



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not Reportable

CASE NUMBER:2026-015857

In the matter between:

**SWARTRUGGENS
GEKOMBINEERDE SKOOL**

FIRST APPLICANT

**THE SCHOOL GOVERNING
BODY OF SWARTRUGGENS
GEKOMBINEERDE SKOOL**

SECOND APPLICANT

and

**THE HEAD OF DEPARTMENT
FOR EDUCATION IN THE
NORTH WEST PROVINCE**

FIRST RESPONDENT

**THE MEMBER OF THE
EXECUTIVE COUNCIL OF**

SECOND RESPONDENT

**EDUCATION IN THE NORTH
WEST PROVINCE**

**CIRCUIT MANAGER, N.O
BOJANALA DISTRICT**

THIRD RESPONDENT

**SWARTRUGGENS
INTERMEDIATE SCHOOL**

FOURTH RESPONDENT

**THE SCHOOL GOVERNING
BODY OF SWARTRUGGENS
INTERMEDIATE SCHOOL**

FIFTH RESPONDENT

**ALL PARENTS AND/OR
GUARDIANS OF PLACED
LEARNERS**

SIXTH RESPONDENT

**ALL PARENTS AND/OR
GUARDIANS OF ENROLLED
LEARNERS**

SEVENTH RESPONDENT

LENGANE BOGATSU

EIGHT RESPONDENT

Coram: WESSELS AJ

Date of hearing

**:13 February 2026, 19 February
2026 and 12 March 2026**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 10h00 on 8 April 2026.

Summary: Constitutional law – Right to basic education – Section 29 of the Constitution – Right to receive education in language of choice – Section 28(2) – Best interests of the child – School governance – Admission and language policies – Sections 5 and 6 of the South African Schools Act 84 of 1996 – Interim interdict – Structural interdict – Co-operative governance – Meaningful engagement – Unilateral placement of learners – Urgency – Sufficiency of service – Concessions by counsel – Alternative draft order – Application for urgent interim relief – Application to remove 78 learners from school dismissed – Structural interdict granted requiring Department to provide infrastructure and resources – Costs on party and party Scale B.

JUDGMENT

Wessels AJ

Introduction

[1] This matter concerns a dispute between a public school, its governing body, and the provincial education authorities regarding the placement of 78 learners at Swartruggens Gekombineerde Skool for the 2026 academic year. The applicants apply for urgent interim relief and a final review of the administrative decisions that resulted in this placement of the learners at the school.

[2] The first applicant is Swartruggens Gekombineerde Skool ('the school'), a public school situated in Swartruggens in the North West Province. It is a combined school offering education from Grade R to Grade 12. The second applicant is the School Governing Body ('SGB'), a juristic person established in terms of s 16(1) of the South African Schools Act¹ ('the Schools Act').

[3] The first respondent is the Head of Department for Education in the North West Province ('HOD'), cited in his official capacity. The second respondent is the Member of the Executive Council for Education for the North West Province ('MEC'). The third respondent is the Circuit Manager for the Bojanala District. Where necessary, I will refer to these parties collectively as 'the first, second and third respondents.'

[4] The fourth respondent is the Swartruggens Intermediate School, a public school from which the 78 learners originated ('intermediate school'). The fifth respondent is its governing body. The sixth respondents are the parents and guardians of the 78 learners placed at the school. The seventh respondents are the parents and guardians of learners already enrolled at the School prior to January 2026. The eighth respondent is Mr Lengane Bogatsu (the first respondent in an official capacity), cited in his personal capacity for purposes of a punitive costs order.

[5] Two organisations were admitted as amici curiae, being the Equal Education Law Centre ('EELC') and the Suid-Afrikaanse Onderwysersunie ('SAOU'). SAOU was admitted as amicus curiae for Part B of the application and attended the proceeding in Part A as an observer only. The EELC made valuable written and oral submissions that have assisted this Court in

¹ South African Schools Act 84 of 1996.

understanding the broader systemic implications of this dispute in relation to the proceedings before this Court.

[6] The matter was enrolled on the urgent opposed motion roll for 13 February 2026. On that date, the matter was stood down to 19 February 2026, when the amici were admitted and time frames were set for the filing of further papers and reports in relation to the then-impending investigation and report by the EELC. The matter was argued before me on 12 March 2026. Counsel for all relevant parties presented comprehensive oral and written submissions.

Relief sought

[7] The applicants seek relief in two parts. In Part A, which is urgent, they seek the following orders:

(a) That the application is declared as one of urgency, and the ordinary forms and service provided for in the rules be dispensed with in terms of Uniform Rule 6(12).

(b) That service of this application on the sixth and seventh respondents is effected by affixing a copy thereof at the school hall and at the main entrance at the first applicant, and at the office of the principal of the first applicant, and by making a copy of this application available at the secretary of the first applicant, at no cost, on request thereto by any and/or all of the sixth and seventh respondents, be regarded as sufficient, and due service of this application on the sixth and seventh respondents.

(c) That the enforcement of the decision of the HOD to place further learners for admission with the first applicant is suspended and interdicted

pending the final determination of the SGB's appeals and condonation applications to the MEC in terms of ss 5(11) and 6(12) of the South African Schools Act 84 of 1996, as amended, including the final determination of any subsequent appeals or review against the decision of the MEC and/or HOD, alternatively, Part B of the application, including the final determination of any subsequent appeals.

(d) That the enforcement of the instruction issued by the third respondent on 12 January 2026 to the Principal of the school to place further learners for admission with the school is suspended and interdicted pending the final determination of the SGB's appeals and condonation applications to the MEC in terms of ss 5(11) and 6(12) of the South African Schools Act 84 of 1996, as amended, including the final determination of any subsequent appeals or review against the decision of the MEC and/or HOD, alternatively, Part B of the application, including the final determination of any subsequent appeals.

(e) Pending the final determination of the aforesaid condonation applications and appeals to the MEC, and any appeal or review thereof, alternatively, Part B of the application, including the final determination of any subsequent appeals, the HOD and/or the third respondent are directed to forthwith and immediately place the 78 learners referred to in the founding affidavit at the intermediate school.

(f) That the costs of this application on the scale as between attorney and own client, be paid by the Eighth Respondent, Mr Lengane Bogatsu, the Head of Department in his personal capacity, *de bonis propriis*, alternatively that the HOD pays such costs together with such further respondents who oppose this application.

[8] In Part B, the applicants apply for an order reviewing and setting aside the decisions to place the learners at the school.

Factual background

[9] The school is a single-medium Afrikaans public school. It has an approved language policy, adopted on 24 April 2025, which designates Afrikaans as the sole language of instruction from Grade R to Grade 12. It also has an admission policy, adopted in February 2025, which sets out capacity determinations based on educational, infrastructural, and operational factors.

[10] The current learner population at the school is 366. Of these learners, 255 are in Grades R to 7, and 110 are in Grades 8 to 12. Approximately 53% of the existing learner population consists of black learners, while the remaining 47% consists of white and coloured learners.

[11] At the beginning of January 2025, the North West Department of Education ('NWDoE') engaged the SGB regarding the possible integration of learners from the intermediate school. On 29 January 2025, the Circuit Manager formally requested that the SGB introduce a dual-medium-of-instruction system to accommodate Grade 8 and 9 learners from the intermediate school. The NWDoE undertook to provide support, including mobile classrooms, furniture, and additional educator posts. A series of meetings and correspondence followed over the course of eleven months. The SGB consistently requested written commitments from the NWDoE regarding infrastructure, funding, human resources, and the instructional model (parallel versus dual medium). These engagements are recorded in the minutes of meetings held on 7 May 2025, 19 June 2025, and 30 June 2025.

[12] On 18 July 2025, Dr SJ Coetzee, a professional engineer, compiled a structural assessment report ("the Coetzee Report"). The report identified significant structural defects in the school's buildings, including: deterioration of reinforced concrete beams and columns in a building described as 3-storey building with open areas on the ground floor where additional classrooms could potentially be built, due to corrosion, spalling, and lamination, requiring urgent repair before any alterations; the wooden school hall being in poor condition, with timber portals exposed to weather and termites showing total deterioration, and the structure being at risk of eventual collapse.

[13] On 10 November 2025, the HOD sent a letter to the SGB, which he described as a 'formal written commitment' to the integration process. The letter gave dates by which the procurement of mobile classrooms would be finalised. On or about 12 January 2026, the school was notified that the NWDoE had unilaterally placed 78 learners, specifically English-medium learners in Grades 8, 9, and 10, via the SA-SAMS System² during the December 2025 holidays. This placement occurred without prior consultation with the SGB regarding the specific learners or the finalisation of arrangements. On 12 January 2026, the applicants' attorneys dispatched a formal demand letter to the HOD, rejecting the placements as unlawful and demanding their immediate revocation by 14 January 2026 at 08h00. On 14 January 2026, a meeting was held at the school attended by the HOD, departmental officials, and the SGB. The HOD stated that the purpose was to ensure the swift implementation of the decision to admit Grades 8 to 10.

[14] At this meeting, the SGB placed on record its concerns regarding structural defects, the lack of an Electrical Certificate of Compliance, failures in sewerage

² The South African School Administration and Management System (SA-SAMS) is a computer programme developed by the Department of Basic Education (DBE) for school administration, governance, and reporting.

and ablution facilities, and the absence of classrooms, ablutions, teacher consultations, and timeframes. The HOD responded by cautioning the SGB against litigation, stating that lawyers are there to make money and that he would use state money to defend the matter.

[15] On 14 January 2026, the 78 learners presented themselves at the school. They have since been accommodated in the wooden school hall identified in the Coetzee Report as being at risk of collapse.

[16] The applicants launched this application on 27 January 2026. The HOD, MEC and third respondent filed notices of intention to oppose and answering affidavits. The fourth to eighth respondents abided by the decision of this Court.

[17] On 19 February 2026, this Court granted the applications of the EELC and SAOU to be admitted as *amici curiae*. The EELC subsequently filed a supplementary affidavit, dated 6 March 2026, reporting on its engagement with the 78 learners and their parents. The affidavit records that the overwhelming majority of the learners expressed a strong desire to remain at the school, that they feel settled and safe, and that they fear being sent back to the intermediate school, which they know to be in a state of disrepair.

The issues

[18] The following issues stand to be determined: whether the applicants have made out a case for the matter to be heard on an urgent basis; whether the attenuated service on the sixth and seventh respondents should be regarded as sufficient and due service; whether the applicants have established a clear or *prima facie* right to the interim interdictory relief sought in Part A; whether the balance of convenience favours the grant of an interim interdict; whether the

applicants have demonstrated that they will suffer irreparable harm if the relief is not granted; whether there is any other satisfactory remedy available to the applicants; and what the appropriate order as to costs should be.

Urgency

[19] The applicants contend that the matter is urgent because the unlawful placement of learners has resulted in 78 learners being accommodated in an unsafe school hall, because the learners' right to a basic education is immediately threatened and because the administrative action, if not suspended, will render the review application moot.

[20] Although the first, second and third respondents contested the urgency, the facts of the application strongly support a finding of urgency in favour of the applicants. The presence of 78 learners in a structure identified as at risk of collapse constitutes an immediate concern. The right to a basic education is foundational to our constitutional order, and any threat to that right must be addressed without delay. Moreover, if the interim relief is not granted, the 78 learners will continue to be educated in the current academic year under conditions that may compromise their safety and educational development, and the review application may become an academic exercise.

[21] I therefore find that the applicants have made out a proper case for the matter to be heard on an urgent basis in terms of Uniform Rule 6(12).

Service on the sixth and seventh respondents

[22] The applicants request an order declaring that service on the sixth and seventh respondents, completed by posting copies at the school and providing copies upon request, is valid and constitutes proper service.

[23] In its written submissions, the EELC raised serious concerns regarding the adequacy of this service. It submitted that there is no evidence that the manner of service had the effect of notifying the parents and guardians of the nature and contents of the application, and that the applicants' claim that they do not have the full particulars of the parents is untenable, given that the school interacts with them daily.

[24] There is substance in the EELC's submissions. The parents and guardians of the 78 learners are directly affected by these proceedings. An order removing their children from the school would have a profound impact on their family lives and their children's education. The principle of *audi alteram partem* requires that they be given a proper opportunity to be heard, should they so decide.

[25] I am also mindful of the practical difficulties, given that the applicants do not have a complete list of the parents and guardians. The matter is urgent. The parents and guardians have now received notice of these proceedings through their children and through the EELC's engagement. The EELC's supplementary affidavit records that it engaged with a significant number of parents and learners. This suggests that the parents are, in fact, aware of the proceedings. Bearing in mind that the parents and guardians have now had the opportunity to make their views known through the EELC's intervention, I am prepared to deem the service effective for the interim relief. However, I must emphasise that this is a pragmatic decision, given the urgency of the matter and the fact that the parents' voices have

been heard through the amicus, the EELC. It should not be taken as condoning the applicants' failure to make more strenuous efforts to identify and directly serve the affected parents.

Legal principles: the interim interdict

[26] The requirements for an interim interdict are well-established. An applicant must establish: A prima facie right, even if open to some doubt; A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; That the balance of convenience favours the grant of the interim relief; The absence of any other satisfactory remedy.

[27] These requirements must be considered in the context of the constitutional rights at play here, particularly to give effect to children's rights to have their best interests considered and to a basic education.

Prima facie right

[28] The applicants assert a prima facie right to have their statutory powers in terms of ss 5 and 6 of the Schools Act respected, and to ensure that the school's infrastructure and capacity are not overburdened in a manner that compromises the safety and educational well-being of all learners. Section 5(5) of the Schools Act provides that the admission policy of a public school is determined by its governing body, subject to the Act and any applicable provincial law. Section 6(2) of the Schools Act provides that the governing body may determine the language policy of the school, subject to the Constitution, the Act, and any applicable provincial law.

[29] These statutory powers are not absolute and should be exercised in accordance with the broader educational principles enshrined in the Constitution. The Constitutional Court in *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another*³ remarked as follows:

‘The case arises in the context of continuing deep inequality in our educational system, a painful legacy of our apartheid history. The school system in Ermelo illustrates the disparities sharply. The learners per class ratios in Ermelo reveal startling disparities which point to a vast difference of resources and of the quality of education. It is trite that education is the engine of any society. And therefore, an unequal access to education entrenches historical inequity as it perpetuates socio-economic disadvantage.’

[30] The Basic Education Laws Amendment Act 32 of 2024 (‘BELA Act’) has now codified these principles. Section 5(5) of the Schools Act, as amended, requires SGBs, when considering admission policies, to take into account: the best interests of the child, with emphasis on equality as provided for in s 9 of the Constitution, and equity; whether there are other schools in the community that are accessible to learners; the available resources of the school and the efficient and effective use of state resources; and the space available at the school for learners.

[31] Section 6(5) imposes similar considerations for language policies, including "the language needs, in general, of the broader community in the education district in which the public school is situated."

[32] More recently, in *Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng*

³ *Head of Department : Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* (CCT40/09) [2009] ZACC 32; 2010 (2) SA 415 (CC) ; 2010 (3) BCLR 177 (CC) (14 October 2009) para 2.

*and Another*⁴, the Constitutional Court affirmed that the power of the SGB to determine an admission policy of a school is not absolute. The Constitutional Court remarked as follows:

‘[42] The irresolvable conflict of provincial and national law seen by the applicant fails to have proper regard to how the provisions of section 5(1) to (3) qualify and limit section 5(5) of the Schools Act. Section 5 regulates admission to public schools. Its opening provision in section 5(1) is plain and emphatic: “[a] public school must admit learners and serve their educational requirements without unfairly discriminating in any way”. Section 5(2) requires a school governing body not to administer a test related to the admission of a learner. Obviously, a learner may not be excluded only on account of failing to satisfy a test the school might choose to put up. Section 5(3) introduces a number of grounds on which a learner may never be refused admission. These include an inability or failure to pay school fees or failure to subscribe to the mission statement of the school. Then follows section 5(5) whose exact words bear repetition:

“Subject to this Act and any applicable provincial law, the admission policy of a public school is determined by the governing body of such school.”

[43] The provision has at least two important internal qualifiers. **First, the governing body determines admission policy of a school subject to the Schools Act and “any applicable provincial law”.** About this, in *Rivonia Primary School, Mhlantla AJ* (as she then was) explained that—

“there is an important textual qualifier in section 5(5) subjecting a school governing body’s power to other provisions of the Schools Act, as well as to applicable provincial law. The effect of this is that the determination of admissions may be subject to provincial government’s intervention in terms of the Schools Act, or applicable provincial law if the intervention is provided for in those instruments.”

⁴ *Federation of Governing Bodies for South African Schools (FEDSAS) v Member of the Executive Council for Education, Gauteng and Another* (CCT 209/15) [2016] ZACC 14; 2016 (4) SA 546 (CC) ; 2016 (8) BCLR 1050 (CC) (20 May 2016) paras 42-45.

[44] Secondly, it is trite that the admission policy of a school must conform to all applicable law including provincial law. It cannot be otherwise because that is what the rule of law requires. It is so that when a school fashions its admission policy it will be actuated by the internal interests of its learners. It is also quite in order that a school seeks to be a centre of excellence and to produce glittering examination and other good outcomes. But public schools are not rarefied spaces only for the bright, well mannered and financially well-heeled learners. They are public assets which must advance not only the parochial interest of its immediate learners but may, by law, also be required to help achieve universal and non-discriminatory access to education.

[45] That, however, must occur within the broader framework of all valid law led by the vision of universal access to education embraced by the Constitution. The duty to place unplaced learners falls on the MEC who must ensure that there are enough school places so that every child can attend school. Similarly, the power to determine learner enrolment capacity and declare a school full or not, in the absence of norms and standards required by the Schools Act that are in force, rightly falls on the HOD. Absent this power the statutory task of the MEC and HOD to place unplaced learners may come to naught.’ (own emphasis)

[33] It is clear, therefore, that while the SGB has a prima facie right to have its statutory powers respected, that right is not unfettered. It must be exercised in a manner that is consistent with the broader constitutional scheme.

[34] In the present case, the SGB has raised legitimate concerns regarding the safety of the school's infrastructure. The Coetzee Report provides objective, expert evidence that the wooden school hall is at risk of collapse and that the 3-storey building, consisting mainly of classrooms, has significant structural defects. The 78 learners are currently accommodated in the school hall. This situation cannot be allowed to continue.

[35] The SGB also has a legitimate interest in ensuring that the school's capacity is not exceeded in a manner that compromises the quality of education. The

admission policy contains detailed formulas for determining capacity based on classroom size, sanitation standards, and other factors. The NWDoE's unilateral placement of 78 learners appears to have disregarded these considerations.

[36] I am satisfied that the applicants have established a *prima facie* right, albeit a right that must be balanced against the rights of the 78 learners and the NWDoE's constitutional obligations.

Irreparable harm

[37] The applicants contend that if the interim relief is not granted, they will suffer irreparable harm in several respects: the learners will continue to be educated in unsafe conditions; the school's capacity will be exceeded, compromising the quality of education for all learners; the SGB's statutory powers will be effectively usurped, rendering the review application moot.

[38] The most concerning form of harm manifests in the safety risk. The Coetzee Report is unequivocal in stating that the wooden school hall is at risk of collapse. The continued accommodation of 78 learners in this structure exposes them to potential physical harm. If a tragedy were to occur, the consequences would be devastating and irreparable.

[39] The EELC's supplementary affidavit presents a counterargument. The 78 learners strongly wish to stay at the school, feeling comfortable and secure in a familiar environment despite existing structural issues. They are concerned about being transferred back to the intermediate school, which is in poor condition. If the interim relief requested by the applicants were granted, and the learners were immediately moved to the intermediate school, it would cause significant

educational disruption and emotional distress. This type of harm would be irreversible.

[40] I am therefore faced with competing claims of irreparable harm. On the one hand, the physical safety risks identified in the Coetzee Report and on the other hand, the educational and emotional harm that would result from removing the learners from their current school.

[41] In my view, the solution lies not in removing the learners but in compelling the Department to take immediate steps to address the safety risks. This would minimise both forms of harm to the extent that the learners would remain in a familiar environment, but the Department would be obliged to make that environment safe.

Balance of convenience

[42] The balance of convenience must be assessed with reference to all the interests at stake. The interests of the SGB in exercising its statutory powers and ensuring a safe and quality educational environment, as well as the interests of the NWDoE in fulfilling its constitutional obligation to provide access to education, but most importantly, the interests of the 78 learners, whose rights to basic education, dignity, and safety are directly implicated.

[43] The balance of convenience favours granting interim relief, but not on the terms sought by the applicants. To remove the 78 learners forthwith would cause them considerable harm. To leave the situation entirely unaddressed would expose them to unacceptable safety risks. The appropriate balance is to grant interim relief that maintains the status quo (the learners remain at the school) but imposes obligations on the NWDoE to address the safety and capacity concerns.

[44] The approach of this Court must be consistent with the principle of co-operative governance that underpins the Schools Act. This principle has been emphasised by the Constitutional Court in *Head of Department, Department of Education, Free State Province v Welkom High School and Another*; *Head of Department, Department of Education, Free State Province v Harmony High School and Another*⁵, the relationship between the Department of Education and an SGB is a partnership. They are legally obliged to negotiate with one another in good faith and in the best interests of learners.

Other satisfactory remedy

[45] There is no other satisfactory remedy available to the applicants. The safety risks are immediate and require urgent intervention. The review application, if successful, would set aside the NWDoE's decisions, but would not, of itself, address the safety concerns or provide a framework for ensuring that the school has the resources necessary to accommodate the learners lawfully and safely.

[46] A structural interdict, which requires the NWDoE to take specified steps within defined timeframes and to report to this Court on its compliance, is an appropriate remedy in these circumstances. It provides ongoing supervision and ensures that the NWDoE fulfils its constitutional and statutory obligations.

The obligations of the NWDoE

[47] The Department has a legal obligation to ensure that the 78 learners receive a basic education in a safe environment. Section 29(1)(a) of the Constitution

⁵ *Head of Department, Department of Education, Free State Province v Welkom High School and Another*; *Head of Department, Department of Education, Free State Province v Harmony High School and Another* (CCT 103/12) [2013] ZACC 25; 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) (10 July 2013) para 36.

guarantees everyone the right to a basic education. This right imposes obligations on the NWDoE. These obligations, that rest on the State, are encapsulated in s 29(1)(b)⁶ which provides that everyone has the right:

‘(b) to further education, **which the state, through reasonable measures, must make progressively available and accessible.**’

[48] Section 6(11) of the Schools Act, as amended by the BELA Act, provides that if the HOD directs a school to adopt more than one language of instruction, he or she must, before the directive is implemented, ‘...take all necessary steps to ensure that the public school concerned receives the necessary resources, including, but not limited to...’ educators and infrastructure.

[49] In the present case, the HOD has directed the school to admit English-medium learners. Section 6(11) of the Schools Act, therefore, obliges the HOD to ensure that the school receives the necessary resources, including infrastructure, to accommodate these learners safely and effectively.

[50] The current circumstances regarding the accommodation of the 78 learners have been clarified by the EELC’s supplementary affidavit. The NWDoE has provided the school with mobile classroom units that are connected to an electricity supply. The learners are accommodated in these mobile classrooms, which are separate from the main school building, and they attend the main building only for one subject, which is computer literacy. The NWDoE has also supplied learning resources, furniture, English-medium educators, and the national school feeding programme for qualifying learners. The EELC’s engagement with the learners reveals that they have become settled at the school, have formed friendships, and express a strong desire to remain, fearing being sent

⁶ Section 29(1)(b) of the Constitution.

back to intermediate school. Many of the learners and their caregivers were unaware of these proceedings until the EELC engaged with them.

[51] The failure of the NWDoE to provide these resources timeously is the root cause of the current impasse. Its obligation is to provide the resources, not to withdraw the learners.

Address by counsel

[52] During the course of the argument, significant concessions were made by counsel that have a direct bearing on the appropriate relief to be granted.

[53] Counsel for the applicants, in his oral submissions, left an alternative draft order in the discretion of this Court. He submitted that, should the Court not be persuaded to grant the relief sought in the notice of motion as originally framed, the Court should grant an order in terms of the alternative draft order. This alternative draft order moves to suspend the HOD's decisions provisionally, while maintaining the learners at the school and imposing a structural interdict on the NWDoE to address infrastructure, safety, and capacity concerns.

[54] Importantly, applicants' counsel submitted that the alternative draft order represents a 'last resort' and that the applicants would seek this alternative relief should this Court not be with them on the primary relief sought. He emphasised that the alternative order would not remove the learners but would instead impose proper responsibility on the respondents to ensure that the children's health and safety are prioritised and properly attended to.

[55] Counsel for the first, second and third respondents, made equally significant concessions. He submitted that the respondents were in full agreement

with the recommendations made by the EELC in its supplementary affidavit. He specifically referred to the recommendations contained in the EELC's supplementary affidavit, which propose a joint assessment of infrastructure, the development of a written infrastructure support plan with clear timelines, the addressing of urgent safety deficiencies within 30 days, and the implementation of all other improvements within six months. It was further submitted that the first, second and third respondents had been engaged with these issues for 11 months and that there had been cooperation in addressing the structural issues raised in this application. Their counsel referred to the NWDoE's letter dated 11 November 2025 as evidence that his clients had made commitments to address these concerns. Importantly, the first, second and third respondents did not oppose the relief proposed by the applicants in the alternative draft order, as the primary submission of their counsel was that the application was not urgent and that the relief sought by the applicants in their notice of motion, specifically the removal of the learners, was inappropriate.

[56] The EELC's counsel made submissions consistent with the EELC's supplementary affidavit. It is recommended that the learners remain where they are, as they are settled within the school community and clarified that the mobile classrooms had been delivered and connected to electricity, and that the learners were accommodated in these mobile classrooms, which are separate from the main building, with the exception of one subject (computer literacy) taught in the main building.

Conclusion

[57] Having considered all the evidence and arguments, as well as having regard to the concessions made by counsel during oral submissions, I conclude that the applicants have established a *prima facie* right to have the school's infrastructure

and capacity concerns addressed. The Coetzee Report stands as uncontroverted expert evidence of the structural risks, and the first, second and third respondents did not meaningfully challenge the existence of this right, focusing instead on the appropriateness of the remedy sought. There is a well-grounded apprehension of irreparable harm if interim relief is not granted, specifically the continued exposure of the 78 learners to unsafe conditions. The first, second and third respondents did not contest the existence of these risks, and counsel for the first, second and third respondents effectively conceded the need for remedial action by fully agreeing with the EELC's recommendations for a structural intervention.

[58] The balance of convenience favours granting interim relief that maintains the status quo while imposing positive obligations on the NWDoE to address the safety and capacity concerns. Importantly, the applicants' alternative draft order abandons the primary relief of removing the learners and instead seeks a structural interdict. This concession aligns the applicants' position with that of the respondents and the amicus, establishing a common ground that the learners should remain at the school while the infrastructure is addressed.

[59] There is no other satisfactory remedy available. The first, second and third respondents, through their counsel's concessions, acknowledged that the NWDoE has been engaged with these issues for 11 months and that commitments were made, yet the safety concerns remain unresolved. This underscores the need for judicial oversight through a structural interdict to ensure compliance.

[60] I am not persuaded that the relief sought by the applicants in prayer 5 of Part A, that the 78 learners be forthwith and immediately placed at intermediate school, is appropriate or in the best interests of the learners. Moreover, no evidence was before this Court to demonstrate that the intermediate school is capable of appropriately accommodating these learners.

[61] The just remedy is to grant an interim interdict suspending the Department's decisions pending the final determination of Part B, and to couple that interdict with a structural interdict requiring the Department to take immediate steps to address the school's infrastructure, staffing, and resource needs. This remedy is in accordance with the alternative draft order proposed by the applicants and with the EELC's recommendations, which the first, second and third respondents have indicated they support.

Costs

[62] The applicants seek a punitive costs order against the eighth respondent, Mr Lengane Bogatsu, in his personal capacity, *de bonis propriis*. They contend that his conduct was arbitrary, unreasonable, and procedurally unfair, and that he acted in a manner inconsistent with his constitutional and statutory obligations.

[63] Having disposed of the urgent interim relief in Part A, I consider it appropriate that the costs of Part B be reserved for determination by the court that hears the review application. The merits of the review, including the lawfulness of the HOD's decision and the question of whether any costs order against the eighth respondent in his personal capacity is justified, are best determined once the full record has been considered and the parties have had an opportunity to fully ventilate the issues in Part B.

[64] I make no order as to costs in favour of or against the *amicus curiae* (the EELC). Its participation has been valuable and has assisted this Court in reaching a just conclusion, but it did not seek costs, and none of the parties opposed its admission.

Order

[72] In the result, I make the following order:

Part A

1. The applicants' non-compliance with the forms and service provided for in the Uniform Rules of Court is condoned, and the application is heard as a matter of urgency in terms of Uniform Rule 6(12).
2. The service effected on the sixth and seventh respondents by affixing a copy of the application at the premises of the first applicant and making copies available upon request is declared sufficient and due service for the purposes of these interim proceedings.
3. The enforcement of the decision of the first respondent to place 78 learners for admission with the first applicant is suspended and interdicted pending the final determination of Part B of this application.
4. The enforcement of the instruction issued by the third respondent on 12 January 2026 to the Principal of the first applicant to place the 78 learners for admission with the first applicant is suspended and interdicted pending the final determination of Part B of this application.
5. Pending the final determination of Part B of this application:
 - 5.1 The 78 learners placed at the first applicant shall remain at the first applicant and shall continue attending classes in English, under the

administration of the applicants, in accordance with the status quo existing on the date of this order.

- 5.2 The relief granted in paragraphs 6 to 18 of this order constitutes a supervisory order (structural interdict) to ensure compliance by the first respondent and the North West Department of Education with their constitutional and statutory obligations.
- 5.3 This Court retains supervisory jurisdiction over the implementation of this Order pending the finalisation of Part B of this application.
6. The first respondent, in his capacity as Head of the Department of Education, North West Province, shall ensure that the North West Department of Education immediately provides, funds, and implements all infrastructure, staffing, educational and support resources reasonably necessary to accommodate the 78 learners placed at the first applicant, without imposing any financial burden on the applicants.
7. Within 7 (seven) calendar days of this Order, the first respondent shall convene a joint inspection and assessment of the infrastructure, facilities, staffing, and resource requirements relating to the placement of the 78 learners at the first applicant.
8. The assessment shall be conducted jointly by representatives of:
 - 8.1 The North West Department of Education
 - 8.2 The applicants; and

- 8.3 Any suitably qualified technical officials required for the purpose of assessing infrastructure and service requirements.
9. The assessment referred to in paragraph 7 shall be completed within 30 (thirty) calendar days of this Order.
10. Within 14 (fourteen) calendar days after completion of the assessment, the first respondent shall ensure that the North West Department of Education prepares a written Infrastructure Support Plan.
11. The Infrastructure Support Plan shall:
 - 11.1 Identify all urgent deficiencies requiring immediate remediation.
 - 11.2 Identify all medium-term infrastructure improvements required.
 - 11.3 Allocate the necessary budgetary resources for each item identified.
 - 11.4 Identify the officials responsible for implementation.
 - 11.5 specify clear implementation timelines; and
 - 11.6 Provide a mechanism for addressing urgent safety, sanitation, or hygiene-related deficiencies.
12. The Infrastructure Support Plan shall specifically address, where applicable:

- 12.1 The electrical capacity of the first applicant and compliance with applicable SANS standards;
- 12.2 The provision and installation of further temporary or permanent classrooms where required;
- 12.3 The provision of further classroom furniture, learning materials, and technological resources;
- 12.4 The adequacy of sanitation facilities, including facilities for mobility-impaired learners;
- 12.5 The adequacy of water supply and piping infrastructure, including fire-fighting water provisions;
- 12.6 The provision of teaching posts and learning support resources required for the 78 learners;
- 12.7 Any necessary adjustments to the first applicant's Post Provisioning Model;
- 12.8 The development of a framework addressing:
 - 12.8.1 The payment or subsidisation of school fees for learners transferred from a no-fee (quintile 3) school to a fee-paying (quintile 4) school; and
 - 12.8.2 The academic integration of learners currently in Grades 9 and 10 when they progress to Grades 11 and

- 12, including staffing, curriculum, and facility arrangements.
13. Any urgent safety, sanitation, or hygiene-related deficiencies identified during the assessment shall be remedied within 30 (thirty) calendar days of this order.
14. All other infrastructure improvements identified in the Infrastructure Support Plan shall commence within 30 (thirty) calendar days after the Plan has been finalised and shall be fully implemented within 6 (six) months of this order.
15. The first respondent shall comply with the recommendations contained in the Structural Assessment for Alterations Report pertaining to Swartruggens Combined School, compiled by Dr SJ Coetzee (Pr Eng) dated 18 July 2025, attached to the applicants' founding affidavit as annexure 'FA3'.
16. Compliance with the recommendations referred to in paragraph 15 shall be achieved within 6 (six) months of this order, and the first respondent shall ensure that the necessary budgetary resources are allocated for the implementation thereof.
17. Within 60 (sixty) calendar days of this order, the first respondent shall ensure that the North West Department of Education, in consultation with the applicants, develops and implements a structured social cohesion programme aimed at promoting integration, mutual respect, and the prevention of bullying amongst all learners at the first applicant.

18. Within 30 (thirty) calendar days of this Order, the first respondent shall ensure that appropriate psychosocial support services, including counselling and educational support services where necessary, are made available to any learner affected by the disruption and uncertainty associated with the placement of the 78 learners.
19. The first respondent shall file with this Court and serve on the applicants the following reports under oath:
 - 19.1 A First Report within 45 (forty-five) calendar days of this Order, detailing:
 - 19.1.1 The outcome of the assessment;
 - 19.1.2 The Infrastructure Support Plan; and
 - 19.1.3 Steps taken to address urgent deficiencies.
 - 19.2 A Second Report within 90 (ninety) calendar days of this Order, detailing progress in implementing the Infrastructure Support Plan.
 - 19.3 A Final Compliance Report within 180 (one hundred and eighty) calendar days of this Order.
20. Each report shall:
 - 20.1 Be deposed to by the first respondent, or by a senior official duly authorised by the first respondent responsible for the implementation of this Order;

- 20.2 Identify the steps taken to comply with each obligation imposed by this Order; and
- 20.3 Specify any instances of non-compliance, the reasons therefor, and the steps and timelines proposed to achieve compliance.
21. The applicants may file a response to any report filed by the first respondent within 10 (ten) calendar days, whereafter the first respondent may file a reply within 5 (five) calendar days.
22. The second applicant shall enter into a consultation process with the parents of learners at the first applicant after the first respondent has substantially complied with the obligations imposed by this order, which consultation shall be conducted in accordance with sections 5 and 6 of the South African Schools Act 84 of 1996 ('South African Schools Act') for the purpose of considering any amendment to the first respondent's admission or language policies.
23. Any amendment to the admission or language policies shall have no legal effect unless and until such amendment has been formally adopted by the second applicant in accordance with the South African Schools Act.
24. The applicants and/or the respondents are granted leave to approach this Court on the same papers, duly amplified where necessary, for further relief, enforcement or variation of this order.
25. The costs of Part A of this application are reserved for determination by the court hearing Part B.

26.No order is made as to costs in respect of the amici curiae.

Part B

27.The applicants are directed to file a supplementary affidavit, if any, within 20 (twenty) calendar days of the filing of the first respondent's First Report referred to in paragraph 19.1 above.

28.The respondents and amici curiae are directed to file any answering affidavits, if any, within 20 (twenty) calendar days thereafter.

29.The applicants are directed to file any replying affidavits within 10 (ten) calendar days thereafter.

30.The Registrar is directed to allocate a date for the hearing of Part B of this application as soon as practicable after the expiry of the periods referred to in paragraphs 27 to 29 above, and in any event not later than 90 (ninety) calendar days after the filing of the applicants' supplementary affidavit.




M WESSELS

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For applicants	:Adv A Sander
Instructed by	:Horn & Van Rensburg Attorneys :Bloemfontein :c/o Loubser-Ellis & Associates Inc :Mahikeng
For first to third respondents	:Adv JM Gumbi SC and Adv T Sebitlo
Instructed by	:State Attorney :Mmabatho
For the first amicus curiae (EELC)	Adv L Zikalala and Adv K Dambuza ,
Instructed by	:The Equal Education Law Centre :Cape Town :c/o Morweng Attorneys :Mahikeng
For the second amicus curiae (SAOU)	:Adv LM Erasmus SC
Instructed by	:Erasmus Inc Attorneys :Pretoria :c/o CJPO Oelofse Attorneys :Mahikeng