

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

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04 October 2013

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Our Ref: MP/1213/0086 (Kindly quote our reference number in your correspondence with the SAHRC)

Dear Mrs Mhlabane,

**RE: COMPLAINT RELATING TO ALLEGATIONS OF THE USE OF EPITHET "KAFFIR" AT LAERSKOOL BERGLAND**

The above matter has reference.

Please find attached copy of a report with findings and recommendations by the South African Human Commission ("the Commission").

In the light of the attached report, the Commission considers the matter finalised and has closed the file.

Yours faithfully,

**Mr Eric Mokonyama**  
Provincial Manager  
Mpumalanga Provincial Office

Transforming society. Securing rights. Restoring dignity.

**Chairperson:** M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate;  
**Commissioners (Part-Time):** J Love, D Titus;  
**Chief Executive Officer:** A K Ahmed



# **SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT**

**File Ref No: MP/1213/0086**

In the matter between:

**Mr BM obo Minor Child X**

**Complainant**

**And**

**Mr B obo Minor Child Y**

**First Respondent**

**Laerskool Bergland**

**Second Respondent**

**Mpumalanga Department of Education**

**Third Respondent**

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## **REPORT**

*(In terms of Procedure 21 of the Complaints Handling Procedures of the South African Human Rights Commission - promulgated in terms of the Human Rights Commission Act, 1994)*

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## **1. Introduction**

1.1. The South African Human Rights Commission (hereinafter referred to as the "Commission") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as the "Constitution").

1.2. The Commission and the other institutions created under Chapter 9 of the Constitution are described as "state institutions supporting constitutional democracy".

1.3. The Commission is specifically required to:

1.3.1. Promote respect for human rights;

1.3.2. Promote the protection, development and attainment of human rights;

1.3.3. Monitor and assess the observance of human rights in the Republic.

1.4. Section 184(2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.

1.5. Further, section 184(2)(c) and (d) affords the Commission authority to carry out research and to educate on human rights related matters.

1.6. The Human Rights Commission Act, 54 of 1994 (hereinafter referred to as the "Human Rights Commission Act"), further supplements the powers of the Commission.

## 2. The Parties

2.1. The Complainant is Mr B, a South African male adult, in his capacity as natural guardian of 13 year-old female grade black seven learner of Laerskool Bergland School in Mpumalanga Province.

2.2. The 1<sup>st</sup> Respondent is Mr BM, a South African male, in his capacity as natural guardian of minor child Y, a Grade 5 male white learner, at Laerskool Bergland School in the Mpumalanga Province.

2.3. The 2<sup>nd</sup> Respondent is Laerskool Bergland School a public school in the Mpumalanga Province.

2.4. The 3<sup>rd</sup> Respondent is the Department of Education in the Mpumalanga Province.

2.5. For purposes of this report, and in line with the approach adopted by courts, the identity of parents and learners is not disclosed. In ***Governing body of the Rivonia Primary School and another v MEC for Education Gauteng Province and another [2012] 1 All SA (GSJ) at paragraph [96-98] and Johncom Media Inv LTD v M and others 2009 (4) SA 7 (CC) at paragraph [42]***, the court held that "disclosing identities of children or their parents could be prejudicial to [the learner] and has the potential to isolate the child involved".

2.6. The School and Department of Education (hereinafter referred to as the "Department") have been joined as the Second and Third Respondents because of the interest they have in this matter.

### **3. The Complaint**

3.1. On 29 February 2012, a complaint was lodged by the Complainant with the Commission.

3.2. The complaint related to the utterance of the word "Kaffir" (hereinafter referred to as the "K-word").

3.3. The Complainant alleged that on 08 February 2012, he fetched his daughter, Minor Child X, from the school.

3.4. Minor child X reported to the Complainant that Minor child Y and a group of friends had called her a "Kaffir" at school.

3.5. Minor child X further reported to the Complainant that Minor Child Y had further attacked her with a cricket bat.

3.6. Upon hearing that, the Complainant immediately returned to the school and reported the allegations to Minor Child X's class teacher.

3.7. Subsequent to this incident, Minor Child X reported a number of further incidents where Minor Child Y had again uttered the K-word with reference to her, and had uttered the same K-word in reference to Minor Child X's mother.

3.8. On 09 February 2012, after his daughter told him that Minor Child Y had also referred to Minor Child X's mother as the K-word, the Complainant wrote a letter to the Principal of the 2<sup>nd</sup> Respondent School making him aware of these allegations of continuous use of the K-word by Minor Child Y.

3.9. According to the Complainant, the Principal reportedly indicated that a disciplinary hearing would be instituted against Minor Child Y, that the Complainant would be called as a witness but would not otherwise be present during the disciplinary hearing.

3.10. As a result of Minor X's allegations as well as the Complainant's dissatisfaction with the outlined disciplinary process, the Complainant lodged the present complaint with the Commission.

#### **4. Preliminary Assessment**

4.1. In its preliminary assessment of this complaint, the Commission's Mpumalanga Provincial Office found the Minor Y's utterances to be unconstitutional and *prima facie* violations of:

**5.1.1 Section 9** of the Constitution of the Republic of South Africa, 1996 ("the Constitution") - Equality;

**5.1.2 Section 10** of the Constitution - Human dignity;

**5.1.3 Section 12** of the Promotion of the Equality and Prevention of Unfair Discrimination Act 4 of 2000;

4.2. The Commission also made preliminary assessment that:

5.2.1 The investigation of the alleged violations fell within the mandate and jurisdiction of the Commission;

5.2.3 That the Commission is the organization best placed to effectively and expeditiously deal with the complaint.

## **5. Steps taken by the Commission**

5.1. The Provincial Office of the Commission in the Mpumalanga Province set about investigation of this complaint.

5.2. Upon receipt of the complaint, the Commission established that there was a pending disciplinary hearing by the school against Minor Y relating to the Complainant's complaint.

5.3. The Commission established that the Department was aware of this disciplinary matter and had requested a copy of the Report of the outcome of the disciplinary hearing from the 2<sup>nd</sup> Respondent School.

5.4. On 19 April 2012 the Commission contacted the school telephonically and requested a copy of the Report of the disciplinary hearing.

5.5. The 2<sup>nd</sup> Respondent School confirmed that the hearing was completed and provided the Commission with a report on 23 April 2012.

## **6. The Disciplinary Hearing Report and Analysis**

6.1. The Disciplinary Hearing Report reflected that the hearing had commenced its proceedings on the 20 February 2012 and continued its proceedings on a subsequent number of dates in February and March 2012.

6.2. Minor Child Y had been charged with "Racism, Fighting, Bad swearing, and Bullying" in terms of the 2<sup>nd</sup> Respondent's Code of Conduct.

6.3. The report indicated that Minor Child Y had initially pleaded guilty to bullying and not guilty to the remaining three charges.

6.4. During the hearing, the school presented evidence through eight witnesses. After hearing the evidence, Minor Child Y pleaded guilty to all 3 (three) charges.

6.5. The record reflected that in mitigation of sanction, Minor Y's mother had stated that NB "Is a boy with a bad temper and must still be taught to be patient and tolerant to other people; He finds it difficult to socialise".

6.6. The record further reflected that Minor Y had previously been a learner at Laerskool Laeveld in Mpumalanga Province. At this school also, Minor Child Y was recorded as having been involved in various incidents relating to fighting and disruptive behaviour, and had been referred to a Child Psychologist for therapy.

6.7. Based on Minor Child Y's plea of guilty, he was found guilty of all three charges.



6.8. As a consequence of the mitigating factors, Minor Child Y was sanctioned to 7 (seven) days suspension from the school. The suspension was with effect from 08 to 16 March 2012. With regard to bad swearing and bullying, Minor Child Y was sanctioned sentenced to 20 (twenty) weeks of work squad detention of which 10 (ten) weeks were suspended on condition that he should not commit any serious misconduct. In the event he committed any serious misconduct, the other 10 (ten) hours of detention would be enforced.

6.9. Both Minors Children X and Y were referred to Ms N Mengel, a Social Worker at the school and Ms S. Siziba, a Social Worker for Child-line. Two therapy reports were produced at the conclusion of the therapy sessions.

6.10. The Social Workers Report in respect of Minor Child Y revealed that: "He does not have impulse control over his emotions and reacts violently when he gets upset. At one stage, he swore at a learner who kept asking for ice-lollies. It was recommended that he must undergo a full psychological assessment and receive therapy from a clinical Psychologist".

6.11. The report indicated that Minor X responded very well to therapy and showed improvement in respect of emotional wellness.

6.12. The report further indicated that Minor Y's parents were in conflict, and that this state of affairs had adversely impacted the psychological state of Y. The Report recommended that both parents of Y should consult with a Psychologist to assist them with anger management and deal with the unresolved issues.

6.13. Subsequent to the Disciplinary Hearing held against Y, Minor Child Y was expelled from the school for an accumulated number of other misdemeanours.

## 7. Actions taken by the 3<sup>rd</sup> Respondent School

7.1. The school developed a plan to deal with this matter. The purpose of the plan was to redress the situation and also restore the culture of respect and social and cultural tolerance.

7.2. The Plan contained two components: (i) Social and Cultural integration Programme and (ii) Anti-Bullying Campaign.

7.2.1. In a nutshell the Social and Cultural Integration Programme sets out the results of a **baseline study** into levels of cultural and social sensitivity amongst learners at the school.

7.2.2. The Programme goes on to outline an **implementation programme**. This segment includes issues such as: creating sensitivity towards different cultural and socio-economic groups; re-evaluating values and morals; conflict management and communication; and developing empathy, respect, tolerance and responsibility for one's own behaviour.

7.2.3. Finally the Programme focuses on the evaluation framework for the programme. The purpose of this phase is to evaluate and monitor learners on a continuous basis throughout the year. It was also aimed at evaluating the effect of the entire programme.

### 7.3. Anti-bullying campaign

7.3.1. The elements of the campaign comprised two key programmes: The first one was called the Psychomotor Programme. This programme prepared learners to understand and control their emotions. The second programme was called the mediator programme. The mediator

programme was aimed at assisting learners to discover more about themselves and helping them to deal with conflict situations using a “no blame approach”.

## **8. Legal and Policy Framework for Analysis**

### **(a) The South African Schools Act**

8.1. Section 8 of the South African Schools Act, 84 of 1996 (hereinafter referred to as the “Act”) is important and its relevant provisions are stated immediately below.

8.2. Subsection (1) provides that *“Subject to any provincial law, a governing body of a public school must adopt a code of conduct for learners after consultation with the learners, parents and educators of the school”*.

8.3. Subsection (2): *“A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to improvement and maintenance of the quality of learning process”*.

8.4. Subsection (4): *“Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner”*.

8.5. Subsection (5): *“A code of conduct must contain provisions of due process safeguarding the interests of the learner and any party involved in disciplinary proceedings”*.

## **(b) School Code**

8.6. As a result of the above provisions of the Act, the school developed and adopted a code of conduct (hereinafter referred to as the "Code") for its learners. The main purpose of the Code is to create a conducive and safe environment for the promotion of access to quality education by all learners of the school.

8.7. The Code requires learners, *inter alia*, to honour others and respect their dignity, culture and race; not infringe the rights of other learners to learn; to behave in an acceptable manner inside and outside the school premises; and to refrain from assaulting or threatening anyone at school.

## **(c) School Disciplinary Code and Procedure**

8.8. This document sets out the procedure that must be followed by the school in the event learners violate the rules of the school. It serves as a guideline for educators of the school.

8.9. The procedures require the Principal to refer matters to the disciplinary committee (DC). The Principal is further required to fill in a DC notice form and, inform parents of a child who must appear before the DC. Parents must also be informed of the offence, in writing, committed by the child.

8.10. Sanctions in respect of offences committed are also outlined in the procedures and include, *inter alia*, detention (examples: picking up of papers, washing windows), written apology, and replacement of damaged property,.

## **9. Analysis of Complaint**

9.1. At the centre of this matter, is the use of the k-word by a learner of a white-race to a learner of a black-race.