

NATIONAL NATIONAL COUNCIL OF PROVINCES

WRITTEN REPLY

QUESTION 178.

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**178. . Ms M Dlamini (Mpumalanga: EFF) to ask the Minister of Basic Education:
to ask the Minister of Basic Education:**

Oversight role of department

What oversight role is played by her department as whenever critical questions are addressed to her, they are referred back to the Member of the Executive Councils?

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Response

According to the Constitution of the Republic of South Africa, 1996 the national government and provincial government share legislative competence in respect of the functional areas listed in Schedule 4. The functional areas listed in Schedule 4 cover fields of concurrent legislative competence. Both the national and the provincial legislatures may pass legislation that regulates matters covered by these functional areas. For example, both the national government and a provincial government may pass valid legislation with regard to 'education'.

The mandate of the Department of Basic Education (DBE) is to monitor the standards of the provision, delivery and performance of education throughout South Africa. The DBE must assess compliance with the provisions of the Constitution and with National Education Policy Act (NEPA), 1996 (Act No.27 of 1996). The Minister of Basic Education has overall political and legislative responsibility for education. Whereas, the executive responsibility for school education rests with provincial government. Therefore, any question that is about the schools, should be responded to by the Provincial Education Departments (PEDs)

Section 8 of the NEPA, provides for the monitoring and evaluation responsibilities of the Minister. The NEPA provides the Minister with the power to establish national education policy, and to monitor its implementation. In essence, Provinces are responsible for implementation, while national government is largely responsible for providing leadership, formulating policy, determining the regulatory framework and monitoring overall implementation by the provincial government.

Moreover, Section 9 and 10 of the NEPA make provision for the establishment of two bodies (Council of Education Ministers (CEM) and the Heads of Education Departments Committee (HEDCOM) to enable the National Department of Basic Education and Provincial Departments to share information and advice, and to collaborate on plans for the betterment of the basic education system. These structures are important vehicles of cooperation between the national and provincial levels of government on all basic education matters.

The Constitution enables Parliament to hold the Cabinet accountable. Section 92(3)(b) of the Constitution mandates Ministers to directly account to Parliament by way of providing full and regular reports on matters under their control. The use of the word "must" or "shall" in a legislative sentence imposes a duty or an obligation. Therefore, the Minister of Basic Education has an obligation to provide full and regular reports on matters under her control. Ministers are clearly not expected to report or account on matters under the control of MECs.

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The Constitution in terms of section 40, allocates powers to three areas of government - national, provincial and local spheres of government. Generally, one area may not usurp the powers of another. In the case of *Doctors for Life International v Speaker of the National Assembly & Others*, [\[1\]](#) Ngcobo J held that the basic structure of our government consists of a partnership between the three spheres of government, oiled by the principles of co-operative governance. These principles require, *inter alia*, that the various spheres of government “exercise their powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere”. The court emphasised that the allocation and distribution of powers in some instances, led to the reservation of powers to a specific sphere of government as stated that “A necessary corollary of this, is that one sphere may not usurp the functions of another, although intervention by one sphere in the affairs of another, is permitted in limited circumstances”.[\[2\]](#)

Thus, in exceptional circumstances, where a provincial government fails to discharge a constitutional obligation, section 100 of the Constitution empowers the national executive to intervene in order to remedy the problem. The intervention and suspension of provincial independence is intended only to be temporary. It should include building the provincial department’s ability to successfully carry out the obligation itself.

Rule 134(5)(b), in the Rules of the National Assembly (NA) of Parliament, also guide that “questions must relate to matters for which Cabinet members are officially responsible”.

Footnote:

[\[1\]](#) *Doctors for Life International v Speaker of the National Assembly* 2006 6 SA 416 (CC) 82.

[\[2\]](#) *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 6 SA 182 (CC)