 2013 as per the appointment letter signed by Ms Seate. The letter of recommendation from the SGB cannot be regarded as a motivation and/or approval for deviation from policy.

6.4.4 It was expected of the GDE to advertise the post and follow ordinary recruitment processes in appointing Mr W Molefe as a Principal at Glenridge Primary School given the fact that the post did not become vacant within three months of assumption of duty by Mr Baloyi.

6.4.5 However, the GDE and in particular Ms Seate, improperly and wrongfully relied on Clause 11.3.5 of the GDE Recruitment Policy to irregularly appoint Mr Molefe without advertising the post, thereby violating the said Recruitment Policy in the process.

6.4.6 Accordingly, such violation by GDE amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
Appointment of Mr KG Mabuza to the position of Circuit Team Manager

6.4.7 The allegation that the GDE irregularly appointed Mr KG Mabuza (Mr Mbauza) without following the Department’s recruitment and selection processes, is substantiated.

6.4.8 Upon perusal of Mr Mabuza’s qualifications and CV, it was observed that Mr Mabuza does not have a Degree or equivalent qualification. According to his CV in my possession, Mr Mabuza has a Secondary Teacher’s Diploma obtained in 1986 from Soweto College of Education as the highest academic qualification, including matric as well as other training certificates.

6.4.9 The advertisement for the post as shown in evidence required a Degree qualification in management / administration or equivalent plus a minimum of five (5) years extensive education management experience. An ordinary or standard Secondary Teacher’s Diploma may not be regarded as equivalent to a Degree since the two are not graded the same in terms of National Qualifications Framework (NQF) ratings as can be seen on the NQF Conversion Table as illustrated in evidence.

6.4.10 Mr Mabuza’s Diploma does not have degree modules or courses and it is marked as such. As a result Mr Mabuza holds an ordinary Diploma and not an Advanced Diploma contemplated under NQF 7 or which is equivalent to a Degree as shown on the conversion table in evidence.

6.4.11 It follows therefore that, by shortlisting, recommending and subsequently appointing Mr Mabuza to the position of a Circuit Team Manager without the required qualification in terms of the advert, the GDE officials and in particular Mr B Ngobeni (former HoD of GDE), Ms Seate, Mr E Ndlebe, Mr J Coetzee
and Ms S Mashala who recommended and approved the appointment, violated Clause 11.3.4 of the Recruitment Policy which requires the verification of qualifications amongst other things before appointment.

6.4.12 Accordingly, such violation by the GDE amounts to improper conduct in terms 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

**Appointment of Ms S Mkhize to the position of a Principal at Winnie Mandela Primary School**

6.4.13 The allegation that the GDE irregularly appointed Ms Mkhize as a Principal at Winnie Mandela Primary School without following the Department’s recruitment and selection processes, is not substantiated.

6.4.14 The position of a Principal at Winnie Mandela School was advertised in the GDE Vacancy Circular on 19 October 2015 with Post No: JC45CS1008A and the closing date was on 2 November 2015. Interviews were conducted on 4 December 2015 and the recommendation letter for appointment of Ms Mkhize was signed by the SGB Chairperson: Ms Dorothy Mothroane, on 7 December 2015.

6.4.15 My office was not provided with a copy of the actual advertisement for this post in order to determine the exact minimum requirements of the position. The Complainant also did not specify what exactly is alleged to be irregular or improper about Ms Mkhize’s appointment.

6.4.16 However, on 22 February 2018, Mr Mpho Maloka: Director of Legal Services of the GDE supplied my office with Ms Mkhize’s CV and academic qualifications. Upon perusal of Ms Mkhize’s qualifications, I observed that she
possesses an Honours Degree in Education obtained from the University of Witwatersrand in 2013 as the highest academic qualification. The CV of Ms Mkhize currently in my possession also discloses that she has more than twenty (20) years of relevant experience in the field of teaching and acted for more than two years in the same post as Principal of Winnie Mandela School.

6.4.17 Evidence in my possession indicates that the GDE adhered to all the provisions of its Recruitment and Selection Policy in the appointment of Ms Mkhize as the principal of Winnie Mandela School.

6.4.18 Accordingly, the appointment did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

**Appointment of Ms H Bivela to the position of Deputy Director:**

**Transversal Human Resource Services for Johannesburg Central District.**

6.4.19 The allegation that the GDE irregularly appointed Ms Bivela (Ms Bivela) to a position of a Deputy Director: Transversal Human Resource Services for Johannesburg Central District without following the Department's recruitment and selection processes, is not substantiated.

6.4.20 Evidence received indicates that the position of a Deputy Director: Transversal Human Resource Services for Johannesburg Central District with Ref No: 2014/05/1020, was advertised in the GDE Vacancy Circular on 25 May 2014 with the closing date of 9 June 2014.

6.4.21 The Complainant's allegation that Ms Bivela was strategically placed in Human Resources to manipulate issues of employment of educators, selling
posts and backdating appointments in an attempt to defraud state funds together with Ms Seate and Ms Mkhize was not supported or corroborated by any evidence. The appointment of Ms Biyela as a Deputy Director: Transversal Human Resources Services in Johannesburg Central District was consistent with the GDE Recruitment & Selection Policy.

6.4.22 Accordingly, the appointment did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Appointment of Mr RR Nemukula to the position of Deputy Chief Education Specialist.

6.4.23 The allegation that the GDE irregularly appointed Mr RR Nemukula (Mr Nemukula) as the Deputy Chief Education Specialist without following the Department’s recruitment and selection processes, is not substantiated.

6.4.24 Evidence revealed that the position of Deputy Chief Education Specialist (DCES): Human Resource Planning and Systems with reference No. 70262128 was advertised in the Star Workplace newspaper on 6 April 2011, with the closing date of 21 April 2011 as required by the above legal prescript. Mr Nemukula went through the selection process, met the post requirements and was appointed regularly as discussed in evidence in the body of this report.

6.4.25 Subsequent to his appointment, Mr Nemukula committed acts of misconduct during 2015 and 2016 financial year was then found guilty and dismissed by the Head of Department (HOD), Mr E Mosuwe, on 4 August 2017. The dismissal of Mr Nemukula was not related to his appointment and he has never been re-appointed by the GDE as alleged by the Complainant.
6.4.26 Accordingly, the appointment did not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.5 Regarding whether the Complainant or the taxpayers suffered prejudice as a result of the alleged maladministration by the GDE.

6.5.1 The allegation that the Complainant or the taxpayers suffered any prejudice as a result of the alleged maladministration by the GDE, is substantiated.

6.5.2 The GDE suffered financial prejudice as a result of irregularly approved cheques, duplication and forgery of the school fund receipt book, irregularly approved travel claims and allowances and the irregular appointments as explained in evidence.

6.5.3 The above marked breaches of administrative processes within the GDE were committed by Ms Mkhuze, Mr Phukubje, Mr Maphunye, Mr Ngobeni, Ms Seate, Ms Mashala, Mr Coetzee and Mr Ndlebe were in contravention of section 195 of the Constitution, Section 16A of the South African Schools Act, 1996, Section 2 sub-subsection 2.1, Section 3. Subsection 3.1 of the Finance Policy, Clause 2.3.15 of Circular 13/2000 of the GDE, Clause 11.3.4 of and Clause 11.3.5 of the Recruitment Policy and other applicable legal prescripts as discussed above.

6.5.4 An irregular appointment shall negatively impact the GDE's finances due to the continuous payment of salaries to employees appointed in contravention of applicable legal prescripts. Such payments amount to irregular expenditure.
which is prohibited under sections 38 and 45 of PFMA. On the other hand, potential qualifying candidates are also improperly prejudiced when they are ignored in favour of a less qualified candidate, hence it is crucial for management to apply its mind when making appointments. A "bad hiring decision" could also harm internal employees’ morale and result to time loss due to grievances, disputes and litigation processes”.

6.5.5 Accordingly, such violations by the GDE amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7. REMEDIAL ACTION

The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

The HoD of the GDE must take appropriate steps to ensure that:

7.1.1 Within thirty (30) working days of the date of issue of this report take appropriate disciplinary action against all implicated employees who are still within the employ of the GDE;

7.1.2 Within sixty (60) working days of the issuing of this report subject all the GDE Human Resources Management and other officials who are involved in the recruitment and selection processes to training or workshop on the GDE Policy;

7.1.3 Within sixty (60) working days from the date of this report, initiate a judicial review process contemplated in terms of sections 6 and 7 of PAJA to set aside the appointment of Mr Mabuza on the basis that he was irregularly appointed
to a post of a Circuit Cluster Manager without having the minimum academic requirement, namely a degree or equivalent qualification for the post,

7.1.4 Within sixty (60) working days from the date of this report, initiate a judicial review process contemplated in terms of sections 6 and 7 of PAJA to set aside the appointment of Mr Molefe on the basis that he was irregularly appointed to a post of a Principal at Glenridge Primary School without the post being advertised as required in the Recruitment Policy.

7.1.5 Within sixty (60) working days from the date of this report, disclose the all irregular expenditure to the Provincial Treasury and to the Auditor General incurred by the DGE in connection with the irregular appointments, and other financial irregularities relating to school receipt book and travel costs.

8. MONITORING

8.1 The HoD of the GDE must, submit an Implementation Plan to my office within thirty (30) working days from the date of receipt of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.2 I wish to bring to your attention that in line with the Constitutional Court Judgement in the matter of Economic Freedom Fighters v Speaker of the national Assembly and other; Democratic Alliance v Speaker of the national Assembly and others [2016] ZACC 11, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the HOD of GDE, unless he obtains an Interim Interdict or Court Order directing otherwise.