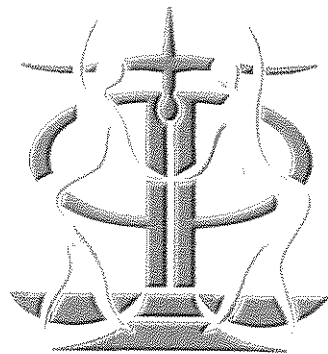


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR
ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 25 OF 2010/2011

**REPORT ON AN INVESTIGATION INTO THE ALLEGED IMPROPER REFUSAL
TO ADMIT A LEARNER TO MILNERTON HIGH SCHOOL**

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Executive Summary

- (i) The Public Protector conducted an investigation regarding the alleged improper refusal by the Milnerton High School in Cape Town to admit a learner to Grade 8 in 2010. The complaint can be summarised as follows:
- (a) Mr M W Nel (the Complainant) approached the Public Protector with a complaint pertaining to the non-admission of his daughter to the Milnerton High School. He resides at Summer Greens, Cape Town. He mentioned that his 13 year old daughter applied for admission at Milnerton High School in June 2009 for the 2010 intake of Grade 8 and was invited for an interview on 13 August 2009.
 - (b) Apparently Mr Oesch of the said School informed the Complainant in November 2009 that the School was full, that he resides outside the feeder area of the School and that the closest school where he must apply for admission is Bosmansdam High School. Mr Rutgers of the Department of Education, Western Cape (the Department) allegedly informed the Complainant that he had measured the respective distances from the Complainant's home and found Edgemead and Bosmansdam High Schools to be closer than Milnerton High School.
 - (c) In this connection the Complainant alleged that he also measured the distances and found Minerton High School to be the nearest to his home.
 - (d) The Complainant's older son is apparently a Grade 10 learner at Milnerton High School. The Complainant averred that it is his information that siblings of learners automatically qualify for admission at the same school. He also mentioned that it would be extremely onerous to transport their two children to different schools.
 - (e) The Complainant further mentioned that there are White learners who had been admitted to Milnerton High School, but who stayed in his suburb. He

provided the names of two other learners from Summer Greens who allegedly applied long after his daughter, but who were admitted to Milnerton High School.

- (ii) The Public Protector's findings are that-
 - (a) The Complainant's allegation that Milnerton High School is the closest High School to his residence was unsubstantiated.
 - (b) The Principal's application of Milnerton High School's Admission Policy was acceptable.
 - (c) However, Milnerton High School's Admission Policy does not conform to the Education Department's Admission Policy For Ordinary Public Schools. This policy provides for the principle of 'first come first served' in the cases of learners whose parents do not live in the feeder zone or whose parent's work address is not in the feeder area. If the Admission Policy were in accordance with the National Policy, the Complainant's daughter would have been eligible for admission because of her early application and the fact that she met all the other criteria under paragraph 2.2 of Milnerton High's Admission Policy. Accordingly, the Complainant's daughter is found to have been improperly prejudiced as a result of this systemic deficiency.
- (iii) The following remedial action should be taken:
 - (a) The Complainant's daughter is to be admitted at Milnerton High School as soon as possible; and
 - (b) The Admission Policy of Milnerton High School is to be reviewed and amended to insert the 'first come first served' principle into paragraph 2.2 of the Admission Policy.

REPORT ON AN INVESTIGATION INTO THE ALLEGED IMPROPER REFUSAL TO ADMIT A LEARNER TO MILNERTON HIGH SCHOOL

1. INTRODUCTION

- 1.1 This report is submitted to the MEC responsible for Education, Western Cape, the Headmaster of Milnerton High School and the Complainant in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994. (Public Protector Act)
- 1.2 The report pertains to an investigation undertaken by the Public Protector following allegations of the improper refusal by the Milnerton High School in Cape Town to admit a learner to Grade 8 in 2010.

2. THE COMPLAINT

- 2.1 Mr M W Nel (the Complainant) approached the Public Protector with a complaint pertaining to the non-admission of his daughter to the Milnerton High School. He resides at Summer Greens, Cape Town. He mentioned that his 13 year old daughter applied for admission at Milnerton High School in June 2009 for the 2010 intake of Grade 8 and was invited for an interview on 13 August 2009.
- 2.2 Apparently Mr Oesch of the said School informed the Complainant in November 2009 that the School was full, that he resides outside the feeder area of the School and that the closest school where he must apply for admission is Bosmansdam High School. Mr Rutgers of the Department of Education, Western Cape (the Department) allegedly informed the Complainant that he had measured the respective distances from the Complainant's home and found Edgemead and Bosmansdam High Schools to be closer than Milnerton High School.

2.3 In this connection the Complainant alleged that he also measured the distances and found the following:

Bosmansdam High School – 5km

Edgemead High School – 5,2km

Milnerton High School– 4.5 km (another route 3.6km)

2.4 The Complainant's older son is apparently a Grade 10 learner at Milnerton High School. The Complainant averred that it is his information that siblings of learners automatically qualify for admission at the same school. He also mentioned that it would be extremely onerous to transport their two children to different schools.

2.5 The Complainant further mentioned that there are White learners who had been admitted to Milnerton High School, but who stayed in his suburb. He provided the names of two other learners from Summer Greens who allegedly applied long after his daughter, but who were admitted to Milnerton High School.

2.6 The Complainant indicated that the Principal of Seamount Primary School (where his daughter attended primary school) wrote to Milnerton High School motivating that his daughter be admitted, but this did not yield any results. He also alleged that he requested to be provided with the criteria for admission, but to no avail.

3. JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution and its additional operational requirements are governed by the Public Protector Act. It was established to strengthen constitutional democracy.

- 3.2 In terms of Section 182(1) of the Constitution the Public Protector has the power 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. Following an investigation, the Public Protector can report on that conduct and take appropriate remedial action.
- 3.3 The complaint accordingly falls within the mandate of the Public Protector.

4. THE INVESTIGATION

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised of the following:

4.1 Key Sources of information

- 4.1.1 Numerous written and telephonic communications were exchanged between the Complainant, the Public Protector and officials of the Department including the Principal of Milnerton High School.
- 4.1.2 The Admission Policy of Milnerton High School was examined.
- 4.1.3 An inspection *in loco* was conducted in order to verify the respective distances of the three relevant schools from the Complainant's home.
- 4.1.4 Three applications of learners for admission to Milnerton High School were examined.

4.2 Summary of the investigation process and evidence

4.2.1 Mr B Volschenk, the Director: Metro North Education District firstly responded that as regards the admission of siblings, the Complainant's older son (in Grade 10) had been accepted at the time as he could be accommodated. However, every year is different in view of the number of applications. In this regard the Admission Policy does not provide for the automatic admission of siblings. The Director further explained that the Admission Policy is the guiding document, irrespective of any motivation from a primary school. The Director asserted that the distances from the Complainant's residence were measured by the Institutional Manager, Mr Rutgers and that the former accepts the latter's integrity. The Admission Policy was obtained from the Director and forthwith made available to the Complainant.

4.2.2 The Admission Policy of the Milnerton High School reflects the signatures of the Headmaster and Chairman of the School Governing Body and the fact that it was ratified in September 2009. The Admission Criteria are stated to be the following:

"2.1 Preference for admission will be given to learners for whom Milnerton High is the closest school to where they actually reside with their **parent/s**.

2.2 If there is available capacity after admissions under 2.1, consideration will be given to applicant learners for whom Milnerton High is not their closest school, subject to an objective evaluation of such applicants according to their proven record under the following headings:

academic prowess

development of particular cultural or intellectual skills

having immediate family at the school (past or present)

representivity

service to the community
sporting prowess...”

4.2.3 The inspection *in loco* and verification of relevant distances were conducted by means of GPS technology and checked by actual measurement per motor vehicle. This exercise was done by the Public Protector together with the Complainant and Mr Rutgers of the Department and revealed the following:

4.2.3.1 The verification of distances from the Complainant's home to the relevant schools showed-

SCHOOL	GPS READING (BY ROAD)	ACTUAL DISTANCE MEASURED
Milnerton High School	4.4 km	4.3 km
Bosmansdam High School	4.2 km	4 km
Edgemead High School	4.5 km	4.3 km

4.2.3.2 Accordingly it was confirmed that Milnerton High School is not the closest school to the Complainant's home, but that Bosmansdam High School is 300 meters nearer.

4.2.3.3 As regards the position of the two other learners who are in the same situation as his daughter, but who were in fact admitted to Milnerton High School, the relevant distances were as follows:

SCHOOL	LEARNER X, GPS READING (BY ROAD) FROM ALLEGED RESIDENTIAL ADDRESS XX TO:	LEARNER Y, GPS READING (BY ROAD) FROM ALLEGED RESIDENTIAL ADDRESS YY:
Milnerton High School	4.8 km	4.4 km
Bosmansdam High School	4.5 km	4.1 km
Edgemead High School	4.8 km	4.4 km

4.2.3.4 In view of the above-mentioned, the Principal of Milnerton High was requested to provide the following:

- (a) Confirmation of the residential addresses of the above-named learners and the fact that they had been admitted to Milnerton High School;
- (b) The respective dates of application of the above-mentioned two learners; and
- (c) Detailed reasons why the said two learners respectively had been preferred for admission to Milnerton High vis-à-vis the Complainant's daughter.

4.2.3.5 The Principal responded that his School could not accommodate more than 120 other learners, not even those from within Milnerton who applied late. He further remarked that all three relevant learners had applied in time, namely by 23 September 2009. Apparently, when additional space is available, decisions are made on the strength of an interview and some educational criteria, such as academics, extra-mural

commitments, suitability, personality, other contributors to the School, etc. As regards the allegation that two White learners in similar circumstances were admitted to Milnerton High School, the Principal remarked that the "white girl" label does not apply to one of them. He mentioned that his School embraces learners representing "34 home languages and dialects and every religion you can think of, and [they] celebrate [their] diversity".

- 4.2.3.6 Information and documents subsequently received from the Principal revealed that the Milnerton High School published a notice in the local newspaper advising of the closing of the application period on 23 September 2009 as applications exceeded positions. He further stated that at the interviews for considering applications for learners from outside the Milnerton area, they placed considerable weight on demonstrated extra-mural commitments once applicants have crossed the academic competence threshold. The Principal confirmed that neither the Complainant's daughter nor learner X or Y were applicants to whom Milnerton High School are the nearest school. He confirmed that all three applicants had satisfactory interviews. Apparently the decisive factor in selecting the two successful applicants for the limited positions available, was the contribution they were expected to make to the school community based on their "contribution contracts" each applicant completed at the interview. In this connection the respective "contribution contracts" completed by the three applicants and application forms revealed the following:

ISSUE	COMPLAINANT'S DAUGHTER	LEARNER X	LEARNER Y
CONTRIBUTION CONTRACT	Tennis Soft ball Netball First Aid Club	Softball Hockey Choirs Drama	Tennis Softball Hockey Netball

		Society Band First Aid Club Interact Club Home Ec.co	Choirs Drama Society Students Christian Ass First Aid Club Pharos (School Magazine) Home Ec.co
INFORMATION RE IMMEDIATE FAMILY AT SCHOOL	Sibling in Grade 10	Sibling in Grade 10	Sibling matriculated in December 2007
RACE	African	White	Coloured
DATE OF APPLICATION	26 June 2009	3 August 2009	17 August 2009

4.2.3.7 It was established that the Complainant's daughter was number 6 on the Grade 8 waiting list.

4.3 Evaluation of evidence

4.3.1 It is common cause that the Complainant's daughter applied well before the closing date for admission to Milnerton High School.

4.3.2 The Complainant was of the view that his daughter qualified to be admitted to Milnerton High School as it was the nearest High School to his home. The inspection *in loco* and verification of distances revealed that Milnerton High School is not the closest to the Complainant's residence, but Bosmansdam High School.

- 4.3.3 The inspection *in loco* further disclosed that the other two learners that the Complainant referred to were indeed in the same position as the Complainant's daughter, in that Milnerton High School was not the nearest school to their respective residences. One of these learners was found to be White and the other Coloured. These learners were however admitted to Milnerton High School. Apparently more than 120 other applicants were in the same situation as the Complainant's daughter and could not be accommodated.
- 4.3.4 Learners X and Y applied much later than the Complainant's daughter. In this respect the Principle advised that all three were received before the closing date, were evaluated and the decisive factor in selecting the two successful applicants for the limited positions available, was the contribution they were expected to make to the school community based on their "contribution contracts" each applicant completed at the interview. The Complainant's daughter indicated four such contributions, whilst the other two learners indicated eight and ten such contributions respectively.
- 4.3.5 As far as the issue of immediate family at the school (past or present) is concerned, the Complainant's daughter and the one learner had an older sibling in the School, whilst the other learner had a sibling who matriculated from the School in 2007. The Department contended that the Admission Policy in this case does not provide for automatic admission of siblings though.
- 4.3.6 The Public Protector obtained the Admission Policy of Milnerton High School soon after having received the complaint and furnished the Complainant with same.
- 4.3.7 The Department affirmed that the Admission Policy is the guiding document in considering applications, irrespective of any motivation from a primary school.

5. REGULATORY FRAMEWORK

5.1 The regulatory framework within which this matter is to be assessed is as follows:

5.1.1 Law

5.1.1.1 The Constitution and prescripts

- (i) Section 29(1) and (2) of the Constitution provides *inter alia* that everyone has the right to basic education and to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.
- (ii) The Admission Policy For Ordinary Public Schools was published by the Minister of Education in terms of section 3(4)(i) of the National Education Policy Act, 1996 (Notice No. 2432 of 19 October 1998). Paragraph 7 of this document provides that the admission policy of a public school is determined by the governing body of the school in terms of section 5(5) of the South African Schools Act, 1996. It is however important to note paragraph 34 of this policy, which stipulates as follows:

“34. If a feeder zone is created-

- (a) *preference must be given to a learner who lives in the feeder zone of a school or who resides with his or her parents at an employer’s home in the feeder zone;*
- (b) *a learner who lives outside the feeder zone is not precluded from seeking admission at whichever school he or she chooses. However, access to a chosen school cannot be guaranteed;*
- (c) *a learner who lives within the feeder zone of a school A must be referred to the neighbouring school B, if school A is oversubscribed. If*

school B is oversubscribed, an alternative school within a reasonable distance must be found by the Head of Department. If that is not possible, school A must admit the learner;

- (d) the preference order of admission is:-
- (i) learners whose parents live in the feeder zone, in their own domicile or their employer's domicile;
 - (ii) learners whose parent's work address is in the feeder area; or
 - (iii) other learners: first come first served. (emphasis provided)"

6. CONCLUSION

- 6.1 The inspection *in loco* and verification of distances revealed that Milnerton High School is not the closest to the Complainant's residence, but Bosmansdam High School. Accordingly, the Complainant's daughter was not automatically eligible to be admitted to Milnerton High School because she did not reside within the feeder area of the School. She was entitled to be considered in terms of the Admission Policy though.
- 6.2 One of the other two learners with whom the Complainant compared his daughter's situation, was found to be White – the other learner is a Coloured person.
- 6.3 The Principal's reasons why the other two learners were selected vis-à-vis the Complainant's daughter seems to be in accordance with Milnerton High School's Admission Policy.
- 6.4 All three learners were in the same position as regards the criterion of having immediate family at the school (past or present). However, the Complainant's daughter applied for admission well before the other two learners. In this connection the Admission Policy does not provide for the placing of applicants with regard to the date of application. The Education Department's Admission Policy For Ordinary Public Schools however does provide for the principle of "first come first served" in the cases of learners

whose parents do not live in the feeder zone or whose parents' work address is not in the feeder area.

7. FINDINGS

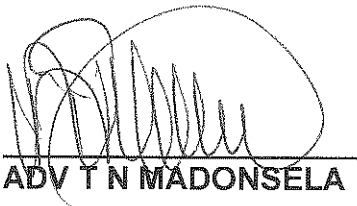
- 7.1 The Complainant's allegation that Milnerton High School is the closest High School to his residence was found to be unsubstantiated.
- 7.2 The Principal's application of Milnerton High School's Admission Policy was found to be acceptable.
- 7.3 However, Milnerton High School's Admission Policy does not conform to the Education Department's Admission Policy For Ordinary Public Schools. This Policy provides for the principle of "first come first served" in the cases of learners whose parents do not live in the feeder zone or whose parents' work address is not in the feeder area. If the Admission Policy were in accordance with the National Policy, the Complainant's daughter would have been eligible for admission because of her early application and the fact that she met all the other criteria under paragraph 2.2 of Milnerton High's Admission Policy. Accordingly, the Complainant's daughter is found to have been improperly prejudiced as a result of this systemic deficiency.

8. REMEDIAL ACTION

- 8.1 The following remedial action in terms of section 182(1)(c) of the Constitution is to be taken:
- 8.1.1 The Complainant's daughter is to be admitted at Milnerton High School as soon as possible; and
- 8.1.2 The Admission Policy of Milnerton High School is to be reviewed and amended to insert the "first come first served" principle into paragraph 2.2 of the Admission Policy.

9. MONITORING

- 9.1 The Head of the Department of Education: Western Cape is required to submit a report indicating the action taken with regard to the implementation of this report within two months of the date of this report.



ADV T N MADONSELA

PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 08/09/2010

Assisted by: Adv W R J van Rensburg, Provincial Representative: Western Cape

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