

**NATIONAL ASSEMBLY**

**FOR WRITTEN REPLY**

**QUESTION 136**

**DATE OF PUBLICATION OF INTERNAL QUESTION PAPER: 14/02/2013**

**(INTERNAL QUESTION PAPER: 1/2013)**

**Mr S Esau (DA) to ask the Minister of Basic Education:**

- (1) How many legal matters were dealt with by her department (a) in the (i) 2009-10, (ii) 2010-11 and (iii) 2011-12 financial years and (b) during the period 1 April 2012 up to the latest specified date for which information is available;
- (2) (a) how many of the specified legal matters were dealt with by (i) the State Attorney and (ii) private attorneys during the specified periods and (b) what are the reasons why her department was not represented by the State Attorney in each specified case;
- (3) what total amounts were paid by her department to (a) the State Attorney and (b) private attorneys during the specified periods? NW142E

**Response**

- (1) See Annexure 1
- (2)
- (3) (a)(i) All legal matters were dealt with by the State Attorney  
(ii) None
- (4) (a) See Annexure A  
(b) None



**ANNEXURE "A"**

**DETAILS OF THE CIVIL CASES DURING THE PERIOD 1 JANUARY 2009 UP TO THE LATEST SPECIFIED DATE IN WHICH THE MINISTER AND/OR DIRECTOR-GENERAL HAS/HAVE BEEN CITED AS RESPONDENT**

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
<b>CASES TAKEN OVER FROM THE DEPARTMENT OF EDUCATION IN 2009</b>						
1	THE BEWEGING VIR CHRISTELIK-VOLKSEIE ONDERWYS (BCVO) VS. THE MINISTER OF BASIC EDUCATION. <b>This case started in 2007-finalized in 2012</b>	4569/2007	The Applicants applied to the North Gauteng High Court for an order declaring that they are not bound by the National Education Curriculum or Policy on Religion.	R503 200  <b>Cost awarded in favour of the Department. State Attorney to recover cost</b>	Minister opposed matter. The applicants appealed all the way to the Constitutional Court, which ruled in favour of the Department.  Costs awarded in favour of the Department. Applicant must pay the Department's costs.	Finalised.
2	WESTERN CAPE FORUM FOR DISABILITY VS. GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND ANOTHER. <b>This case started in 2007-finalized in 2011</b>	5249/07/P9	Western Cape Forum for Intellectual Disability launched an application in the Cape High court concerning the alleged failure by the national and provincial governments to provide basic education for children with severe and profound intellectual disability. This was alleged to be in breach of the affected children's constitutional rights.	R336 153.17	The Minister opposed the matter. The Court held that the applicant is entitled to the relief sought.	Finalised.
3	HOERSKOOL LANGENHOVEN AND OTHERS V WILLIE KATHS		The Department and the school issued a summons against Willie Kath's for transfer of immovable property of the school that was illegally transferred to Willie Kath's who used to be the previous principal of the school	R 94 392	The case was settled out of court-The Defendant returned the property to the school	Finalized
4	HOËRSKOOL ERMELO		The Head (HoD) of the Mpumalanga	The Department did not incur	The court ruled in	Finalised.

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	VS. HoD OF EDUCATION: MPUMALANGA & MINISTER OF EDUCATION. <b>This case started in 2007-finalized in October 2009</b>		Education Department had instructed the principal of Ermelo High School to admit 113 learners who could not be accommodated elsewhere {to be taught in English} for the 2007 academic year, contrary to the policy of the school. The HoD also withdrew the governing body's function of determining the language policy and appointed an interim SGB.	any cost as the cost was paid by the Mpumalanga Education Department	favour of the school. The HoD appealed to the Constitutional Court, arguing that the school was the only high school not filled to capacity. It was held that a HoD might on reasonable grounds withdraw a school's language policy. Held further that the power to determine the language policy in a public school must be exercised by the governing body subject to the limitations set by the Constitution and the Schools Act.	
<b>CASES REGISTERED IN 2010</b>						
5	THANDO MTHEMBU VS. MINISTER OF EDUCATION AND ANOTHER		Rescission of a judgment that had incorrectly been obtained against the Minister. Minister incorrectly cited in the matter.	Amount paid: R22 800,00 (14/03/2011)	Application granted.	Finalised.
6	CENTRE FOR CHILD LAW AND OTHERS VS. THE GOVERNMENT OF THE EASTERN CAPE AND 7 OTHERS		The applicants applied to the Eastern Cape High Court for an order declaring that the failure of the first and second respondents to provide access to adequate school facilities for the seven schools in question was unconstitutional and unlawful.	Amount paid: R207 477,15 (5/4/2011)	The matter was settled out of court.	Finalised.
7	DIE AFRIKAANSE TAALRAAD VS. MINISTER OF BASIC EDUCATION		The applicants made an application to the Equality Court claiming that the respondent was discriminating unfairly against Afrikaans-speaking students, with specific reference to Funza Lushaka bursary scheme: the bursaries	Amount paid: R55 290,00	The Minister is opposing the matter. Since the Department filed its opposing affidavit, stating that	Ongoing

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			are not awarded to students who choose Afrikaans as a subject for teacher training. Relief sought: Interim order that respondent stop unfair practice; final order that practice amounts to language discrimination; that all students be considered for bursaries on merit; a public apology; costs and any other alternative legal assistance.		the applicant's complaint has no foundation and that Afrikaans-home-language students are the most overrepresented home-language-speaking group when it comes to the awarding of Funza Lushaka Bursaries, the applicant has not yet filed its answering affidavit.	
8	SIYABONGA ZAMOKHWAKHE ZAMA AND ANOTHER VS. MEC FOR EDUCATION, KZN		The first applicant applied to court requesting the respondents to permit him to write supplementary examinations	No legal cost incurred in this matter	The Minister of Basic Education was cited as an interested party. The matter has been dismissed.	Finalised.
9	SF MASWANGANYI T/A MANGAMELA TRADING ENTERPRISES		The DBE received a warrant of execution in which the Minister was cited as the first execution debtor. The summons had not been served on the DBE. Therefore, the DBE instructed Limpopo to apply for a rescission of judgment.	Limpopo Education Department paid legal cost.	The judgment was rescinded. LED is defending the case. Minister wrongly cited in terms of section 60(3) of SASA	Finalized
10	MAGISTRATES' COURT: BAFOKENG: EG TLHAPANE VS. MINISTER OF BASIC EDUCATION, MEC: NORTH WEST EDUCATION DEPARTMENT AND GOVERNMENT EMPLOYEES PENSION FUND		The DBE received a summons alleging that the plaintiff had been employed by the North West Education Department (NWED) and had left the employ of the NWED during 2006; and that her benefits were still being withheld.	No legal costs	Plaintiff withdrew case against all the Defendants	Finalised.

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11	MATOKAZI P AND 33 OTHERS VS. MEC FOR EDUCATION		The applicants request the court to assist them in enforcing an order which was granted by the court on 29 September 2011. This is an application for request to provide information in terms of the Promotion of Access to Information Act.	No legal costs	The matter was settled out of court. ECED provided information in terms of the PAIA Act.	Finalized.
<b>CASES REGISTERED IN 2011</b>						
12	PJ OLIVIER VS. MEC FOR EDUCATION		The applicants applied to court, directing that the administrative action taken by the Eastern Cape Education Department in its decision not to fill all vacant substantive posts at public schools in the Eastern Cape Province in accordance with their 2010 post establishment be judicially reviewed.	Amount paid: R19 380,00	The Minister abides by the decision of the court.	Finalised.
13	NIGERIAN UNION OF SOUTH AFRICA VS. BISSCHOP FRANCIS AND 3 OTHERS		The applicant made an application that the first, second and third respondents are interdicted from publishing the workbook and ordered to remove page 56 from the book. According to the applicant, the article is <i>per se</i> defamatory of a group of persons, namely, Nigerians, in that it depicts them as "drug smugglers and crooks".	No legal costs	The matter has been struck from the roll.	Finalised.

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14	SADTU VS. MEC FOR EDUCATION, EASTERN CAPE		SADTU instituted legal action against the MEC for Education in the Eastern Cape and the Minister. The Minister was cited as a result of the section 100 intervention. It was alleged that the MEC or the HoD had acted irregularly or unlawfully and had not adhered to the intervention in regard to the 2012 post establishment, which it had determined without consideration of the terms of the MoU comprising the delegations as a consequence of the intervention. It further alleged that there had been no proper consultation with the unions.	No legal costs	The Minister did not oppose the matter.	Finalised.
15	KHARITHOME TRAINING AND CONSULTING CC VS. MAKGETSE HIGH SCHOOL AND FOUR OTHERS		The plaintiff instituted the action in relation to a contract that he had entered into with the defendants. The Minister was cited as the third defendant. The plaintiff alleges that the defendants unlawfully terminated his contract and, as a result, he claimed R360 000.	No legal costs	The Minister was wrongly cited in this matter. The Minister is not liable in terms of section 60(3) of the SASA. The Plaintiff attorney was requested by the state attorney to withdraw against the Minister.	Ongoing.
16	SAMKELO MALIMA VS. MINISTER OF BASIC EDUCATION		An application to release the results attained by the applicants in the 2010 Senior Certificate Examination in all subjects other than Computer Application Technology.	No legal costs	The DBE did not oppose.	Finalized
17	S KHUBHEKA VS. MEC: KZN AND OTHERS		The KwaZulu-Natal Education Department unlawfully upgraded the posts deputy chief education specialists. This function resides with the Minister; the KZNED did not have the authority, or any authorization, to upgrade the posts.	Account not yet received from State Attorney	The Minister is opposing the matter.	Ongoing.

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
18	FRANCA LINGUA VS. THE MINISTER OF BASIC EDUCATION		The plaintiff alleges that the Department owes it an amount of R13 430 361 for the printing of textbooks.	R11 286	The Department is defending the matter and Counsel has been appointed.	Ongoing.
19	PROCON FISCHER VS. MINISTER OF EDUCATION		The plaintiff is claiming an amount of R7 million from the Department for non-payment.	Amount paid:R95 061,00  <b>Cost to be recovered by the State Attorney</b>	This matter was withdrawn by Plaintiff. Plaintiff tender cost	Finalized
<b>CASES REGISTERED IN 2012</b>						
20	SECTION 27 VS. ADMINISTRATOR OF THE LIMPOPO EDUCATION DEPARTMENT AND MINISTER OF BASIC EDUCATION		The applicants applied for various orders – amongst others, that the failure to supply textbooks to public schools constitutes a breach of learners' right to basic education.	Account not yet received from State Attorney	The matter was heard in court, and it was ruled that textbooks must be delivered in Limpopo by 15 June 2012 and that a catch-up plan for Grade 10 must be implemented.	Finalized
21	NEW GENERATION PUBLISHERS VS. MINISTER OF BASIC EDUCATION		The applicant, a publishing company, brought an application to court in two parts. In Part A, an order was sought for an interim interdict to stop the Department from releasing reports to publishers regarding Grade 11 Accounting (English) and that the books for Grade 11 Accounting (English) not be included in the National Catalogue, pending the finalisation of the case. In Part B, the applicant sought an order that the decision of the LTSM screening committee to disqualify their book be reviewed and set aside.	R793 895  <b>Cost in this matter awarded in favour of the Department. State Attorney to recover cost.</b>	The Application was dismissed with cost.	Finalized
22	EQUAL EDUCATION VS. MINISTER OF BASIC EDUCATION		The applicant brought an application in two parts. In Part A, an order was requested that emergency relief be provided to two rural storm-damaged public schools situated in the Eastern Cape. These schools had been considerably damaged by a storm in and during 2011. The Eastern Cape Education	R214 662	A settlement agreement was entered into in respect of Part A on the basis that the ECED will provide emergency relief to the two	Finalized

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			<p>Department (ECED) had failed to provide the necessary relief – hence the application. This part of the case will be settled out of court, as the ECED has indicated that the necessary measures and steps will be taken to provide relief to these two schools. A settlement agreement on Part A has been drafted and was circulated to the applicants' attorneys.</p> <p>In Part B of the application, the Applicants requested an order that the Minister be directed to promulgate regulations on norms and standards for school infrastructure in terms of section 5A of the South African Schools Act. This part of the application is being defended.</p>		<p>schools</p> <p>Part B of the application is defended. The advocates representing the Department are busy drafting the Opposing Affidavit.</p> <p>This matter was settled out of court. The Department agreed to promulgate Regulations in terms of Section 5A of SASA.</p>	
23	PTYTRADE T/A EDOSOLUTIONS VS. MINISTER OF BASIC EDUCATION		The applicant brought an urgent application to court for an order that the service level agreement that was concluded with the Limpopo Education Department (LED) on 18 October 2010 be implemented with immediate effect and that the LED be interdicted from procuring learning and teaching support material from any other party than the applicant.	R284 800.05  <b>Cost to be recovered by the State Attorney</b>	The matter was heard at court on the 22 June 2012 and the court ruled in favour of the Department.	Finalized.
24	CENTRE FOR CHILD LAW AND 5 OTHERS VS. THE MINISTER OF BASIC EDUCATION AND 3 OTHERS		The applicants seek, inter alia, the following relief: Implementation of 2012 educator establishment of the Eastern Cape Education Department (ECED) declared by the MEC in that province, in terms of section 5(1)(b) of the Employment of Educators Act 76 of 1998 (EEA); directing the respondents to implement 2012 provincial post establishment, by appointing educators to all vacant substantive posts within three (3) months of the date of the	R100 071.48	Counsel has been appointed to draft papers on behalf of the respondents .Most of the issues were settled out of court. The only issue that was heard was pertaining to the declaring post establishment of non educators. This matter	Finalized

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			order; directing Minister and/or HoD to appoint educators on a temporary basis pending the permanent appointment within one (1) month of the date of the order.		was argued in court on the 26 July 2012 and judgment was delivered on the 3 August in favour of the Applicants. The ECED was ordered to declare post establishment for non educators at public schools.	
25	SAVE OUR SCHOOLS AND COMMUNITY VS. PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND 4 OTHERS	.	The applicant applied to court for a declaration that the conduct of the National Executive constitutes a breach of its obligations, and that it has not given effect to the decision to assume responsibility for the obligations of the Eastern Cape Education Department. Also for a declaration that it has not given effect to the MoU between the national and the provincial government and has not put into operation the implementation framework as set out in the MoU.	Account not yet received from State Attorney	Settlement agreement was made an order of court	Finalized
26	AFRICAN PUBLISHERS ASSOCIATION VS. MINISTER OF BASIC EDUCATION AND OTHERS		The applicants applied for an order interdicting the respondents from selecting on behalf of the SA public school LTSM as contained in the National catalogue and that the respondents were bound by the aforesaid catalogue.	R87 679	The matter is being opposed. Counsel has been appointed to draft opposing affidavit.	Ongoing.
27	NEW GENERATION PUBLISHERS V MINISTER OF BASIC EDUCATION		The Applicants a publishing company brought an application that the decision of the Department of Basic Education to disqualify its History text book, on the basis that it was submitted after the cut of date for re-	R161 150	This matter is being defended. The Department filed opposing papers. The Applicant has not filed	Ongoing

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			submission of conditionally qualified textbooks, is set aside.		any reply to opposing papers. The state attorney was instructed to set this matter down for hearing.	
28	FEDSAS V MINISTER OF BASIC EDUCATION		The Applicants brought an application requesting the court to set aside the Regulations in terms of section 38A of the SASA.	Account not yet received from State Attorney	This matter was settled out of court .The Regulations was withdrawn on the basis that further consultation will be sought and that the Act be strengthened to include some of the issues contained in the Regulations.	Finalized
29	SECTION 27 V MINISTER OF BASIC EDUCATION		The Applicants in this matter brought a fresh application requesting amongst others the court to declare that there was non-compliance with the first court order; that the court direct the Department to deliver books for 2012 to all, public schools; that the court direct the department to conduct an independent verification of the delivery of textbooks to schools in Limpopo; that the court order the Department to compile a catch up plan for foundation phase learners in Limpopo; that the catch up plan for learners in grade 10 be extended to 2013;that the department be directed to deliver textbooks for 2013 to public	R350 741.08	The parties agreed on the following: That delivery of all outstanding textbooks for 2112 be completed by the 12 October 2012, the Department will file an affidavit at court by the 17 October confirming this; The Department will file an affidavit by the 31 October to court as to the outcome of	Finalized

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			schools in Limpopo by the 9 January 2013;that the Department pay the cost of the application		the spring catch up classes; that textbooks for 2013 be delivered by the 15 December 2012, a progress report will be filed at court on the 31 October and again on the 15 December. The parties could not reached agreement on the issue of non – compliance ;Independent verification of delivery of textbooks and cost; The case was argued on the 2 October2012 and judgment is expected on the 5 October 2012.	
30	PALESA FAITH MANYOKOLA&EQUAL EDUCATIONV MEC EDUCATION EC AND OTHERS		This Application was brought to repair poor infrastructure at the school. The Minister was cited as an interested party	No legal Cost	The Department is not defending the matter. The Eastern Cape Education Department agreed to repair the damage at the school	Ongoing

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
31	MP SANGA V MINISTER OF BASIC EDUCATION		The Applicant applied for an order that the Department provide him with his Matric Certificate	No Legal Cost	The Department provided the certificate	Finalized
32	MAGNA FS V MINISTER OF BASIC EDUCATION		The plaintiff in this matter issued summons against the minister for payment of R 6 567 010.55	No Legal cost to date	The Department is defending this matter as the plaintiff provided a defective service	Ongoing

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
33	SADTU AND OTHERS V MINISTER OF BASIC EDUCATION AND OTHERS		The Applicants in this matter applied for an order setting aside the 2013 post establishment of the Eastern Cape education Department	R131 232.05  <b>State Attorney to recover the Department's Cost</b>	This matter was heard on the 7 December 2012  The application was dismissed with cost, including cost of two counsel.	Finalized
34	MARTHINUS BEKKER V MINISTER OF BASIC EDUCATION		This is an application for information to compel the Respondents to provide documentation showing the payments made in favour of the liquated estate. Minister was wrongly cited in the case.	No Legal Cost	An amended notice of motion was filed removing the Minister as Respondent. No cost order was sought against the Department	Finalized

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
35	BEAVILLION SECONDARY AND OTHERS V MEC EDUCATION AND OTHERS		This is an application to set aside the decision of the MEC to close nineteen schools in the Western Cape-The minister was cited as an interested party	No Legal Cost	The Department is not defending the case	Ongoing
<b>CASES REGISTERED IN 2013</b>						
36	GOVERNING BODY OF HOERSKOOL FOCHVILLE AND ANOTHER MEC FOR EDUCATION GAUTENG		This is an application to set aside the decision of the MEC to admit English learners to an Afrikaans school. The Minister was joined as a Respondent	No cost to date	The Department did not oppose the application.	Ongoing

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
37	MAKOPANE V MINISTER OF BASIC EDUCATION		The plaintiff in this matter claim payment of the amount of R 145 641 for arrear salary for three months	No legal Cost to date	The Department is defending this case as the Plaintiff was on dismissal provided with all arrear salary payments	Ongoing
38	EDWARD JAMES PETERSON V DEPARTMENT OF BASIC EDUCATION		The Plaintiff in this matter claim payment of the amount of R20 000 for arrear payments	No legal cost to date	This amount is disputed as the Department only owe him R2300.The claim could also have prescribed.	Ongoing

NO.	MATTER	CASE NO.	CAUSE OF ACTION	LEGAL COSTS	COMMENTS	STATUS
39.	BULAMBO BIAKOMBOKA V MINISTER OF HOME AFFAIRS		This an application to set aside the decision of Home Affairs not to issue dependents of a foreigner with a temporary asylum seekers permit. The child could as a result not be admitted to school. The Minister is the fifth Respondent in this matter	No legal Cost	The Department is not opposing this application	Ongoing

#### LEGAL COST

2009- R 933745.17- (OF THIS AMOUNT R 503200 TO BE RECOVERED BY STATE ATTORNEY)

2010 - R 285567.15

2011 – R 125 727

2012- R 2 124 230.61- (R 1 209 927 OF THIS AMOUNT TO BE RECOVERED BY THE STATE ATTORNEY)

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