



9 July 2021

TO: MS DEBBIE SCHAFER
MEC for Education
Western Cape Department of Education
Per email: edumin.edumin@westerncape.gov.za

AND TO: ADV LYNN COLERIDGE-ZILS
Director of Policy Coordination
Western Cape Department of Education
Per email: Lynn.Coleridge-Zils@westerncape.gov.za

RE: Continued Discrimination in Western Cape Public and Private Schools against LGBTQI+ Learners based on their Sexual Orientation, Gender Identity, Gender Expression and/or Sex Characteristics (SOGIESC)

1. We are writing with regard to the continued victimisation of and discrimination against lesbian, gay, bisexual, transgender, nonbinary, gender diverse, intersex, plus (LGBTQI+) learners based on their actual or perceived sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC) that are occurring in public and private schools in the Western Cape.

2. The Constitution of the Republic of South Africa, 1996 (**Constitution**), provides 'everyone' with the right to education. Section 9 adds hereto that no one may be unfairly discriminated against based on their sex, gender or sexual orientation in the context of education. Yet, there are increasing reports of victimisation of and discrimination against learners based on their sexual orientation, gender identity, gender expression and/or sex characteristics in both public and private schools in the Western Cape. This means that these schools are violating the human rights of learners, undermining their wellbeing and obstructing their education, and not meeting obligations in terms of the South African Schools Act 84 of 1996, which commits to combat *all* forms of unfair discrimination and intolerance in schools.

Experiences of LGBTQI+ learners in public and private schools of the Western Cape

LGBTQI+ learners are experiencing many forms of bullying, harassment, abuse, discrimination and systemic violence in schools. These homophobic, transphobic and intersexphobic school environments are frequently also guilty of other forms of prejudice and discrimination, particularly racism. The following are merely a few examples over the past few years:

3. In 2017, bullying, discrimination and exclusion of sexually and diverse learners were reported at a private school in Cape Town within a heteronormative, cisnormative and binary school environment that lacked awareness and affirmation of sexual and gender diversity, and that deprived learners of their agency and self-expression.
4. In 2018, bullying was reported of a gender diverse learner and other learners at a public primary school in Cape Town because of gender expression, sexual orientation, race, weight and size.
5. In 2020, persistent and ongoing bullying and discrimination towards a gender diverse and transgender learner was reported at a public high school in a Western Cape town, including denial by the school of the learner's right to express their gender identity. This took place in the context of rigid cisnormative, gender binary and racist norms within the school environment. In the end the learner had no other choice but to leave this school following the deterioration of her mental health, the unwavering position of the school management that demanded the learner to surrender her need for gender expression and accept to be banned from using the newly rebranded "cisgender-only" bathrooms. There is no evidence of accountability or disciplinary action taken by the WCED against the implicated Management Staff even under circumstances of a gross violation of the learner's human rights and intentional discriminatory and abusive practices.
6. In 2021, alarming and heartbreaking reports were received about transphobic/homophobic and racist bullying and discrimination of learners at a private school in Cape Town, including by a teacher. The structural violence has been continuing for years.
7. On 10 June 2021, numerous news outlets reported that LGBTQ+ learners and their allies at DF Malan High School in Bellville, Cape Town, were verbally abused and bullied by

queerphobic learners when they gathered during break to celebrate International Pride Month. This was after not being given permission to host an official pride event at the school.¹ Upon learners approaching the school principal, instead of taking action against those guilty of the abuse and protecting learners' rights to sexual and gender diversity in the school, further pride gatherings were banned and the principal blamed LGBTQ+ learners for making "themselves targets" and claimed that "celebrating Pride Month is not inclusive". A petition on Change.org calling on the school to publicly apologise for silencing the LGBTQI+ community at the school, discipline the learners that verbally abused the victims, and hold educational seminars for learners and teachers to promote inclusion at the school, has garnered more than 14 000 signatures. MEC Schafer has publicly condemned the events.²

8. More recently, on 23 June 2021, *Die Burger* reported the transphobic discrimination experienced by a transgender learner in Strand High School, who is not being allowed to wear the school uniform corresponding to his gender. According to the learner's mother, he is being treated differently because the school does not know how to handle the situation. He has attempted to attend school in the boys' uniform but was sent home. The School Governing Body (**SGB**) erroneously believes he is being accommodated because he is allowed to wear the green school trouser. However, this forms part of the girl's uniform and does not recognise his gender. Instead, this makes him more visible and therefore more vulnerable to bullying. His experiences at school have profoundly impacted on his mental health and wellbeing. He also indicated that there are other students like him who attend the school and who want to wear other uniforms than those assigned to them, but who fear speaking about it. The WCED is reported to be in conversation with the school but the discrimination continues.³
9. The bullying, abuse, discrimination, exclusion and systemic violence experienced by these learners and others in similar school environments harm young people's sense of self, their emotional and physical wellbeing, and their ability to complete their education. It tells them that they are unwelcome in Western Cape schools if they are different from the school community's prejudices and narrow ideas of gender, sexuality and bodily features. It tells them they do not belong if they do not identify in certain ways and do not dress and wear their hair in certain ways. It tells them who they should like and what their bodies should look like, or else they will be silenced or pushed out. It tells them that they should not be seen for who they are in public, that who they are should remain hidden away. As a result, some learners leave school and/or attempt to take their own lives.

¹ Bobby Jordan, DF Malan High probed for punishing 'provocative' pride pupils instead of abusers (10 June 2021) <https://www.timeslive.co.za/news/south-africa/2021-06-10-df-malan-high-probed-for-punishing-provocative-pride-pupils-instead-of-abusers/>; Nicole McCain, Support for public apology from Hoërskool DF Malan swells after homophobia accusations (10 June 2021) <https://www.news24.com/news24/southafrica/news/support-for-public-apology-from-hoerskool-df-malan-swells-after-homophobia-accusations-20210610>.

² Change.org, Justice for DF Malan High School's LGBTQ+ students (2021) <https://www.change.org/p/df-malan-high-school-justice-for-df-malan-high-school-s-lgbtq-students>.

³ Carl Thomas, Strand: Transgender seun verbied om seununiform te dra, *Die Burger* (23 Junie 2021) <https://www.netwerk24.com/Nuus/Onderwys/strand-transgender-seun-verbied-om-seununiform-te-dra-20210622>.

10. These experiences directly and adversely affect learners' ability to fully participate in the school environment and obtaining an education. It is a denial of their right to equal access to education. The impact on children and young people often lasts a lifetime. It is a gross injustice that calls for a strong action from government, school-governing bodies, teachers and all those involved in the education and wellbeing of children, not merely a lukewarm response and inconsequential promises.
11. As Sachs J stated in **S v M (CCT 53/06) [2007] ZACC 18**:

“Every child has [their] own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, [they] cannot be treated as a mere extension of [their] parents [or community], umbilically destined to sink or swim with them ... *Individually and collectively all children have the right to express themselves as independent social beings, to have their own laughter as well as sorrow, to play, imagine and explore in their own way, to themselves get to understand their bodies, minds and emotions, and above all to learn as they grow how they should conduct themselves and make choices in the wide social and moral world of adulthood. And foundational to the enjoyment of the right to childhood is the promotion of the right as far as possible to live in a secure and nurturing environment free from violence, fear, want and avoidable trauma*”.⁴
[own addition to text] [own emphasis].
12. Although this statement was made in a different context, it nonetheless holds true here.

A CALL TO ACTION

13. We are aware of the Western Cape Education Department's (**WCED**) intention to address the discrimination against learners based on their sexual orientation and gender identity through adopting the Draft Guidelines on Gender Identity and Sexual Orientation (**Draft Guidelines**),⁵ which is yet to be finalised by the WCED.
14. However, the Draft Guidelines only present guidelines to schools and focuses on the opinions of the school community. It also does not include the rights to bodily diversity or diverse sex characteristics. Optional SOGI guidelines are not enough to ensure that all LGBTQI+ learners can go to school without the fear of bullying, victimisation, discrimination and marginalisation for who they are. Ultimately, LGBTQI+ learners are being deprived of their rights to education, equality, dignity, and bodily and psychological integrity in favour of the cultural and religious prejudices of other learners, their parents and the wider school community. This is not the balancing of rights that the Constitution envisages.
15. Moreover, engagement with the WCED on the draft guidelines by some of the signatories started in 2019, the Draft Guidelines was gazetted in March 2020 and

⁴ Paras 18-19.

⁵ Draft Guidelines on Gender Identity and Sexual Orientation in Public Schools of the Western Cape Education Department, 2020. https://static.pmg.org.za/prov-gazette-Extra_8223-Extra-Draft-Gender-Identity-2020.pdf

submissions made again by some of the signatories to this letter, but we still do not have anything concrete in place to root out SOGIESC discrimination and victimisation in schools.

16. Considering the systemic violation of LGBTQI+ learners' rights in Western Cape schools, we call on the WCED to take urgent active steps to address the bullying, marginalisation, discrimination and systemic violence that these learners experience on a day-to-day basis on the grounds of their perceived or actual sexual orientation, gender identity, gender expression and/or sex characteristics. It is not enough to investigate the incidents on a case-by-case basis.
17. More specifically, we call on the WCED to:
 - 17.1. Finalise, as a matter of urgency, an inclusive, nondiscriminatory SOGIESC policy that is binding on all public and private schools in the Western Cape and that truly includes, protects and affirms LGBTQI+ learners, educators and other staff;
 - 17.2. Ensure implementation of the SOGIESC policy by all public and private schools in the Western Cape, monitor schools' compliance and hold schools accountable for violations;
 - 17.3. Investigate, with immediate effect, the experiences of LGBTQI+ learners outlined at the schools identified in the above section "Experiences of LGBTQI+ learners in public and private schools of the Western Cape";
 - 17.4. Take disciplinary measures against those implicated in bullying, victimisation and discrimination at these schools in consultation with the victims;
 - 17.5. Ensure that discriminatory and exclusionary practices are ended at these schools;
 - 17.6. Ensure that inclusive and affirming practices are put in place at these schools;
 - 17.7. Take measures to provide redress for harm done to LGBTQI+ learners in these schools;
 - 17.8. Implement SOGIESC sensitisation training at the relevant schools to be attended by pupils, educators and other staff;
 - 17.9. Do a follow-up investigation of the experiences of LGBTQI+ individuals at these schools in due course; and
 - 17.10. Publish its findings.

Request

18. In this regard, we kindly request the following:
 - 18.1. Furnish us with a response to the above by **Friday, 23 July 2021**.
19. Please do not hesitate to contact the following persons as representatives of the collective organisations for any further comments or queries:
 - 19.1. Amy-Leigh Payne, Attorney, Legal Resources Centre: amyleigh@lrc.org.za
 - 19.2. Estian Smit, Research, Advocacy and Policy Manager, Triangle Project: estian@triangle.org.za

Signatories

1. **Legal Resources Centre**, Amy-Leigh Payne, Attorney, <https://lrc.org.za/>
2. **Triangle Project**, Estian Smit, Research, Advocacy and Policy Manager, <http://triangle.org.za/>
3. **Access Chapter 2**, Steve Letsike, Executive Director, <http://www.ac2.org.za/>
4. **Be True 2 Me**, Lee-Anne Walker, Executive Director, <https://www.betrue2me.org/>
5. **Equal Education Law Centre**, Tshego Phala, Executive Director, <https://eelawcentre.org.za/>
6. **Gender DynamiX**, Liberty Matthyse, Executive Director, <https://www.genderdynamix.org.za/>
7. **HealthEnabled**, Peter Benjamin, South Africa Country Director, <http://healthenabled.org/>
8. **Lesbian and Gay Community and Health Centre**, Nonhlanhla Mkhize, <http://www.gaycentre.org.za/>
9. **Lower South Coast LGBTI Community Projects Rural**, Zinhle Ndimeni, <https://www.facebook.com/Lower-South-coast-lgbti-community-projects-rural-105995000841029/>
10. **Matimba**, Akani Shimange, <https://www.matimba.org.za/>
11. **OUT LGBT Well-being**, Roché Kester, Hate Crimes Manager, <https://out.org.za/>
12. **Professional Association for Transgender Health (PATHSA)**, Elma de Vries, PATHSA Secretary, <https://pathsa.org.za/>
13. **Same Love Toti**, Kim Lithgow, Director, <https://www.pflagsouthafrica.org/>
14. **Sexual and Reproductive Justice Coalition (SRJC)**, Shamillah Wilson, Director, <http://www.srjc.org.za/>
15. **Uthingo Network**, Anthony Waldhausen, Director, <https://uthingonetwork.org.za>
16. **Women's Legal Centre**, Mandi Mudarikwa, Attorney, <https://wlce.co.za/>
17. **LS**, Grade 11 transgender female learner - victim of discrimination and abuse
18. **Carolyn Newton**, parent of transgender child
19. **Rebecca Pointer**
20. **Spencer Pointer**
21. **Kestell Serfontein**, Parent of affected learner
22. **Marion Stevens**, Parent of nonbinary child, founding & outgoing Director of the Sexual and Reproductive Justice Coalition (SRJC) and Gender Advisory Panel (GAP), World Health Organization
23. **Xanny Stevens**
24. **Peter van Heusden**
25. **WA**, Parent Trans child and SGB board member of WC School
26. **Suzette Wandrag**, Mother of learner CJ de Jongh