

SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

WC/2021/0124

In the own accord investigation of:

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Complainant

and

THE WESTERN CAPE EDUCATION DEPARTMENT

First Respondent

BRACKENFELL HIGH SCHOOL

Second Respondent

**THE SCHOOL GOVERNING BODY OF BRACKENFELL
HIGH SCHOOL**

Third Respondent

FINAL INVESTIGATIVE REPORT

1.INTRODUCTION

1. In early November 2020, the Western Cape Provincial Office of the South African Human Rights Commission (**‘the Commission’**), became aware, through media reports, that a “whites-only” matric ball (**‘the Ball’/‘the Event’**) was alleged to have been hosted at or by Brackenfell High School in the Western Cape (**‘the School’**).

2. The Commission, in accordance with its mandate and powers investigated the matter, of its own accord, to determine the veracity of the allegations of unfair discrimination on the ground of race, levelled at the School.
3. While the media also reported on broader allegations of racism experienced by black learners attending, or who had attended, the School, as well as on the protests that ensued between political party members and residents of Brackenfell following the media reports of the Ball, this report focuses on the Ball and the allegations that it was a “whites-only” matric ball hosted by the School.
4. This report records the processes, assessments, findings and recommendations arising from the investigation by the Commission.

2. THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION’S MANDATE

The Constitution

1. The Commission is an independent institution established in terms of section 181 of the Constitution, Act 108 of 1996 (**‘the Constitution’**) to strengthen constitutional democracy. Section 184(1) provides that the Commission must-
 - “(a) promote respect for human rights and a culture of human rights;*
 - (b) promote the protection, development and attainment of human rights; and*
 - (c) monitor and assess the observance of human rights in the Republic.”*
2. Section 184(2) of the Constitution empowers the Commission to monitor, investigate, research, educate, lobby, advise and report on matters where human rights may have been violated. More specifically, section 184(2) empowers the Commission

- “(a) to investigate and to report on the observance of human rights;*
- (b) to take steps to secure appropriate redress where human rights have been violated”.*

The South African Human Rights Commission Act

3. In addition to the broad powers and functions conferred on the Commission by the Constitution, the Commission’s powers and obligations are fleshed out, more specifically, in the South African Human Rights Commission Act 40 of 2013 (**‘SAHRC Act’**) which permits an investigation by the Commission of its own accord.

4. In terms of section 13 of the SAHRC Act, the Commission is competent

- “(a) to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it must, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum”.¹*

5. In order to give effect to the powers and obligations set out in section 13, in terms of section 15(1) of the SAHRC Act, the Commission may

- “(a) conduct or cause to be conducted any investigation that is necessary for that purpose;*

¹ Section 13(3).

- (b) *through a commissioner, or any member of staff duly authorised by a commissioner, require from any person such particulars and information as may be reasonably necessary in connection with any investigation;*
- (c) *require any person by notice in writing under the hand of a commissioner ... in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such notice must contain the reasons why such person's presence is needed and why any such article or document should be produced".²*

6. As regards investigative reports by the Commission and any findings herein, section 18 of the SAHRC Act provides that

- "(3) The Commission may, subject to the provisions of subsection (5), in the manner it deems fit, in writing, make known to any person, the head of the organisation or institution, or the executive authority of any national or provincial department, any finding, point of view or recommendation in respect of a matter investigated by it.*
- (4) If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the head of the organisation or institution or the executive authority of any national or provincial department concerned, the head of the organisation or institution or the executive authority of any national or provincial department concerned must within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking any*

² Section 15(1) (a)-(c).

steps to give effect to such finding or recommendation, if any such steps are required.

- (5) *The findings of an investigation by the Commission must, when it deems it fit but as soon as possible, be made available to the complainant and any person implicated thereby.*³

7. Lastly, giving effect to its mandate, and in finding solutions and making recommendations, the Commission is also empowered to

“(i) make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights;

...

- (iii) request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights”.*⁴

8. In this regard the SAHRC Act also requires that *“[a]ll organs of state [such as the WCED] must afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its functions.”*⁵

The South African Human Rights Commission Complaints Handling Procedures

³ Section 18(3)-(5).

⁴ Section 13(1)(a).

⁵ Section 13(4).

9. The Commission's Complaints Handling Procedures (**CHP**), published in January 2018⁶ further elaborates on the steps the Commission may take to address an alleged human rights violation (of the rights set out in the Bill of Rights).⁷
10. In terms of the CHP, the "*Commission is competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights*".⁸ An investigation of the Commission's own initiative is labelled, in the CHP, as an "*own accord investigation*" and is defined as "*an investigation of an alleged human rights' violation initiated by the Commission, with or without a complaint having been lodged by a party*".⁹

3. THE PARTIES TO THE OWN INITIATIVE INVESTIGATION

1. As indicated above, the South African Human Rights Commission, through its Western Cape Provincial Office,¹⁰ instituted an own accord investigation in this matter.
2. The First Respondent is the Western Cape Education Department.¹¹ Education being a concurrent national and provincial legislative competence, in terms of Schedule 4 of the Constitution, the WCED is the provincial government department responsible for, in accordance with the Western Cape Provincial School Education Act 12 of 1997 (**'the WC Schools Act'**), overseeing the "*organisation, governance and funding of ... schools*"¹² in the Western Cape. The WCED as the party responsible for implementing the WC Schools Act is obligated to ensure that access to a basic education is undertaken in a manner

⁶ Complaints Handling Procedures of the South African Human Rights Commission of 2018.

⁷ Chapter 2 of the Constitution.

⁸ Section 3(1) of the CHP.

⁹ Section 1.1 of the CHP.

¹⁰ Defined as 'the Commission/SAHRC' above.

¹¹ Defined as the 'WCED'.

¹² See the preamble to the WC Schools Act.

which upholds “*the principles and values of the Constitution ... while requiring the highest standards of accountability from ... learners, their parents, school governing bodies, educators and officials*”.¹³

3. The Second Respondent is Brackenfell High School,¹⁴ a public, coeducational¹⁵ secondary school¹⁶ located in Brackenfell in the Western Cape.
4. The Third Respondent is the School Governing Body of Brackenfell High School (**SGB**). The National Schools Act 84 of 1996 and the WC Schools Act sets out the functions that an SGB may take on, which include, “*promot[ing] the best interests of the school and striv[ing] to ensure its development through the provision of quality education for all learners at the school*”.¹⁷

4. EVENTS WHICH LED TO THE REGISTRATION OF AN OWN INITIATIVE COMPLAINT

1. In early November 2020, the Commission was made aware, through media reports (in newspapers, on online news, on television and on social media)¹⁸ of allegations that parents of matric learners attending the School had, with the School’s knowledge, alternatively, that the School itself had organised an

¹³ Ibid.

¹⁴ Defined as ‘the School’ above.

¹⁵ A school with mixed sex or gender cohorts.

¹⁶ In terms of the WC Schools Act, a “secondary school” is defined as “a school providing education from not lower than the eighth up to but not exceeding the twelfth grade”.

¹⁷ Section 21A(a) of the WC Schools Act.

¹⁸ Tembo Theolin, “Winde disturbed by EFF, residents clash outside of Brackenfell High School”, IOL, 9 November 2020. Accessible at: <https://www.iol.co.za/capeargus/news/watch-winde-disturbed-by-eff-residents-clash-outside-of-brackenfell-high-school-dce190c4-f10e-45f6-9d32-dde1388539ae>.

Sokanyile, Asanda, “Calls for Brackenfell High principal’s suspension over ‘whites only’ matric event”, IOL, 7 November 2020, Accessible at: <https://www.iol.co.za/weekend-argus/news/calls-for-brackenfell-high-principals-suspension-over-whites-only-matric-event-890667e2-245e-4a2d-bba5-bfac4550125f>; Dordley, Lucinda, “EFF protests at Brackenfell High School following racist allegations”, Cape Town Etc, 6 November 2020. Accessible at: <https://www.capetownetc.com/news/eff-protests-at-brackenfell-high-school-following-racist-allegations/>; Hyman, Aron, “It was all white on the night at cape town high schools unofficial matric dance”, The Sunday Times, 5 November 2020. Accessible at: <https://www.timeslive.co.za/sunday-times-daily/news/2020-11-05-it-was-all-white-on-the-night-at-cape-town-high-schools-unofficial-matric-ball/>;

unofficial private matric ball which was attended exclusively by white learners and some white teachers of the School. The allegations if true, would amount to unfair discrimination on the ground of race in that black¹⁹ learners were said to have been deliberately excluded from the Ball.

2. In terms of the said media reports, it was alleged that
 - 2.1. the WCED would not permit the School to have an official matric ball due to COVID-19 regulations and/or the SGB decided not to have a matric ball due to COVID-19 health concerns;²⁰
 - 2.2. parents of learners then decided to organise a private event ('**the Event**') and made 100 tickets available (due to COVID-19 regulations) to attend the Event despite there being approximately 250 matric learners at the School;²¹
 - 2.3. the Event was attended only by white learners of the School and two white teachers from the School;²²
 - 2.4. despite it being a private event organised by parents, the School knew that the Event was happening, and that only white learners would be invited or would be attending the Event;²³and
 - 2.5. a parent involved in organising the Event, reportedly indicated that learners of all races could not attend because they were either excluded by the limitation on the number of learners who could attend, or because the white learners did not share information about the Event with learners of other races. ²⁴

¹⁹ Black refers to black African, coloured, Indian and other persons of colour.

²⁰ Ibid. See Hyman, Dordley & Sokanyile.

²¹ See Hyman and Dordley (note 18 above).

²² See note 18 above.

²³ See Dordley and Sokanyile (note 18 above).

²⁴ See Hyman (note 18 above).

3. The media also reported that there is a deeper issue of racism between the white students against the black students at the School (Media reports referenced a deluge of stories that were posted anonymously on an Instagram page detailing stories of alleged racism experienced by current and former pupils of the School).²⁵
4. The allegations of a “whites only” Ball - the Event - had also resulted in protest action and violent clashes between members of certain political parties and parents of learners at the School, and residents who lived in the Brackenfell area. There were also calls for the Principal and the two teachers who attended the Event to be suspended.²⁶

5. THE REGISTRATION OF AN OWN INITIATIVE COMPLAINT BY THE COMMISSION

1. The essence of the allegations raised, via media reports, against the School, is essentially that a matric dance or matric ball was held for only the white matric learners of the School, to the exclusion black matric learners, of the School. That the school knew that the event was exclusively for white learners and the school sanctioned such an event. In other words, that the School unfairly discriminated against black learners of the School based on their race.
2. The Commission, in accordance with its mandate and powers, registered and undertook an own accord investigation to determine whether there was direct or indirect discrimination on the ground of race. If the Commission found that there was direct or indirect discrimination, it would further have to determine if the discrimination was unfair. If the Commission found that there was unfair discrimination it would then need to determine
 - 2.1. who was affected by the unfair discrimination;

²⁵ The Instagram page can be accessed at:
<https://www.instagram.com/bhstories/?igshid=zybmv22wzvp1> .

²⁶ See Tembo (note 18 above).

- 2.2. who was responsible for the unfair discrimination; and
- 2.3. what the most appropriate steps, to take, would be to remedy the unfair discrimination.

6. STEPS TAKEN BY THE COMMISSION IN INVESTIGATING THE COMPLAINT

Engagement with Parties to the Investigation

1. On 10 November 2020, the Commission conducted an unannounced inspection at the School and held meetings with the School authorities²⁷ and the WCED²⁸.
2. Following the unannounced inspection, and after learning of intended protest action at the School, by the Economic Freedom Front (EFF) and other political parties, on 19 November 2020, the Commission issued a media statement requesting these protestors to protest peacefully and within the ambits of the Constitution.²⁹
3. On 20 November 2020, the Commission was present at the School to monitor the protest action.
4. On 24 November 2020, the Commission held a press conference at its office, to inform the media and public of its investigation in respect of the issues outlined above. The Commission proceeded to send correspondence, in the form of an allegations letter, to the School. The School's first written response

²⁷ Mr J Muller (The School's principal); Mr G Smit (The Chairperson of SGB); one of the parents who organised the Event (Identity Withheld); and Advocate Veldsman (A Disciplinary Committee member).

²⁸ Mr R. Larney (District Chief Education Specialists).

²⁹ The Commission's media statement can be accessed here:
<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2495-media-statement-sahrc-condemns-the-violence-that-erupted-outside-brackenfell-high-school-in-the-western-cape>.

to the allegations letter was received, by the Commission, on 25 November 2020.

5. On 26 November 2020, the Commission held a further meeting with the School, the WCED, the SGB, a representative from the School's Representative Council of Learners ('**Learner Representative**')³⁰, and with one of the parents/guardians who organised the Event. In the meeting the Commission requested the School to invite parents/guardians and learners in writing to contact the Commission should they wish to provide input to the Commission, or to provide the Commission with information relevant to the investigation.
6. On 30 November 2020, the Commission held a further meeting, virtually, with another Learner Representative³¹ of the School.
7. On 3 December 2020, following the Commission's previous meetings with the School and the WCED, the Commission requested evidence that the School had sent written correspondence to parents/guardians and learners inviting them to contact the Commission should they wish to provide input or information to the Commission in the course of the investigation.
8. The School provided proof in the form of email receipts of emails sent to the parents/guardians of the learners attending the School.
9. On 8 December 2020, following media reports that the WCED had issued a report on its investigation into the allegations of racism at the School, the Commission requested a copy of said report, which was received on 11 December 2021.
10. On 9 December 2020, the Commission held a meeting with a parent of a learner who did not attend the School (Brackenfell High School). The parent was purported to have been the first person who posted about the Event and made

³⁰ The learner's identity is confidential.

³¹ The learner's identity is confidential.

the allegations of racism on social media. During the meeting the parent informed the Commission that he was informed by his daughter's friend (a learner at the School) that the School held the alleged Event, but that he, the parent, had no personal knowledge of the Event. Attempts to have an interview with the learner who informed her friend's parent of the Event and averred racism on the part of the School were unsuccessful.

- 11.** The Commission attempted to secure a meeting with the learner on 31 January 2021 and on 10 February 2021, respectively, in order for her to provide her views in respect of the allegations that she had allegedly made against the School, but she repeatedly declined to participate or provide information and/or evidence in respect of the allegations, to the Commission.
- 12.** On 30 January 2021, the Commission reached out to a parent who, it had been informed by the School, sent an email to the School's principal displaying her dissatisfaction that there had been a Ball, "for only white learners". The Commission held an interview with the said parent to obtain her views in respect of the Event. The parent in question could not provide any relevant information beyond the general allegations doing the rounds at the time, but wanted to draw the Commission's attention to differential treatment experienced by her son from certain teachers at the school. The Commission requested that the parent's child contact the Commission, with the parent's consent, should he have information relating to the Event. Neither the parent nor her child made further contact with the Commission.
- 13.** On 10 February 2021, the Commission addressed further correspondence to all parents/guardians of the School's Grade 12 learners and other interested persons requesting them to contact the Commission should they wish to give input or provide their views in respect of the Event.
- 14.** In the meeting of 26 November 2020, one of the parents who was involved in organising the Event advised that there were learners from other schools who had also attended the Event as the Event "was not the School's event". The

Commission therefore requested that the parent provide contact details of learners from other schools that attended the Event.

15. Consequently, on 11 February 2021, the Commission held an interview with a learner who attended a different school, but who had attended the Event. The learner confirmed that he came to know of the Event through social media, and that he attended the Event. He also confirmed that there were learners from other schools and not only from Brackenfell High School who had also attended the Event. He further indicated that he was asked to share the invitation amongst other high school learners and was never told to invite only white learners to the Event.
16. On 29 January 2021, the Commission sent correspondence to the School's Administrator, requesting confirmation, as per the School's initial response, that no videos/pictures in respect of the event were posted on the School's social media pages. Confirmation in respect of the above was received from PinPro Media ('**PinPro**') on 2 February 2021.
17. In its response PinPro informed the Commission that it had a service agreement with the School in which it provided the School with videography services, managing and monitoring the School's Facebook page and drafting and posting to the School's website. PinPro confirmed that, to its knowledge, there had been no video(s) /invitation(s) or any material(s) which related to the Event posted to either the School's Facebook page or the School's website. It confirmed, however, that a video of a private function known as the "the Masquerade Ball", had been posted on its YouTube channel but that the Masquerade Ball, which was the Event, had been privately organised by parents and learners and not by the School.
18. On 12 March 2021, the Commission addressed further correspondence to PinPro, requesting clarity in its response in respect of the video of the "Masquerade Ball". On 16 March 2021, PinPro Media clarified that the video of the Event was not posted on the School's social media platforms but was briefly

posted on PinPro Media's YouTube Channel as a private event organised by parents, and not as the School's event.

Evidence before the Commission

- 19.** During its investigation, the Commission gathered information from the parties and through engagements with people, including learners. A summary of the sources and description of the evidence is provided below:
 - 19.1.** Various statements from all race groups of the 2020 cohort of Grade 12, learners from the School and some learners who had attended the Event from another school.
 - 19.2.** Various statements from some parents/guardians of learners at the School.
 - 19.3.** Video footage of the event and a statement from PinPro Media in respect of the video footage.
 - 19.4.** Copies of mobile phone screenshots of WhatsApp conversations forwarded and shared amongst learners which, includes learners from all race groups.
 - 19.5.** The invitation to the Event, which had been posted on a Facebook post of one of the organising parents, which stated that "*anyone that is interested*" and "*asking that learners share with other learners*". The Facebook post was made public.
 - 19.6.** A copy of the invitation to the Event.
 - 19.7.** Copies of a bank account statement in respect of funds that were collected and used to organise the Event.
 - 19.8.** A copy of a signed contract in respect of the venue hire.

- 19.9. A copy of the list of names of learners who attended the Event.

Learner and Parent Statements

20. Set out below is an assortment of statements from learners of the School ('**Learner Statements**'), quoted as received by the Commission.³² Some information has been redacted to protect the identity of a learner or parent or where a certain part of the statement does not refer to the Event but to other alleged incidences of discrimination.

- 20.1. "I am a grade 12 learner at Brackenfell High School. I found out about the ball through two of my friends who spoke about it and shortly after this I heard that a few other people I knew would attend the function. I discussed the matter with my boyfriend and other friends but decided that we would not attend due to COVID. The school told us that there would be no matric farewell function. Many of our parents then used the money for the function for other pressing issues. As such there was no money to attend the function. According to all the available knowledge, no invitation was sent out. The function was advertised on various social media platforms and through parents and learners, and this means that all matriculants were invited to the function, otherwise there would have been a private function".
– Learner Statement 1

- 20.2. "I am a grade 12 learner at Brackenfell High ... I attended the Masquerade ball at Skilpadvlei on 17 October. When I received the invitation, I was asked to send it to everyone I know who I think would like to go. ANYONE who would like to go, never was I told white, black, pink only. One of the first ones I've send it to was my coloured friend who plays first team cricket with me. The event was private and had nothing to do with the school at all and was not restricted to Brackenfell High learners at all and learners from

³² *Sic.*

other schools attended as well. Why are they not put on the spot? The ticket price of R500 was not too high, if the school was allowed to hold a matric farewell, the ticket price would've been much more. We've seen it as a get together we could attend after a very challenging matric year before our final exams. I received the invitation three weeks before the event and decided to make a plan to go. It was like buying a ticket to go see a show. Never was I asked the colour of my skin." – Learner Statement 2

20.3. "As a matric student at Brackenfell high school I was not informed about the PRIVATE dance...As for my opinion on the matter, it was a PRIVATE function and one can invite whom you want to. The same as for ANY other function, could it be a family braai or birthday party, one are allowed to invite who you want!" – Learner Statement 3

20.4. "I'm a grade 12 learner from Brackenfell High School who attended the Masquerade Ball hosted on the 17th of October 2020. I would just like to give information that I received given the event. Due to Covid-19 Brackenfell High one of the many high schools were not allowed to host a farewell for the Matrics of 2020. So that been said a small group of parents got together and decided to host a private event for a farewell. These parent's children started spreading the news and then told their fellow learners to spread the information to any friends or friend groups. Never were we told that the event was exclusive of any specific people, be that race, culture, gender etc." – Learner Statement 4.³³

20.5. "[T]he invitation of the masquerade ball was sent to me, among others, on our Dr12 class group on the 20th of September already. No one on the group had responded directly to the individual who sent the image. She (probably) obtained the invitation from the group of representatives (used for the matric jackets). Even after this there was talk in bilingual classes

³³ To this statement, Learner 4 attached proof that a scanned copy of the invitation to the Event was forwarded from the mother of Learner 4, to another learner's parent, who was of a different race than that of Learner 4.

where students who were going would speak about the ball and [their] excitement to go. I personally chose not to go because I felt it was short notice and the fact that only a few people would be able to attend convinced me not to go, as it would not be the same without all the matriculants there...and there is still a pandemic, risking illness before prelims was not a good idea for me”. – Learner Statement 5

20.6. “Ek het wel die uitnodiging na die maskerbal gekry. Ek is deur ... genooi maar het nie gese omdat ek reeds planne het.” – Learner Statement 6

20.7. “As a matric student at Brackenfell high school I was not informed about the PRIVATE dance. And if I was aware or invited to the dance, I still wouldn't attend it because I was a comorbidity student. As for my opinion on the matter, it was a PRIVATE function and one can invite whom you want to. The same as for ANY other function, could it be a family braai or birthday party, one are allowed to invite who you want! The reaction upon this event is according to me, super childish and out of jealousy!! Why didnt the other parents also take it upon themselves to arrange something for their children? Maybe because they were lazy?! They want to sit back and want others to do everything for them! Like I said, I too wasn't at that dance. People who are throwing their toys around regarding the dance are in my opinion just lazy lime light seekers who wants attention!! They must grow up!!!! Brackenfell high matric student* its everyone's human right and freedom to invite or socialise with whom they want to!” – Learner Statement 7

20.8. “I'm an English learner of the school and have not received any invitation to this function nor has my friends or classmates. My parents have Afrikaans friends whose daughter was invited and they posted pictures on social media, and that is how I got informed of this function. I was however very upset and questions did arise. I'm however lucky to have parents that are understanding and give me support. I do feel that I need to state my case on this matter as per below: The people in charge of our Schools Facebook page should be kept liable and taken to task for this matter at

hand. They are the cause of this situation by posting pictures and the guest list and calling it a Matric Masquerade Ball and then later posting it on YouTube. Which in time got deleted, Why? The parent/s that went to the newspapers & EFF, should have investigated this matter before making a statement of it being a racial issue, as I'm a white pupil. The fact that all matriculants were invited by WhatsApp is not true. The fact that it was stated that only 2 teachers were invited and attended is questionable as on the guest list 4 teachers were invited I have attached some images which was shared among matriculants taken from the School Facebook page and YouTube..." – Learner Statement 8³⁴

- 20.9.** "Aan wie dit mag gaan. HIERDIE EMAIL GAAN OOR DIE PRIVAAT MASKERBAL BY SKILPADVLEI EN DIE AKSIES WAT DAARBY BETREK WAS. Ek is 'n graad 12 leerder by Brackenfell hoërskool. Ek het uitgevind van die maskerbald deur twee van my vriendinne wat daarvoor gepraat het. Daarna het ek gehoor dat 'n paar van my kennise die funksie sal bywoon. Ek en my kerel het ook die saak bespreek met ons vriendekring, maar het tot die besluit gekom dat ons dit nie sal bywoon nie, as gevolg van die COVID het die skool uitdruklik vir ons gese dat daar nie 'n matriekafskied sal wees nie so baie van ons ouers het dus die geld wat hulle gespaar het gebruik op ander dinge wat dringend aandag gekort het, daarom was daar nie geld om hierdie funksie by te woon nie. Volgens al die inligting wat tot my beskikking is, was daar geen uitnodigings uitgestuur nie. Die funksie was geadverteer op verskeie sosiale media platforms en deur verskeie ouers asook leerders, dit beteken vir my dat alle matriekelante uitgenooi was, anders sou daar privaat uitnodigings gewees het. Verder was ek baie ontevrede met die manier hoe die situasie hanteer was deur die EFF. Ek voel hulle optrede was onnodig, want ek as 'n "kind" weet dat daar baie beter maniere is om konflik situasies of probleme op te los. Tydens die tyd

³⁴ In response to the Commission's request for Learner 8 to provide the Commission with the images referred to in their statement as none was attached, Learner 8 stated that they were "[s]orry for taking so long to respond, I was waiting for a few of my school mates to forward me any images or screenshots of it being on the Facebook page but to no avail".

van die optogte was ek bang om skool toe te gaan, want 'n mens is onseker wat sal gebeur en of jy sal veilig wees. Alle matrieks regoor die wereld het reeds 'n baie moeilike jaar gehad en in ons eindeksamen was ons ontwring deur probleme wat vreedsaam opgelos kon word. Volgens my het almal die reg tot onderwys en dit was ontnem van verskeie kinders omdat ouers bang was om hulle kinders skool toe te stuur terwyl hulle by die werk was, wat beteken hulle het kosbare onderrig tyd verloor, maar matrieks moes skool toe gaan om te gaan skryf en op 'n later stadium was Laerskool Brackenfell ook op 'n hard lockdown omdat hulle betrek was by die situasie. Ek hoop my paar woorde sal help sodat julle die regte keuse kan maak rakende die situasie.” – Learner Statement 9

20.10. “I am a Grade 12 2020 learner from Bellville High School and I was invited and attended the Masquerade Ball. There were 1 or 2 other learners from my school- Bellville High School that also attended” – Learner Statement 10

20.11. “Following confirmation from the school, stating that there will be no matric ball in 2020, learners were sad but also understood that the decision taken was to protect them due to Covid- 19 pandemic. As a result of there being not matric ball, friends and parents started planning amongst themselves their own events to celebrate the matric year. We knew that there were a few events being arranged and planned, that we also started planning our own event, which I celebrated with my partner. I was also added into a WhatsApp group but I do not remember by whom and when but it was shortly after the announcement of there being no matric ball for the year. At the time of being added into the group there were already a few learners in the group. In the group it was communicated that only 50 learners could attend due to Covid-19 restrictions. Once the Covid-19 regulations were eased, more learners were added into group. Learners also started sharing the invitation poster on their WhatsApp statuses and inviting more friends. The poster was bilingual, it included both English and Afrikaans...”. I was shocked when I saw from the media that it was alleged that the school arranged the event for only white learners. About less than 2 weeks before

the event there was a list distributed of learners that had already paid and would be attending. The list was sent on the WhatsApp group that showed who will be attending. My reasons for not attending that event was because it was short notice, it was expensive (R500), from the list it was none of my friends attending and I was arranging an event of my own and not as the media state that I did not attend because it was only white learners attending. I do not understand as to why this specific event was an issue when there were other events after the one in question. Also in the specific event, there were other schools that were invited to the event. In that event there were also children from other schools...” – Learner Statement 11

20.12. “Following an announcement that there would be no matric ball, learners where not happy as they wanted to have photographs of their matric year. As a result parents organised their own private parties for their children and children’s friends to celebrate the matric year. There were about 4 or 5 other private events organised by learners and parents. ...first came to learn of the Masquerade Ball when I was added in a WhatsApp group. I was added to the WhatsApp group about a week after the School principal had announced that there will be no matric ball....The title of that WhatsApp group was called “Masquerade Ball”. In the WhatsApp group it was requested by the organizer that learners invite their friends but that space was limited to 50 learners due to the Covid-19 regulations. An invitation was also posted by the organizer on her personal Facebook account. There was a payment of R500 required to attend the event, which I could not afford. Learners joined and left the group as they pleased. The invitation was also sent to class representatives to share to the rest of the learners in their classrooms. Learners also posted the invitation on their Facebook timelines and WhatsApp statuses”. [name omitted] is of the view that any learner could have easily seen the invitation as it was an open invitation. He however did not attend any of the private events. His feelings are that the allegations against the School that it organised a matric ball only for white learners is unfair as the invitation was open to everyone and it was not organised by the School. “Yes, the event was attended by only white learners, but the invitation was extended to everybody”. – Learner Statement 12

21. Below are three statements by parents (**Parent Statements**), quoted as received by the Commission.³⁵ Again, some information has been redacted to protect the identity of a learner or parent or where a certain part of the statement does not refer to the Event but to other alleged incidences of discrimination:
- 21.1. “...There were a lot of separate ‘matric balls’ which were arranged by various parents or the pupils themselves. After the year the matrics had in 2020, give them a break! If other socializing was permitted, why not a private function at which the regulations were adhered to? Is there any investigations against any of the other schools – I know of a matric ball / private event which was held in Kraaifontein, Bellville and numerous other places. Were there any correspondence addressed to any other school in the Western Cape or actually any other province in South Africa, regarding any private events / matric balls with only selected pupils and/or a group of f[r]iends which arranged an event on their own, not involving their schools? Or do separate complaints need to be made to be investigated?...” – Parent Statement 1
- 21.2. “As per my daughters email and attachments hereto sent to you in December 2020, I wish to confirm that this invite was forwarded to as many friends and parents of friends as possible, whether it was persons of another race, culture etc. At no time were any of us as parents, or the kids told to exclude anyone from the invite....” – Parent Statement 2
- 21.3. “She first received an email from the school that due to Covid- 19 there would be no matric ball and parents accepted that. Then they saw a video on YouTube that it was the school’s matric ball for only white learners. The school should have informed all parents that they can arrange their own events. Why did the school, while knowing other parents are planning events for their kids, did it not inform the other parents that they too can have their own events? It made the children that did not attend feel

³⁵ *Sic.*

worthless. If they had sent an email that there would be no matric ball but that there are a few parents that would want to arrange a matric ball event, any other parent that want can do so. How can there be an event when the teachers are invited and also say it is a private event...” – Parent Statement

3

7. LEGAL FRAMEWORK

1. As stated in paragraph 5, above, the Commission has to determine, amongst other things, whether or not there was direct or indirect discrimination on the ground of race, and if the Commission finds that there was direct or indirect discrimination, it would further have to determine if the discrimination was unfair.
2. The legal framework applicable in this investigation provides the basis for the assessment of the evidence obtained through the investigation to determine whether there was indeed direct or indirect discrimination and is set out below.

The Constitution

3. In terms of section 9 of the Constitution

“(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

- (5) *Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.*”

The Promotion of Equality and the Prevention of Unfair Discrimination Act

4. The Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 (**‘the Equality Act’**), gives expression to Section 9 Constitution.

5. Section 1 of the Equality Act sets out the following applicable definitions:

“discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly—

- (a) *Imposes burdens, obligations or disadvantage on; or*
 - (b) *withholds benefits, opportunities or advantages from,*
- any person on one or more of the prohibited grounds”.

“prohibited grounds” are

- (a) *race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status’.*

6. In terms of section 7 of the Equality Act:

“[N]o person may unfairly discriminate against any person on the ground of race, including –

...

- (b) *the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;*
- (c) *the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is*

actually aimed at maintaining exclusive control by a particular race group;

...

(e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons.”

7. Section 13 of the Equality Act sets out the requirement to discharge the burden of proof:

“(1) If the complainant makes out a prima facie case of discrimination—

(a) the respondent must prove, on the facts before the court that the discrimination did not take place as alleged: or

(b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

(2) If the discrimination did take place—

(a) on a ground in paragraph (a) of the definition of “prohibited grounds” then it is unfair, unless the respondent proves that the discrimination is fair”.

8. Section 14 of the Equality Act specifies the factors relevant to assessing fairness:

“(2) In determining whether the respondent has proved that the discrimination is fair the following must be taken into account:

(a) The context;

(b) the factors referred to in subsection (3);

(c) whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.

(3) The factors referred to in subsection (2)(b) include the following:

- (a) *Whether the discrimination impairs or is likely to impair human dignity;*
- (b) *the impact or likely impact of the discrimination on the complainant;*
- (c) *the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;*
- (d) *the nature and extent of the discrimination;*
- (e) *whether the discrimination is systemic in nature;*
- (f) *whether the discrimination has a legitimate purpose;*
- (g) *whether and to what extent the discrimination achieves its purpose;*
- (h) *whether there are less restrictive and less disadvantageous means to achieve the purpose;*
- (i) *whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to—*
 - (i) *address the disadvantage which arises from or is related to one or more of the prohibited grounds; or*
 - (ii) *accommodate diversity.”*

8. ANALYSIS

Information Confirmed During the Investigation

1. The School issued a circular, following a decision taken by the WCED to prohibit matric dances due to COVID-19 and learners possibly becoming infected with COVID-19 before having to sit for matric exams (**‘the instruction’**), informing parents of learners there would be no matric dance for the Grade 12 learners of 2020 due to the Covid-19 pandemic.
2. During an SGB meeting, however, a parent had mentioned in passing (after the actual meeting) that parents were thinking of organising their own parties to celebrate their children and children’s friends’ matric year. According to the

School and SGB, they did not request further details from the parent, as according to them, these were private conversations between learners and parents which did not involve the School as the School had chosen to follow the instruction of the WCED.

3. The statement of the bank account where money was deposited to purchase a ticket for the Event was opened in the name of one of the organising parents of the Event. The account statement reflected that parent's personal details and account number and was linked to that parent's existing private bank account. The funds into and out of the account (in respect of the Event) were solely controlled and managed by the organising parent. A further inspection of the account statement reflected that no monies had been sent to or received from the School.
4. The contract for the venue was in the name of and signed by one of the organising parents and made no reference to the School.
5. The invitation to the Event, the "Masquerade Ball", was, in fact, posted on the social media accounts of the organising parents and did not reflect any of the School's details or information. Allegations that the invitation was placed on or reflected the School letterhead could not be confirmed. Despite the Commission's repeated requests, evidence of (or copies of) the alleged invitation on the School letterhead, was not provided to the Commission.
6. The parent organising the Event confirmed having invited four teachers from the School (only three attended) because they were friends with those four teachers, outside of the School. The organising parent did not invite the School's principal as they did not know the principal well.
7. The Event was attended by learners from the School and learners from other schools from the Brackenfell and Bellville area. Of the seventy-two learners that attended, forty learners were from the School and thirty-two were from other schools. Some of the learners that attended were also not matriculants.

8. The parent organising the Event confirmed that she had made a request for people to “sponsor a child” for the benefit of learners that would like to attend but could not because of not being able to afford the ticket to the Event, but no one responded to the request and as a result the parent ended up sponsoring one learner.
9. The Commission scrutinised the video evidence of the Event, provided to it by one of the parents. Both the visual and audio did not reveal any utterances, markings or branding in the form of banners and/or imagery relating to the School. The video evidence of the Event was recorded by PinPro, for free, and uploaded to PinPro’s Youtube channel. It could not be conclusively established that the video in question, or the photographs of the Event had ever been posted on the School’s official social media pages.

Discrimination on a Prohibited Ground

10. Based on the allegations in the media reports, as set out in paragraph 4 of this report and the legal framework set out above, the Commission first has to determine, using the information gathered, whether the Event (the organisation, the promotion and/or the execution thereof) directly or indirectly disadvantaged matric learners who are black, or whether it amounted to the withholding of benefits, opportunities or advantages from such matric learners of the School.
11. The information obtained by the Commission, during its investigation, is set out in paragraph 6 of this report. The Commission, noting the incongruity of the allegations levelled in respect of the Event, in the media and on social media, and the information disclosed to it by the persons who were willing to meet with and provide evidence to the Commission – including learners, parents and staff of the School, must make a determination as to the most probable facts.
12. The parties who complied with the Commission’s request for information, appeared from the versions presented by them, to have first-hand, personal, knowledge of the idea for, planning of and hosting of the Event.

13. The Commission noted, having regard to the evidence, statements and context in this matter, that information presented was consistent across the versions of the various statements, and accordingly found that it was in a position to determine the veracity and accuracy of facts around the planning and hosting of the Event.
14. There is no dispute that the Official Matric Ball of the School was cancelled on account of the instruction issued by the WCED. Following the School's decision, a number of parents and matric learners decided to organise various private events to celebrate the 2020 matric year, with one of those events being the Event in question. The Commission was informed by learners and parents/guardians³⁶ that there were about five other private events known to have been held amongst groups of friends.
15. The evidence provided by learners and parents/guardians showed that the Event was promoted via WhatsApp and Facebook and word of mouth and that there was no exclusion or selection of races. In respect of the Event, there is no dispute that there were 100 spaces/tickets on sale (given the Covid-19 lockdown regulations, in place at the time), the venue was private and tickets to the Event were R500.00 per ticket.
16. The Commission further considered whether the purchase price of R500.00 per ticket, as well as the additional costs involved in travelling to Skilpadvlei, the venue of the Event, could have indirectly discriminated against learners who do not identify as white, on socio-economic grounds. However, the prices of tickets for matric balls, hosted by schools, range from R300.00 to R1 500.00.³⁷ The extent of the cost of a ticket for a matric ball hosted by the School is bolstered by Learner Statement 9, in which the learner states that after the School announced it would not be hosting a matric ball, their parents spent the money

³⁶ See paragraphs 6.19 and 6.20, above.

³⁷ Schutz, E, "Project eases matric dance financial burden", 26 August 2019, the New Frame, accessed at: <https://www.newframe.com/project-eases-matric-dance-financial-burden/>; and A4W Contributor, "How to financially survive your teenager's matric dance", 15 August 2014, All4Women, accessed at: <https://www.all4women.co.za/137301/leisure/how-to-financially-survive-your-teenager-s-matric-dance>.

saved for the matric ball on other things that were urgently needed. Thus, as far as the Commission's understanding of such events go, even if the School were to host a matric ball, it would be hosted off school grounds and would be cost-bearing for the attending learners. On that basis, the Commission does not find that the R500.00 ticket price and venue, 16 kilometres from the School, was indirectly discriminatory against any Grade 12 learner of the School.

- 17.** While it appears from the video recording and photo's that the Event was attended by white learners from the School, it is clear from some statements made to the Commission by black matric learners, that they were aware of the Event and had seen the invite on WhatsApp or Facebook or had been informed via word of mouth. The invite to the Event was also shared with learners from other schools, some of whom attended the Event.
- 18.** Thus, with reference to the allegation that the Event was held exclusively for white learners, the Commission, after consideration of the inputs received, can find no evidence to substantiate the allegation that the Event, was organized exclusively for white learners .
- 19.** For the Commission to find that there was discrimination, the Commission would need to establish whether there was differential treatment. As will appear from the above, the Commission concludes that there was in fact no differential treatment in respect of the Event. In the absence of being able to find that there was differentiation on the basis of race as alleged, the Commission is obliged to conclude that the allegations made on social media and carried in the media, were without substance and accordingly that there was no discrimination in the planning or hosting of the Event. In terms of the definition of discrimination therefore, the Commission is unable to find that any burden, obligation or disadvantage was imposed, nor is the Commission able to find that any benefit, opportunity or advantage was withheld, on the basis alleged or at all.
- 20.** Given that the Commission's analysis finds that there is no discrimination on the ground of race, there is no need to determine fairness.

9. FINDINGS

1. In respect of the allegations that the School hosted a “whites only” matric ball the Commission finds that:
 - 1.1. While the School’s officials likely knew about the Event -- because details of the Event were advertised or shared by parents/guardians and learners of the School on WhatsApp, Facebook and by word of mouth, and four teachers were invited -- based on the evidence before the Commission, it finds that the School was not involved in the planning, funding, advertising or hosting of the Event and therefore finds that the School did not host a “whites only” matric ball and did not unfairly discriminate against Grade 12 learners on the ground of race.
 - 1.2. The organisers of the Event did not directly or indirectly discriminate against learners on the ground of race.

10. ADDITIONAL COMMENTS

Misinformation in Mainstream and Social Media

1. The Covid-19 pandemic has brought to the fore the power of, and consequently the dangerous effects of misinformation on social media platforms. The Commission found, in its investigation, that an adult who did not possess all the facts relating to the Event, but who heard about the Event from their child’s friend, who was a learner at the School, was one of the first persons to post on social media (Facebook), alleging that the Event was racially discriminatory. The Commission was unable to confirm the source of this person’s information as the learner in question refused to meet with the Commission. The Commission deemed it inappropriate to issue a subpoena against this learner.

2. Furthermore, while not making findings about whether or not the media contravened the Press Code of Ethics and Conduct for South African Print and Online Media (**‘the Press Code’**), when reporting on the Event, the Commission does note that the publication of people’s allegations without adequately checking the accuracy and veracity of these allegations quoted in the media reports in accordance with the Press Code, nevertheless holds the risk of harm. This is especially true when dealing with allegations of racism in South Africa – a particularly volatile issue in our country –, serving to aggravate racial tensions, invoking false narratives and creating opportunity for hatred and violence. In this particular instance, given the widely reported although unfounded allegations of racism in regard to the organizing and holding of the matric ball, the spectre of racism that was raised on social media, was handled in a manner that served to further widely disseminate such ill-founded allegations by the mainstream media reports, leading to protest action that turned violent and invoked hate speech outside the School. The stress and fear this generated, especially among the learners at the school cannot be acceptable. This is a matter that should be of concern to all media outlets in the country and should be a matter for serious reflection for journalists and media editors, alike.
3. The parent who posted the allegations about the Event on Facebook and media outlets will equally be contacted and advised by the Commission, regarding the consequences of their actions in this regard.

Broader Allegations of Racism Experienced at the School

4. During the investigation, allegations of broader experiences of racism experienced by black learners, both current and former learners of the School were received from certain witnesses³⁸. These allegations did not relate to the Event which was the subject of this investigation.

³⁸ See paragraph 4.3 above.

5. The Commission will commence its investigation into these allegations by requesting written submissions from learners, parents, the School, the SGB and any other person that would like to bring complaints or information before the Commission.

Protest Action outside the School

6. Racism and racial discrimination is a painful reality which, despite 27 years of democracy, continues to find form both covertly and in plain sight in our country. Where racism manifests in schools, the experience and impact are particularly devastating for those who experience it and those who are within its harmful radius. Allegations of racism should therefore not be blithely invoked or exploited for political gain. The protest action, which turned violent, which followed misinformation being widely disseminated regarding the Event negatively impacted on the rights of the School's learners. Our Constitution enjoins us all to act in the best interest of children which is of paramount importance.

The Commission has previously pronounced on the impact of violent protest action in relation to education in the context of protests which took place in Vuwani in Limpopo where, during protest action, 29 schools were set alight by protestors following their dissatisfaction with a High Court ruling.³⁹ The Commission will, having regard to its earlier recommendations to the National Department of Basic Education following its national hearings into the impact of protest-related action on the right to a basic education in respect of other demonstrations and protests that affected the right to basic education,⁴⁰ take steps to better protect the rights of learners, which will include the investigating the issues pertaining to the law in respect of gatherings and if necessary make

³⁹ Kgatle Mookgo Solomon, The impact of the Vuwani protests on teaching and learning: Practical theological reflection (2018) STJ vol.4 n.1 Stellenbosch.

⁴⁰ See the Commission's report on its National Investigative Hearing into the Impact of Protest-related Action on the Right to a Basic Education in South Africa, accessible at: <https://www.sahrc.org.za/home/21/files/WEBSITE%20Impact%20of%20protest%20on%20edu.pdf>

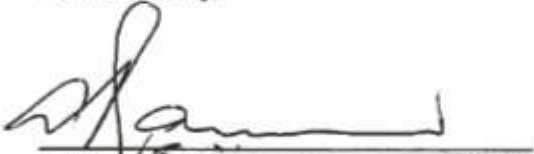
recommendations for the amendment of the Regulation of Gatherings Act 205 of 1993, to conditionally restrict gatherings at or near schools in order to prevent the violation of the right to basic education, and to prevent children from being subjected to the trauma of protests, especially where such protest action becomes violent.

7. In respect of allegations of hate speech related to the protest action, the Commission has begun its investigations in this regard and has sent out correspondences in the form of allegation letters to the persons and/or entities alleged to have committed hate speech in terms of the Equality Act.

Should any of the parties be aggrieved by the findings and recommendations of the Commission as contained herein, such a party is entitled to challenge same in court through the process of judicial review. An application for judicial review must be made within 180 days of the date on which all internal remedies were exhausted. Where there are no internal remedies available, the application must be made within 180 days of the date on which the applicant became aware of the decision (or could reasonably be expected to have become aware of the decision).

SIGNED AT JOHANNESBURG ON THE 02 DAY OF MARCH 2022.

Yours faithfully,



Advocate André Gaum
Commissioner
South African Human Rights Commission